DELEGATED REPORT

Recommendation Made: 16 May 2011

Reference:- 11/00274/CONDIT **Parish:- Market Bosworth Parish Council**

Applicant:- Mr Nick Smart
The Club House
Back Lane
Market Bosworth
Leicestershire

Location:- The King William Iv 35 Station Road Market Bosworth Nuneaton Leicestershire

Proposal:- REMOVAL OF CONDITION NO.6 OF PLANNING PERMISSION 10/00232/FUL WHICH REQUIRES THAT THE DEVELOPMENT SHALL NOT COMMENCE UNTIL THE PROVISION AND MAINTENANCE OF OFF SITE OPEN SPACE (WHETHER BY PHYSICAL PROVISION OF FINANCIAL CONTRIBUTIONS) IS SECURED AND APPROVED IN WRITING BY THE LOCAL PLANNING AUTHORITY

Introduction:-

This application is seeking the removal of condition 6 of planning application 10/00232/FUL which required that development should not commence before the provision and maintenance of open space was either provided on site or secured through financial contributions.

The site occupies a prominent position at the junction of Southfield Way, Warwick Lane and Station Road within the Market Bosworth Conservation Area adjacent to an existing food takeaway shop. The existing building occupies a slightly elevated position above the pavement level and is of an attractive tile hung gabled design. The building is of red brick, with brown clay tiles to the roof. This site is adjacent to a Grade II listed building, no.11 Warwick Lane, and on the opposite street corner is a dentist. To the north is the Dixie Grammar School. Works are currently being undertaken to the former public house with the provision of an extension to the rear of the site and various cosmetic alterations.

History

10/00232/FUL
Conversion of Public House and flat above into four town houses and associated car parking
Approved 17.05.2010.

09/00311/FUL
Conversion of Public House to Five Apartments and associated car parking
Approved 07.09.09

05/01123/FUL
Conversion to Seven Apartments and Car Parking
Refused 28.04.2006
Appeal Allowed 14.03.2006

Consultations:-

Objection received from Market Bosworth Parish Council on the grounds that the applicant should be financially contributing towards the maintenance of public space before development continues at pace on site.

No comments received from:-

Ward Members

Development Plan Policies:-

Hinckley and Bosworth Adopted Local Development Framework- Core Strategy (2009):-

Policy 11

Hinckley and Bosworth Local Plan 2001:-

IMP1
REC3
BE1
BE5
T5

Supplementary Planning Guidance:-

Play and Open Space SPD.

Appraisal:-

The main issue in determining this application is the principle of development and whether a financial contribution towards open space should be waived in lieu of the previous scheme allowed at appeal didn't require this contribution.

Principle

The granting of planning permission on previous applications in 2005, 2009 and 2010 for the conversion and extension to the public house has demonstrated that the site is considered acceptable in principle for residential uses. Furthermore the site lies within the settlement boundary for Market Bosworth where there is a presumption in favour of residential development. Therefore it has been established that the site is acceptable in principle for residential development.

Open space contribution

The main issue is that the applicant has decided to proceed with construction on site without complying with the relevant condition to secure financial contributions for the provision and maintenance of off-site open space. This is a pre-commencement condition. The argument put forward in the applicant's case is that there was previously no requirement in the 2005 application for this to be applied. It should be noted that planning application 05/01123/FUL was allowed at appeal and it was deemed by the Planning Inspector that the imposition of a condition requesting financial contributions was in conflict with Circular 11/95 which stated that no payment of money can be required when granting a permission.

As it stands the condition attached to planning permission 10/00232/FUL relating to open space contributions is not enforceable.

The site is located within 300 m of Northumberland Avenue and Parish Field Amenity Green Spaces and therefore the proposal triggers a requirement for a contribution towards the provision and maintenance of play and open space in accordance with Policy REC3 supported by the Play and Open Space SPD. The Play and Open Space Audit states that there is adequate provision of Amenity Green Space within Market Bosworth and recommends that existing Amenity Green Space should be protected and improved. The development proposes 3 x bedroom units and 1 x 3 bedroom unit which would appeal to families. These families would be likely to use the existing open spaces in Market Bosworth, thereby contributing to the wear and tear of its facilities and resulting in the requirement for maintenance of such facilities. It is therefore concluded that a financial contribution for the maintenance of existing open space is reasonable and CIL compliant in this case. A request to include monies to contribute towards the provision of open space in Market Bosworth is not considered to be CIL Compliant. In light of this issue, negotiations have taken place with the applicant and the case officer to discuss whether they would commit to financial contributions towards the maintenance of public open space in Market Bosworth. The applicant has confirmed that they would commit to financial contributions towards the maintenance of open space and this has been subsequently secured through a section 106

agreement to ensure that its payment is enforceable.

Conclusion

The applicant has signed an unilateral undertaking under S.106 of the Act and has agreed to the contribution of monies towards the maintenance of off-site open space in Market Bosworth, thereby meaning that the removal of the condition is considered to be reasonable in lieu of the present of the undertaking and CIL compliance of the case.

RECOMMENDATION:- Permit subject to the following conditions:-

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the development plan and would not be to the detriment of visual or residential amenity, highway safety or the character and appearance of the Market Bosworth Conservation Area.

Hinckley & Bosworth Borough Council Local Plan (2001) :- BE1, BE5, BE7, T5, REC3, IMP1
Hinckley & Bosworth Borough Council Core Strategy (2009):- Policy 11

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2 Before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed extension shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.

3 The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows: 5456.01, 9018.01 Rev A, 9018.02 Rev A, 9018.03.

4 No development shall take place until full details of both soft and hard landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The details shall include proposed finished levels and contours, means of enclosure, hard surfacing materials, planting plans, written specifications, schedules of plants noting species, plant sizes and proposed numbers/densities, where appropriate and an implementation programme.

5 The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by (Amendment) (No.2) (England) Order 2008 (or any order revoking or re-enacting that Order with or without modification) development within Schedule 2, Part 1 Classes A, B, C, D, E, G. shall not be carried out unless planning permission for such development has first been granted by the Local Planning Authority.

7 Before the first occupation of any dwelling hereby approved, the access roadway and vehicle parking spaces shall be laid out and in accordance with the approved plan 9018.01 and be maintained thereafter.

Reasons :-

1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2 To ensure that the development has a satisfactory external appearance to accord with policy BE7 of the adopted Hinckley & Bosworth Local Plan.

3 For the avoidance of doubt and in the interests of proper planning.

4 To ensure that the development has a satisfactory external appearance to accord with policy BE7 of the adopted Hinckley & Bosworth Local Plan.

5 To ensure that the development has a satisfactory external appearance to accord with policy BE7 of the adopted Hinckley & Bosworth Local Plan.

6 This is a dense development where all dwellings have restricted residential curtilages and a prominent site where certain types of development may result in issues which affect both visual and residential amenity and the Character of the Conservation Area and would therefore be contrary to the requirements of Policies BE1 and BE7 of the Adopted Hinckley and Bosworth Local Plan.

7 To ensure that adequate off-street parking facilities are available to accord with policy T5 of the adopted Hinckley & Bosworth Local Plan.

Notes to Applicant:-

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3 As from 6 April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4 All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

5 Bats, nesting birds, great crested newts and certain other species are protected by law. A watching brief (maintained by the applicant and all workers on site) for all protected species should be maintained throughout the development. If any such species are discovered before or during the works, the works must be suspended and the local office of Natural England contacted for advice.

6 This planning application is subject to a legal agreement relating to public open space.

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