IG Land & Planning

1 Thornton Close, Crick, Northants, NN6 7GE
Tel/Fax 01788 824346 Mobile 07802 237526
E-Mail: igidley@btinternet.com Website: IGLandPlanning.supanet.com

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The Planning Inspectorate
3/20 Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Dear Sir/Madam

Re: Appeal APP/K2420/A/11/2163009/NWF – Site at 3 Cleveland Road, Hinckley

The following is the appellant's comments on third party comments, Leicestershire Council Council's statement and the LPA's statement.

Third Party Comments

Comments have been submitted to The Planning Inspectorate by Mrs Paxton, Paul Hunt, B Newton and Mr & Mrs Hards.

The objections can be summarised as relating to housing need, design, amenity and car parking congestion. The purpose of the planning application was to extend the time limit for implementation. National planning guidance on such applications advises that only new material planning matters ought to be considered since the grant of the original consent. None of the objections raise any new matters and every single one was considered by the previous Inspector when upholding the previous appeal (Mr Hunt seems confused on this point as the Secretary of State did not refuse any planning application).

County Council's Statement

Hinckley & Bosworth Borough Council are the planning authority on this particular planning application whereas Leicestershire Council are the planning authority for mainly waste and mineral planning applications. Given this, the appellant has only responded to the LPA's request for financial contributions in its appeal statement and the lack of any open space provision was their only reason for refusal of permission.

The LPA did consider the County Council's request for financial contributions to be secured within a S.106 agreement and the reasons for not passing this request onto the developer are explained in the planning officer's report (appendix 1 of the appellant's appeal statement). The relevant paragraphs are reproduced below:

'The contribution requested by the Director of Children and Young Peoples Services (Education) in respect of the Upper School sector states that there is a deficit of 86 places and the proposed development will contribute one school place at a contribution of £18,355.16. Developer contributions cannot be used to fund existing deficiencies in a service and it is difficult to conclude that the contribution is necessary to make the development acceptable in planning terms when there is an existing shortfall in places.

The requests from Director of Environment and Transport (Civic Amenity) Director of Adults and Communities (Libraries) fail to accurately assess how the proposed development will impact upon Barwell Civic Amenity Site or Hinckley Library and how the contributions will be used to address these issues. Therefore these requests are not considered to be CIL compliant.'

The appellant was not privy to the correspondence between the LPA and the County Council but the assessment above by the LPA appears to be founded on reasonable grounds.

The County Council has submitted a lengthy appeal statement and thus warrants examination. The County Council makes reference to a Statement of Requirements for Developer Contributions in Leicestershire (SRDCL). The latest review is noted as taking place in December 2007 which is prior to the known effects of the recession and therefore considered to be outdated in relation to the present economic circumstances. The SRDCL is not adopted guidance by the LPA and is not referred to in Local Plan Policy IMP1. Given all of the above, it is considered that only limited weight can be attached to this guidance to planning authorities in Leicestershire.

Paragraph 3.1 of the County Council's appeal statement states that the planning application was refused on highway grounds and that a unilateral undertaking has been provided by the appellant. Both of these statements are untrue and appear to be a hangover from the original appeal.

The County Council accepts that no contribution can be justified towards primary and high school education. Its request for £18,355.12 relates to high school education at John Cleveland College. According to the Department of Education, the number of pupils at this college is 1715 (census date January 2011). There is modest spare capacity therefore of 27 pupils. The County Council refer to a 'projected on roll' figure but there is no explanation to demonstrate where the additional 113 pupils are going to come from. It is difficult therefore to give this projected figure any credibility and it is considered that it cannot be relied upon in this context of this appeal due to a lack of evidence.

The LPA also makes a valid point that (if one accepts the deficit of 85 pupils) that this is a known deficiency that should be funded by other means and not the proposed development. If the projected figure relates to new developments then it is likely that financial contributions have already been secured to increase college capacity. The County Council Education Department statement in Appendix 1 states that the requested money will be used to improve, enhance or remodel existing facilities.

It is considered that this proposal does not meet the tests laid down in Circular 05/2005. It is considered that the proposed works are not sufficiently specific with 3 options cited. It also seems unreasonable to request £18,355 to undertake such works to create one additional school place and it is doubted that improving or enhancing any facilities will result in spare capacity. Remodelling might create additional capacity and in effect, given the County Council's perceived need for 1 space, this would result in one classroom being reorganised. It is considered that the money requested is excessive to create this one additional desk and chair space.

