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DEVELOPMENT SERVICES
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James Hicks
Hinckley & Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

Date 17 July 2009
Our ref: RXH\4148714.1\50350.196\ZZW
Your ref:
Direct tel: +44 (0) 121 202 1467
Direct fax: +44 (0) 121 234 0005
E-mail: RHooper@hbj-gw.com

Dear Mr Hicks

Land adjacent to 391 Coventry Road, Hinckley, Leicestershire
Planning Applications for Removal of Conditions
Ref 09/00343/CONDIT and 09/00340/CONDIT

I refer to our meeting on 9th July when officers from the Highways Agency confirmed that they had not been consulted on the 2005 planning application number 05/000615/FUL for the commercial development on land adjacent to 391 Coventry Road, Hinckley. You invited us to examine the web site in terms of the Highways Agency comments on the 2007 planning application number 07/01150/FUL for commercial development of land adjacent to 391 Coventry Road, Hinckley. I have now examined the detail of that and note that the Highways Agency raised no objection to the application and did not ask for or require a condition about works to the Dodwells Roundabout.

As a result of both applications it is clear the conditions which are the subject of these applications were not attached at the either the requirement or request of the Highways Agency. Circular 11/95 on conditions states at paragraph 24 "Unless a condition fairly and reasonably relates to the development to be permitted, it will be ultra vires."

The responsibility for requiring any works to a trunk road are is that of the Highways Agency and not the Local Planning Authority. The fact the Highways Agency did not require the works to the Dodwells roundabout as a condition for not raising an objection to the planning applications in either 2005 or 2007 means that the conditions neither fairly or reasonably relate to the development. The conditions are therefore as a matter of law ultra vires. The circular continues at paragraph 25:

"Thus it is not sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings...it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists....it is proper for conditions to secure satisfactory access, for example, or parking facilities, genuinely required by the users of the proposed development..."

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One Eleven
Edmund Street
Birmingham
B3 2HJ
DX 13033 Birmingham-1
t: +44 (0) 121 234 0000
f: +44 (0) 121 234 0001
www.hbjgateleywareing.com

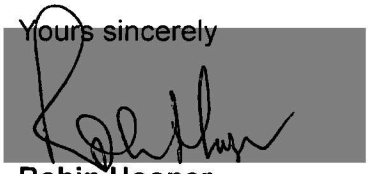
It is an obvious point, accepted by the senior planning officer at the meeting, that the works to the roundabout at Dodwells are to satisfy needs of other developments past and future, and therefore it is wrong as a matter of law to require this single development to provide the works. The conditions on both planning permissions were wrongly applied and upon these applications before the Council should now be removed. The development of this site does not require now, and more importantly did not when the conditions were imposed, the improvements to Dodwells roundabout.

It is therefore not a matter of either planning officer or political judgement to be exercised whether the conditions should be enforced or not. It is a matter of law that they should be removed in accordance with the two applications which have been submitted. Even if the Highways Agency in 2009 has a different view, the test is not in 2009 but at the time when the conditions were imposed, when the Highways Agency did not have any objection and it did not require the conditions to be attached to either permission. The evidence does however note with hindsight and the power now to assess the actual usage of the roundabout, the professional opinion is that the works suggested by virtue of the conditions are not even necessary. Therefore the Council can take comfort from the evidence presented on that by the professional highways consultant.

I would respectfully request therefore that the Council complies with the legal principles that apply to imposition of conditions and grants consent to both applications. In the event that the Council does not approve both applications I am instructed to advise that my client will pursue the matter to appeal on both and will be seeking an award of costs.

I understand that this matter will be heard by committee shortly I formally request the right to speak on behalf of the applicant at the committee meeting.

Yours sincerely



Robin Hooper
Director of Planning Services
for HBJ Gateley Wareing LLP

cc. Highways Agency