DCAPLFC
11/00279/CLU.

The Planning Inspectorate
EST 1909

3/26 Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8067
Customer Services: 0117 372 6372
Fax No: 0117 372 6153
e-mail: teame1@pins.gsi.gov.uk

Mr Simon Wood
Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire
LE10 1BZ

Your Ref:

Our Ref: APP/K2420/X/11/2155849

Date: 21 September 2011

DEVELOPMENT SERVICES
23 SEP 2011
RECEIVED

Dear Mr Wood

Town and Country Planning Act 1990
Appeal by David Durrant
Site at 15 Crown Hill Road, Burbage, Hinckley, LE10 2LD

I enclose for your information a copy of the appellant's final comments on the above application for Costs. This completes the appeal timetable.

No further comments, from any party, will now be taken into consideration.

Yours sincerely

Fran Littler

E221L(BPR)

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -
http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY DAVID DURRANT

ON BEHALF OF CHARTWELL CARE LIMITED

SITE AT 15 CROWN HILL ROAD BURBAGE HINCKLEY LE12 2LD

RECEIVED
21 SEP 2011
REGISTRY

COMMENTS ON THE LOCAL AUTHORITY'S RESPONSE TO THE APPELLANT'S APPLICATION FOR COSTS

Marrons
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY

DX 710910
Leicester Meridian

Tel: 0116 289 2200
Fax: 0116 289 3733

Email: paulwakefield@marrons.net

Ref: PAW 4888-1-3
PINS Ref: APP/K240/X/11/2155849

1. In reply to the Council's Response to the Costs Application, whilst the Appellant notes the fact that members of the planning committee were required to make a judgment when reaching their decision, it is once again necessary to highlight paragraph B.20 of the Costs Circular which states in full:

"Planning authorities are not bound to accept the recommendations of their officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority".

2. The Council's response notes at paragraph 17 that the Officer's report advised that the proposed use *"would not constitute a material change of use"*. It goes on to highlight at paragraph 18 that Members had the benefit of both the Officer's report and the late item which contained *"details of the operational aspects of the proposed use, including numbers of vehicles likely to be using the premises and staff rota times"*.

3. It should be noted that the information supplied by the Appellant and reported as a late item was all before the Officer when the report was written, as it is all set out in *"A Pathway to Progress"* which was submitted at the time of the application (and which is attached as Document B to the Appeal Statement).

4. The only additional information before the Committee, which was not covered in the Officer's report were the third party representations.

5. This application was refused, according to the decision notice, as the number of staff required in order to carry out the proposed use *"materially alters the character of the property"*.

6. However, the minutes of the planning committee meeting at which the decision was taken make no reference to any concern on the part of the

members about this issue. The official minutes (which are the Council's own record of events) only note members' concerns in respect of the impact on local residents, *"particularly due to problems which had occurred in the past"*[1]. It is these new representations which were carried by the late items report, and which according to that report were reported for members' information whilst it was stressed that *"the planning merits of an application are not relevant to the consideration of the purely legal issues which are involved in determining the application."*

7. From the minutes of the meeting it is clear that members were *"concerned about the impact on local residents, particularly due to the problems which had occurred in the past."* There is not a single reference to the impact of staffing on the character of the property. Therefore, the only evidence of members decision making process makes no reference to, and therefore fails to substantiate, the only reason given for refusing the application.

8. This is clearly unreasonable behaviour on the part of the local authority who, despite the clear guidance given in paragraph B20 (and the guidance of Officers in the late items report), have clearly failed to show reasonable planning grounds for taking a decision contrary to the recommendation of their officer and have failed to produce relevant evidence on appeal to support the decision in all respects.

9. This failure to produce evidence was highlighted by the Appellant in the initial Appeal Statement, and despite having opportunity to do so in their Appeal Statement, the Council failed to produce any evidence to substantiate the reason for their decision. The Council have therefore clearly acted unreasonably in this case.

10. As the Inspector will no doubt appreciate, an appeal decision and a costs decision are separate matters. Therefore, even if the Inspector is

[1] This appears to be a reference to the anti-social behaviour which had resulted from the previous use of the property, by an unconnected third party, for housing children with Emotional and Behavioural Difficulties which was mentioned in all of the third party correspondence.

persuaded that the appeal should be refused (although for the reasons set out in the Appeal Statement this is not a view which the Appellant would endorse) the fact that the Council have failed to produce relevant evidence to support their decision in all respects is clearly unreasonable, and it is submitted that costs should be awarded regardless of the decision taken by the Inspector when determining the Appeal.

11. Therefore, for the reasons outlined in the Costs Application and further substantiated in this response, it is respectfully requested that a full award of costs be made in this matter.