Hinckley & Bosworth Borough Council

A Borough to be proud of

Town and Country Planning Act 1990

PLANNING PERMISSION

Name and Address of Applicant	**Name and Address of Agent (if any)**
San Giovanni	Mr Ian Ritchie
Mill Lane	Leco House
Sheepy Parva	Old Farm Road
Atherstone	Mancetter
Leicestershire	Atherstone
	Warwickshire

Part I - Particulars of Application

Date of Application	**Application No.**
20 March 2009	09/00208/FUL

Particulars and location of development :

EXTENSION AND ALTERATION TO RESTAURANT

San Giovanni Mill Lane Sheepy Parva Atherstone Leicestershire

Part II - Particulars of decision

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 the character of the street scene, highway safety, or residential amenity. The proposal is sited in such a location that it may be at risk from flooding from the River Sence, however the existing restaurant building has never been blighted by flood previously and the work required to model and understand the extent of the flooding is not proportionate to the nature and scale of the development proposed.

Hinckley & Bosworth Borough Council Local Plan (2001) :- BE1, NE5 and NE13

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council grants permission for the carrying out of the development referred to in Part I hereof in accordance with the application form and plans submitted, subject to the following conditions :-

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 be constructed in accordance with the Flood Resilient Design specifications set out in the applicants email dated 19 May 2009. These measures shall be maintained thereafter.

The reasons for the conditions are :-

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

IMPORTANT – PLEASE REFER TO THE NOTES AT THE END OF THIS DOCUMENT

2. To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

3. The site is located within close proximity of the River Sence and is therefore at risk of flooding. The extent of flooding is unknown in this locality, however the design methods proposed will ensure that the development will be resilient to any flooding event. In accordance with the requirements of Policy NE13 of the adopted Hinckley and Bosworth Local Plan and the guidance contained within PPS25.

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 6th 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. Your attention drawn to the potential issue of flooding from the River Sence at this site and the response from the Environment Agency attached to this decision. The grant of planning permission is not an indication of the nature or extent of the flood risk at this site and the owner/operator should seek assurances elsewhere in respect of the potential for flood risk and damage. The planning system and the local planning authority is not liable for any decision or consequence of any decision made.

T. M Prowse

TREVOR PROWSE
PROPER OFFICER OF THE COUNCIL

Date:- 21 May 2009

NOTES

1. It will be most helpful if the application number shown overleaf is quoted in all correspondence.

2. If the applicant is aggrieved by the decision of the Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act 1990 within **six months (see para 2a below)** of the date of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Room 305(K), Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or by telephoning 0117 372 6372). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that the permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to the directions given under the order. He does not in practice refuse to entertain appeals solely because the decision by the Local Planning Authority was based on a direction given by him.

2a. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 5th September 2003 must be made within **six months** of the date of this notice.

3. If permission to develop land is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

4. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

5. This permission covers only consent under the Town and Country Planning Acts and does not give permission to demolish a Listed Building, for which separate consent is required. Amongst other things the consent of the Council of the district in which the land is situated may be required under the Building Regulations and if the proposals affect land within the limits of the highway (that is between the highway fences or hedges) the separate consent of the Highway Authority may also be required. Steps to obtain the necessary further consents should be taken before proceeding with the development.

SHOPS, OFFICES, FACTORIES, EDUCATIONAL BUILDINGS & BUILDINGS TO WHICH THE PUBLIC ARE TO BE ADMITTED : ACCESS AND PROVISION FOR THE DISABLED PERSONS

1 The Local Planning Authority is required to bring to your attention the requirements of the Disabled Persons 1981, Building Regulations 1991 "Access and facilities for Disabled People" document M and the Chronically Sick & Disabled Act 1970 (as amended 1976) (Sections 4.7.8 and 8A) requiring the provision of access facilities, car parking and toilets for the disabled and the provision of signing indicating what provision has been made for disabled persons within the building. Your attention is also drawn to the Code of Practice B.S 5619 "Design of Housing for the convenience of Disabled People", 1978 and Code of Practice, B.S. 5810 : 1979, "Access for the Disabled to buildings" available from the British Standards Institution, 2 Park Street, London W1A 2BS. (Tel 071-629-9000) and (in so far as educational buildings are concerned), to Design Note 18 "Access for the Physically Disabled to Educational Buildings."