Furthermore, the requested financial contribution does not directly relate to the proposed development of apartments in this location but has been based upon average household composition. According to 2001 Census data, there were 3 dependent children living in flats in the Hinckley Castle Ward above the age of 11. In the unlikely event that each one was aged 14 or above, this equates to 0.0074 children per flat in the local ward (total of 404 flats). A development of 14 flats is likely therefore to create a maximum of 0.1 children above the age of 11 and thus a need for the education contribution cannot be justified in accordance with Circular 05/2005 which states that it must directly relate to the proposed development.

In terms of the library contribution, there is insufficient justification for this. As per the case planning officer's evaluation, the County Council has failed to accurately assess impact and how the money will be used. There is no mention of the capacity of the library and whether it is under or over subscribed. It has not therefore been demonstrated that the requested contribution is essential such that development could not proceed without it.

The justification for the Civic Amenity Contribution is similarly weak. Again, there is no mention of the capacity of Barwell Civic Amenity site and therefore, it has not been demonstrated that the requested contribution is essential. In addition, it is doubted that increased capacity could be achieved for £601 and the additional justification on pages 18/19 of the County Council's statement do not relate to waste.

In any event, as comprehensively demonstrated in the appellant's appeal statement, the financial contributions requested would worsen the site's financial viability which has already been proven to be marginal at best.

LPA's Statement

The appellant's appeal statement comprehensively addresses the reason for refusing planning permission and therefore the following comments concentrate on matters where further clarification is necessary or new points.

Paragraph 6.9 states that Clarendon Park is within 400m of the appeal site. This is misleading. It is barely within 400m as the crow flies which is not possible to walk. The walking distance to Clarendon Park is circa 700m whichever entrance one uses. As stated in the appellant's appeal statement, there are nearer parks that are more likely to be used (in the unlikely event of children occupying the proposed development). As a further example, Granville Park is en-route to Clarendon Park if the Coventry Road route is used. A refurbished play area was installed during 2007 and features new swings, see-saws, roundabouts and multi-play equipment. Given the

closer proximity of this park containing the facilities that the LPA states are needed for the proposed development, the Council's justification for its requested financial contribution contains further flaws.

Paragraph 6.10 states that a target quality score for parks of 80% is reasonable but none of the Council's parks achieved this standard in 2005 and therefore it is a rather optimistic standard, though Granville Park may be rated higher following its refurbishment. Clarendon Park is one of the best rated parks but in any event it is considered to be beyond the reasonable walking distance of the appeal site.

Paragraph 6.12 i) states that it is impossible to control that children will never live in these apartments. This is not strictly true. A condition could be applied to a planning permission which restricted all occupation to adults only of age 18 or above. Notwithstanding this, the LPA's argument could also be applied to housing need which is equally impossible to determine to an exact level of accuracy. However, it is good planning practice to use all the information available to determine the likely occupation rate. The best information available in this case is the local ward Census data from 2001 which suggests that 0.65 children occupying the development would be a reasonable and realistic forecast.

Paragraph 6.12 iii) seeks to justify the financial contribution sought on the basis of visiting children. The appellant's agent is not aware of any cases nationwide where visitors have been the basis of justifying financial contributions in S.106 agreements and doubts that this would comply with the reasonableness test

The appellant disagrees with the LPA's conclusions in paragraphs 6.15 and 6.16. For the reasons outlined in this letter and the appellant's appeal statement, the appeal site is located within a highly sustainable urban location. Improvements at Clarendon Park which the appellant has demonstrated does not directly relate to the appeal site would have no bearing on the sustainability of the proposed development.

In respect of paragraphs 7.1 and 7.2, reference to the appellant's statement that the development will be barely viable within the next 3 years was made in paragraph 18.5 not 18.4 of its Viability Appraisal. The definition of 'barely' is 'only just' and does not prove that development will not come forward. It is difficult to predict the housing market with any accuracy and therefore a 30% rise in prices is a possibility, albeit an optimistic one. The appellant's point was that the evidence demonstrates that financial contributions would render the proposed development unviable. The LPA's arguments in paragraphs 7.1 and 7.2 do not counter this argument and do not substantiate its reason for refusal.

That concludes the appellant's comments.

Yours faithfully



Ian Gidley MRTPI
Director