LEGAL

Richard Wright

From: Michael Rice
Sent: 09 August 2010 14:28
To: Richard Wright
Cc: Cathy Horton
Subject: RE: Appeal re: 09/00915/OUT - Britannia Road, Burbage (Knapp)

Richard

Thanks. I've had a look at the paperwork.

I have a meeting tomorrow morning with Andrew Tyrer and Sally B-B to discuss these matters generally. Simon is aware and Cathy is going to attend

I had discussions last week with Phil and James on similar issues with their cases and I felt that we should meet with County and also with the other agencies eg Police and PCT, although tomorrow is only with County.

I believe that HBBC is in a difficult position because it has to be satisfied that the requested contributions meet the 3 tests in the CIL Regs, and, as per normal, there is little by way of guidance or particular clarification from decided appeal cases. The agencies themselves are between a rock and a hard place.

The tests in the CIL Regs are what we have to meet and I think they make it difficult to justify taking contributions for future wider development as envisaged by the Police Authority. As I understand the position that sort of infrastructure provision will need to be secured by means of a CIL charging schedule. Wayne W has referred to 2 appeal decisions but I don't think they help overmuch although it's interesting that the inspector in one made reference to agreement reached between the parties that the contributions met the tests in CIL Regs. I'm not clear whether in those circumstances the inspector is still required to appraise the proposed obligations and it's an area which needs clarifying

The difficulty we have at the moment is that it's very much a subjective approach without any real benchmarks to guide us.

I have commented to Phil on requests for contributions and hopefully the general points made will be helpful.

In so far as this application is concerned, my initial comments are as follows;

Education

From the information set out in the County's justification paper, I feel they could argue that tests 1 and 2 of Reg 122 are met in that the upper school is now at capacity and additional provision needs to be made to accommodate potential pupils from the proposed development.

It may be that the calculations provided by the County are in fact fairly and reasonably related in scale and kind to the development but I am not in a position to comment on the County's calculations

Library

The existing library is already inadequate to meet existing needs and is currently at considerably less capacity than the County's standard. The level of book provision is also less than the County standard and para B 9 of 05/05 states that planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development

It is difficult to see how the library contribution request meets the 3 tests

Civic amenities

I have commented on similar requests to Phil and James. The cumulative effect of several developments might well have an impact on the facilities at Barwell but it is difficult to see how this would be the case when the estimated additional volume is 0.21% from this develoment.

The contribution request does not clarify that the existing facilities cannot cope with the additional 0.21% nor does it state what extra infrastructure requirements are necessitated by the development.

Again it is difficult to see how the contribution request meets the 3 tests

PCT request

My response would be as my response to Phil last week. In addition the report from the PCT identifies existing deficiencies ie `serious capacity issues`

The Trust has already approved the surgery`s case to extend ALTHOUGH NO FUNDING IS AVAILABLE!. This statement effectively undermines its case based on the wording of para B 9 of 05/05

Police Contribution

Much of the Police Authoity`s case is about wider planning objectives. It is also difficult to see how the Police Authority can justify a contribution of £37k to offset the impact of an additional 0.59 member of staff, and how such a sum can be regarded as fairly and reasonably related in scale and kind to the development

The statement also talks of other contributions being necessary to `kick start` the major works

The proposed projects for which it is asserted the contribution will be spent are vague and do not adequately explain how they are directly related to the development

Again it is difficult to se how the Police request meets the 3 tests

Hope this is helpful

Mike

From: Richard Wright
Sent: 06 August 2010 13:11
To: Michael Rice
Subject: Appeal re: 09/00915/OUT - Britannia Road, Burbage (Knapp)

Hi Mike,

This appeal was originally to be determined by the written representations procedure. However, PINS regard an oral event as being necessary and have suggested an informal hearing. The other side are requesting a public enquiry (which we are seeking to resist) as they consider that it may be necessary for cross-examination of witnesses (the cynic in me suggests that this has come about because David Wilson Homes and their resources are now in the background!). The final decision is still up in the air.

In the meantime, and following recent changes in our approach towards contributions and their justification which has come about after the written representations statement was submitted, I want to make sure that there is sufficient justification for the developer contributions that we are asking for in this case.

I would be grateful if you could have a look through the attached statements and the appendices and let me have your thoughts regarding what you feel has been adequately justified and what has not. For your information, the (revised) hearing statements are due by 3rd September 2010 but I am on leave from 14th August to 31st August.

Kind regards

Richard Wright

Area Planning Officer

Hinckley and Bosworth Borough Council
Telephone: (01455) 255894
Fax: (01455) 619897
Email: richard.wright@hinckley-bosworth.gov.uk

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