2 The buildings to which these requirements apply are :-

a) Buildings to which the public are to be admitted to which Section 4 of the Chronically Sick & Disabled Act 1970 (as amended 1976) applies.
b) Offices, Shops & Railway Premises as defined in the Offices, Shops & Railway Premises Act 1963 or premises deemed to fall within the Act.
c) Factories as defined by Section 175 of the Factories Act 1961.
d) Educational Buildings as defined by Section 29B of the Disabled Persons Act 1981.

Mr James Hicks
Hinckley & Bosworth Borough Council
Development Control
Council Offices
Argents Mead
Hinckley
Leicestershire
LE10 1BZ

Our ref: LT/2009/107806/01-L01
Your ref: 09/00208/FUL

Date: 14 April 2009

Dear Mr Hicks

EXTENSION AND ALTERATION TO RESTAURANT
SAN GIOVANNI MILL LANE SHEEPY PARVA ATHERSTONE LEICESTERSHIRE.

Thank you for referring the above application which was received on 2 April 2009.

Environment Agency position
In the absence of an acceptable Flood Risk Assessment (FRA) we OBJECT to the grant of planning permission and recommend refusal on this basis for the following reasons:

The FRA submitted with this application does not comply with the requirements set out in Annex E, paragraph E3 and Annex G of Planning Policy Statement 25 (PPS 25). The submitted FRA does not therefore, provide a suitable basis for assessment to be made of the flood risks to people, and property arising from the proposed development.

In particular, the submitted FRA fails to: -

1. Establish the 20 year, 100 year and 100 year plus 20% (for climate change) and 1000 year flood levels at the site, and therefore fails to quantify the likely depths of flooding to be experienced by people using the restaurant (including the car park) or to the building itself. The proposed kitchen extension is only up to 1.3 metres above the November 2000 flood level (which has not yet been given a probability of occurrence, e.g. 5% chance in any one year, or 1 in 20 year).

2. Describe and detail on a drawing how the flood water comes to pass beneath the site, including its flow and contribution to flood risk during a range of flood events up to and including the extreme event.

3. Consider the effect of a range of flooding events including extreme events on staff, diners and their vehicles. In the autumn and winter when it gets dark at 4pm, and/or if occupants are working or dining late, they may fail to notice the first signs of flooding and therefore fail to evacuate the site when flooding is likely to be serious, and/or the car park is likely to become inundated.

4. Consider the effect of a range of flooding events including extreme events on the building and its contents. With the likely depth of flooding at this site currently unknown we are unable to recommend a safe finished floor level. In addition the FRA fails to mention the potential use of flood resilient construction, as detailed under Annex G of PPS25.

5. Satisfactorily consider the requirement for flood emergency planning including flood warning and evacuation of people for a range of flooding events up to and including the extreme event (as advised by PPS25, paragraph G12 and the PPS25 Practice Guide, paragraph 7.23).

6. Consider the risk of vehicles being washed off site during a range of flood events up to and including the extreme event.

7. Consider the potential for the entrance to the car park to become a flood flow route during a range of flood events up to and including the extreme event, and the impact of this on any evacuation plan. Section 4.3 of the FRA states that the car park entrance forms the lowest part of the highway in this area.

8. Provide sufficient site specific topographic survey to Ordnance Datum (adjusted to Ordnance Survey GPS).

Additional Information:
The Environment Agency's Flood Zone Maps do not show all minor watercourse flood plains as the maps outlines are based on a generalised river modelling and mapping method carried out nationally, to only provide an indication of flood risk. Because the flood zones outlines are not definitive, they should not be transposed onto Ordnance datum maps or site specific topographic survey in order to establish a flood level at the site.

Hydraulic modelling may be required to confirm actual flood zone/flood plain outlines at the site, including but not exclusive of 20 year, 100 year, 100 year plus 20% (for climate change) and 1000 year (5%, 1%, 1% plus 20% increase in flow, and 0.1%) flood event levels.

When established, a comparison of the watercourse, hydraulic and topographic information for the above flood levels will confirm the likely extent and depth of flooding and flood zone classification at the site.

The topographic survey must be to GPS Ordnance Datum (adjusted to Ordnance Survey GPS, where traditional surveying methods are used). Any other topographic level information provided must also be corrected to OS GPS.

