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

28th December 2011

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

Dear Sir/Madam

Re: Site at 3 Cleveland Road, Hinckley, Ref APP/K2420/A/11/2163009/NWF – Application for an Award of Appeal Costs

I refer to the above appeal made on behalf of my client Sycamore Developments.

I am instructed to make an application for an award of appeal costs.

It is considered that the LPA has acted unreasonably. The grounds for this application are as follows:

Validation of Application

The LPA has been unreasonably obstructive since the submission of the application. The application was originally lodged on 27th May 2011. A letter dated 6th June 2011 was received from the LPA requesting the fee of £500 and a viability assessment. In terms of the fee, this was due to a fault with the LPA's online payment system and was eventually resolved by payment with a cheque on 7th June 2011. The LPA insisted on a viability assessment despite this not being a validation requirement within paragraph 10 of the Planning Portal's form for such applications. Whilst it is acknowledged that a viability assessment was necessary to determine the application, it was considered unreasonable to refuse to validate the application for this reason until one had been received.

The LPA then verbally insisted that a viability assessment must include all the potential S.106 contributions sought from all the various consultees and that the appellant had to consult with these parties directly. Apart from the additional delay caused, it was considered to be an unreasonable request because the appellant had already explained that the proposed development was barely viable without any S.106 contributions. The financial contributions sought were therefore irrelevant but the appellant had to comply with the request in order for the application to be validated.

The appellant submitted the viability assessment via e-mail dated 22nd July 2011. Despite this, the LPA acted extremely unreasonably by then requesting submission of a S.106 agreement within a letter dated 19th July 2011 and continued to pursue this request after receipt of the viability assessment which demonstrated that the development would be unviable with any S.106 agreement contributions. Following a complaint, the LPA's Principal Planning Officer agreed to validate the planning application and a letter was received from the LPA dated 1st August 2011 confirming this with a backdated validation date of 22nd July 2011 to coincide with the submission of the viability assessment.

Determination of the Application

The LPA then acted unreasonably by incorrectly advising within an e-mail dated 16th August 2011 that the original S.106 agreement could not be altered (despite its imminent expiry) but then contradicted itself by suggesting either an amended S.106 agreement based on revised consultation responses or withdraw the application and submit a fresh full application. The appellant responded on 17th August 2011 and attached a link to the DCLG's guidance on 'Greater Flexibility for Planning Permissions' which makes it clear that changes can be sought to S.106 agreements.

During the latter part of the LPA's determination of the application, it sought to negotiate the S.106 agreement to a reduced level of £15,009.60 within an e-mail dated 22nd September 2011 despite accepting that the proposed development was not viable with such a payment. The appellant responded to this e-mail on the same day with a detailed and reasoned explanation as to why a S.106 agreement could not be entered into. Despite this, the LPA proceeded to refuse the application.

LPA's Decision Notice

It was accepted by the case officer prior to the determination of the application that any open space provision would have to be provided off-site. Despite this, the decision notice refused planning permission on the basis of no provision onsite for play and open space. Due to this reason for refusal, the appellant had to address this issue separately in its appeal statement which was a wasted expense as the LPA accepted that onsite provision was not appropriate as did the previous Inspector. The decision notice was also incorrect as some amenity space is proposed.

Viability Assessment

The LPA confirm in its appeal statement that the appellant's viability case is not contested (paragraph 7.1). The LPA additionally confirm that:

> *'Turning to the matter of economic viability, the LPA has fully considered the fact that viability is a material planning consideration and the Ministerial Statement: Planning for Growth Growth and the draft wording of the National Planning Policy Framework (NPPF).'*

Elsewhere in the LPA's appeal statement, the LPA acknowledge guidance in Circular 05/2005 (paragraph B10 advises on economic viability). It is considered that despite clearly being aware of all the above guidance and material considerations concerning

economic viability, the LPA chose to refuse planning permission on the basis of the need for local play space even though there is an abundance of local play space within the local area. It is considered that the LPA's decision in these known circumstances constitutes unreasonable behaviour.

LPA's Appeal Case

Despite the LPA acknowledging guidance in Circular 05/2005 and The Community Infrastructure Levy (CIL) Regulations 2010, Part 11, Regulation 122, the LPA has failed to demonstrate that the financial contribution sought towards off-site local play space meets the tests prescribed by such guidance and legislation.

Paragraph B5 of circular 05/2005 states that:

'A planning obligation must be:

(i) relevant to planning;
ii) necessary to make the proposed development acceptable in planning terms;
(iii) directly related to the proposed development;
(iv) fairly and reasonably related in scale and kind to the proposed development; and
(v) reasonable in all other respects.'

It is considered that the tests in criteria ii), iii), iv) and v) have not been met.

The LPA has not demonstrated, nor provided any evidence to prove that the financial contribution sought is necessary. Conversely, the appellant has demonstrated via Census data that it is highly unlikely that children will occupy flats in this area of Hinckley. This information is more readily available to the LPA than it is to the appellant. The LPA further concede that Clarendon Park already has a play area and that the proposed contribution will be used to improve some of this equipment. It is considered that this is a maintenance expense that does not fall under the remit of planning obligations as it is an existing deficiency.

The LPA has failed to demonstrate that the proposed planning obligation is directly related to the proposed development. The appellant has demonstrated that there are 3 local play spaces closer to the appeal site than Clarendon Park.

The LPA has failed to demonstrate that the financial contribution sought is fairly and reasonably related to the proposed development. The sum sought is likely to be sufficient to replace the majority of equipment within the children's play area at Clarendon Park.

For the reasons in this letter and the appellant's statement, the planning obligation sought is unreasonable in all other respects.

Circular 03/2009

It is considered that the conditions in paragraph B12 of the above circular have been met. For the reasons in this letter, it is considered that the LPA has acted

unreasonably and that its unreasonable behaviour has caused the appellant to incur expense unnecessarily by having to be professionally represented and pursue an appeal when planning permission should have been granted.

In respect of paragraph A22 of Circular 03/2009, it is considered that the LPA has acted unreasonably in the determination of the application and because it has failed to substantiate its reason for refusal. Whilst it has provided an appeal statement, it is considered that its reasoning is flawed and not based upon any robust evidence.

It is considered and concluded that the whole appeal could have been avoided if the LPA took proper account the appellant's accepted economic viability case, the Ministerial Statement: Planning for Growth, the draft wording of the National Planning Policy Framework NPPF and the tests laid down in Circular 05/2005 on planning obligations as well as the guidance on viability within this Circular. It is further considered that the whole appeal could have been avoided if the LPA had properly researched the need for local play space arising from the proposed development and the locations of the nearest local play spaces to the appeal site.

I look forward to receiving the Inspector's decision in due course.

Yours faithfully



Ian Gidley MRTPI
Director