The fluvial flood risk at the site should be established, as detailed above and in paragraph 6.5 of the PPS25 Practice Guide, prior to suggesting any flood warning or evacuation plans.

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Appropriate plans and cross-sections of the site must be provided, extending from the site, through the watercourse and beyond, detailing the site layout and levels and the predicted flood levels, with the above flood event outlines marked on the plans as contour lines.

There should be no raising of ground levels, or storage of materials (including soil) within the 100 year (1%) flood plain, unless appropriate flood plain compensation proposals are provided. However, mitigating the impacts of development should only be applied as a last resort, and following the application of the Sequential Test.

No new buildings (including sheds, cycle storage or garages), structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of any river/watercourse, inside or along the boundary of the site, unless otherwise agreed in writing.

The permanent retention of a continuous unobstructed area is an essential requirement for the preservation of the water course corridor, wildlife habitat, flood flow conveyance and future watercourse maintenance or improvement.

We recommend finished floor levels are set a minimum of 600mm above the 100 year plus 20% (for climate change) (1% plus 20% increase in flow) flood event level.

If the applicant or agent wishes to discuss any of the above points with the Environment Agency, they should contact Development Control Officer Sarah Mallett on 01543 405029.

I have sent a copy of this letter to the agent.

Yours sincerely

Mr Nick Wakefield
Planning Liaison Officer

Direct dial 0115 846 3635
Direct fax 0115 846 2681
Direct e-mail nick.wakefield@environment-agency.gov.uk

cc Ritchie & Ritchie Llp

End

Mr James Hicks
Hinckley & Bosworth Borough Council
Development Control
Council Offices Argents Mead
Hinckley
Leicestershire
LE10 1BZ

Our ref: LT/2009/107806/02-L01
Your ref: 09/00208/FUL

Date: 11 May 2009

Dear Mr Hicks

EXTENSION AND ALTERATION TO RESTAURANT - SAN GIOVANNI MILL LANE SHEEPY PARVA ATHERSTONE LEICESTERSHIRE

We refer to the Environment Agency's letter to Hinckley & Bosworth Borough Council dated 14 April 2009 Ref: LT/2009/107806/01-L01, and Farebrother and Partners letter to the Council dated 24 April 2009 Ref: PCB/JWH/11892.2.0.

We can confirm that the issues raised in our letter are still outstanding, and therefore the Agency maintains its OBJECTION to the proposed development.

With reference to Farebrother and Partners letter dated 24 April 2009, we have the following comments to make: -

Under the EA/LPA Consultation Matrix we appear to have been consulted by H&B BC either under Matrix Cell B2 and/or D2 where the later states that the table, together with the supporting evidence, would form a Flood Risk Assessment (FRA) sufficient to be assessed by the LPA.

However Matrix Cell D2 includes the following: -
No Consultation – see standing advice/standard comments.

Note - The Environment Agency will still comment on minor applications e.g. residential extensions where: -
(a) Permitted development rights have been removed for flood risk reasons, and;
(b) A local consultation protocol has been agreed between the Environment Agency and the Local Planning Authority;
(c) The application includes culverting or control of flow of any river or stream, or falls within 20 metres of the top of the bank of a Main River. See columns B and C.

Flooding is a natural event. It occurs when there is heavy rainfall that fills rivers and streams above their normal capacity. The excess water that gathers cannot be restrained by normal boundaries (such as a river embankment) and follows the path of least resistance. This means areas that are low lying and close to the source of a flood will be the most vulnerable.

Flood risk is not just the likelihood of flooding, but the possible damage a flood could do as well. Paths that the water will take during floods, and how the severity of a flood affects its path, as well as impact on the people, land and property affected by flooding.

When we talk about flood risk we mean two things:

1. The likelihood of a particular flood happening, best expressed as a chance or probability over a period of one year. For example, 'There is a 1 in 100 (or 1%) chance of flooding in any given year in this location'.
2. The impact or consequences that will result from various flood events occurring.

The probability or likelihood of flooding is described as the chance that a location will flood in any one year. If a location has a 5% chance of flooding each year, this can also be expressed as having:

1. a 1 in 20 chance of flooding in that location in any year
2. odds of 20 to 1 against a location being flooded in any year

However, this doesn't mean that if a location floods one year, it will definitely not flood for the next 19 years. Nor, if it has not flooded for 19 years, will it necessarily flood this year.

We need to know both how high the probability is of a flood occurring and the severity of any impact (which may change depending on how extreme the flood is). Only by determining both for a range of flood events of different size (5%, 1% and 1% plus 20% increase in river flows due to climate change) can an assessment of what the risk is to a particular area be undertaken. The lower the percentage then the less chance there is of flooding in any one year; the higher the percentage then the more chance there is of flooding in any one year.

The Scale, Nature and Location of the proposed development will inform the scope of the FRA. Whilst the scale and nature of the proposed development may be appropriate for development in other locations, this site is located within (and not on the margins of) the 100 year and 1000 year flood plains (Flood Zones 3 and 2), and is within 20m of the River Sence.

The proposed development may therefore increase the area of building at risk of flooding and increase the flood risk to its users by increasing the number of occupiers and vehicles on this site. A site, which until demonstrated otherwise, may not have safe access or egress for those occupiers during various flood events up to the 100 year flood event.

The flood risk assessment submitted to us does not demonstrate that the development and its users will be safe for the lifetime of the development, does not increase flood risk elsewhere and does not seek to reduce flood risk overall.

Additional information

Farebrothers and Partners refer to comments and statements made by Environment

Agency Development and Flood Risk Officer, Sarah Mallett, in their letter of 24 April 2009. It is the view of the Environment Agency that the referred to letter, takes the comments and statements of Sarah Mallet and quotes them out of context, including but not exclusive of, the cases detailed below. We would therefore recommend that future records of meetings or telephone conferences are provided to us for review and acceptance prior to formal submission, so that we can confirm that our position/s has been accurately recorded: -

1. Contrary to the information provided under bullet point 1 of the above letter, the River Sence has not yet been hydraulically modelled by the Environment Agency, because it is a mainly rural catchment, with a lower number of properties at risk of flooding compared to its length, and other watercourses. It therefore scores a lower priority than other watercourses e.g. Upper River Avon which is currently being re-modelled.

In this instance, as is the case for all other developments not benefiting from existing hydraulic models, it is the developer's responsibility to demonstrate to our satisfaction that Flood Risk has been appropriately assessed.

2. Within Bullet point 1 of the above letter it is stated that the 2006 and 2007 flood were extreme events, which equated to a 1 in 200 year flood event. This statement has not been made by us, and until it has been demonstrated as realistic by appropriate hydraulic modelling, it should therefore be dismissed by decision makers.

3. Bullet points 1, 3 and 9 which refer to the location of the Black Horse were not clearly identified within the FRA and our comments were made on that basis. We can now confirm that the Black Horse public house is located over 280m downstream of the proposed development, and as such will be subject to different (lower) flood levels, due to the hydraulic gradient of the watercourse. Reference and comparison to this building is not appropriate and should therefore be dismissed by decision makers.

4. Within Bullet point 3, we are unable to accept hearsay as factual flood risk information. Under the Terms of the Water Resources Act 1991 and the Land Drainage Byelaws we would have to object to any barrier proposed to be installed around the car park (see Bullet point 6) as this would result in a loss of flood plain storage, and increase the flood risk to other adjacent and downstream properties and land.

5. Bullet point 9 suggests that our Flood Mapping is inaccurate. We are unable to change our Flood Mapping until alternative flood plain outlines have been demonstrated by appropriate hydraulic modelling.

For a Flood Map challenge we will need to see the following: -

- Digital copy of model
- Digital copy of survey used
- Model report to include:
    - Hydrology
    - Calibration
    - Sensitivity Analysis
    - How the assumptions were made
    - Reasons for choosing model
    - Written confirmation that the Agency is granted unrestricted and

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perpetual rights to use this data and information for all purposes including supply to others as required by statute such as Freedom of Information Act.

I have sent a copy of this letter to the applicant/agent.

Yours sincerely

Tom Broomhall
Planning Liaison Officer

Direct dial 0115 8463635
Direct fax
Direct e-mail Thomas.Broomhall@environment-agency.gov.uk

cc Zyox Ltd, Ritchie & Ritchie LLP

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