



Paul Gregory
Swale Borough Council
Planning Department

Date: 17 July 2018
Our Ref: M18/PJ022.03
Your Ref: SW/18/500973

By email only: PaulGregory@swale.gov.uk

Dear Mr Gregory

**RE: Demolition of former residential care home building and erection of 21 dwellings with associated new access, car parking and amenity areas (Resubmission to 16/507706/FULL) (Part Retrospective)
Doubleday Lodge Glebe Lane Sittingbourne Kent ME10 4JW**

I am writing with reference to the above application and the committee report that has been prepared for the meeting on 19 July as there are several matters that my client and I believe need clarifying for your members. Given the timing of this letter while I am hopeful that it will be reported in full as a supplementary report to members I have ensured that all of the planning committee members are provided with an email copy of this letter for completeness.

In the report there is a discussion that appears to suggest that the 19 shared ownership properties might not come forward for shared ownership and could instead perhaps come forward as market housing which would inevitably impact of viability matters. I should confirm that my clients have agreed a deal with Moat Housing Association which would see them take all of the 21 dwellings on this site. As you will know only 2 of the units are governed through the s106 as affordable housing due to the grant funding, however the original s106 clearly stated under recital F that "all of the Dwellings on the Development will be for affordable housing..." Although my clients have submitted this application seeking to effectively vary the s106 insofar as it relates to developer contributions they are not seeking to amend recital F such that the scheme will remain as 100% affordable. This is an important distinction that has not been made clear enough to your members as from reading the report they might be led to assume that some or all of the 19 shared ownership units could be sold on the open market. This is material to the consideration of this scheme as the delivery of 100% affordable housing from this development is capable of being afforded substantial weight in the planning balance, notwithstanding the Council's stated position on housing. Delivery of 100% affordable (21 units) would otherwise require the delivery of a scheme of 210 dwellings within Sittingbourne to deliver a similar policy compliant provision of affordable housing.

The other matter which has not been made clear enough in the report is the matter of the contributions and the impact of not providing these. Indeed, the report makes no reference to the matter which was previously highlighted in my letter of 22 June which included a relevant appeal decision (I note that the committee report makes reference to an appeal and states that it was provided as an appendix but this does not appear on the agenda papers so for the benefit of the committee members I have included this letter again here). This makes it very clear that on the matter of viability for obligations the decision maker has to be clear about the harm in not providing the contributions when weighed against the benefits of the housing provision. We had approached KCC to seek further clarification on the educational contributions requested such as the specific projects, timetable for delivery and overall capital cost. We have not been provided that information and on the basis of the limited information that has been set out in the committee report I would imagine that the Council have not been provided with any further information beyond that set out in the consultation response. When you consider that information in light of the appeal decision it should be evident that at present insufficient information has been provided to come to a correct balancing exercise.

Without the additional information outlined above the committee members lack the minimum information required to make a balanced judgement and therefore any decision made is likely to be based on an incomplete picture of the issues. I only mention this as with the appeal decision the Planning Inspector also had to consider a costs claim and considered that without the further additional information that I have outlined above the Council acted unreasonably and therefore had costs awarded against them. The report appears to suggest that as the scheme is now well advanced on site there would be no indication that works would come to a halt should this application be refused and the original s106 upheld with the contributions. This conclusion runs contrary to the advice from both viability consultants that the scheme with the full level of contributions is not viable. A refusal of this current application will require my client to explore all potential avenues to address this viability matter.

Yours sincerely



IAIN WARNER BSc (Hons) DipTP MRTPI
DIRECTOR

For and On Behalf Of
TETLOW KING PLANNING

cc. Richard Monaghan (email only)
Laurence Mineham (email only)

Jim Wilson (email only)
James Freeman (email only)
All Planning Committee members (email only)

Enc. APP/X3025/W/17/3172241 Appeal decision & Costs decision



Appeal Decision

Hearing Held on 26 July 2017

Site visit made on 26 July 2017

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 August 2017

Appeal Ref: APP/X3025/W/17/3172241
Factory, Victoria Street, Mansfield NG18 5RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Chera Developments against the decision of Mansfield District Council.
 - The application Ref 2015/0259/ST, dated 27 April 2015, was refused by notice dated 21 October 2016.
 - The development proposed is the conversion of existing mill building into 24 No. of flats and construction of 44 No. of Flats within 2 No. of blocks.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing mill building into 24 No. of flats and construction of 44 No. of Flats within 2 No. of blocks at Factory, Victoria Street, Mansfield NG18 5RW in accordance with the terms of the application, Ref 2015/0259/ST, dated 27 April 2015, subject to the conditions set out in the attached schedule.

Procedural Matter

2. At the hearing I informed the Council and the appellant that I was intending to use the description of development as it was set out on the appeal form since it most accurately reflects the development to which the appeal relates. This was the same description that appears on the Council's decision notice. Neither the appellant nor the Council objected to my use of this description and as such I was content to proceed on this basis.

Application for costs

3. An application for costs was made by Chera Developments against Mansfield District Council. This application is the subject of a separate Decision.

Main Issues

4. There are two main issues in the determination of this appeal. These are:
 - Whether or not the proposed development would make adequate provision for car parking and the subsequent effect it may have on highway safety; and
 - Whether or not the proposed development would make adequate provision for affordable housing, education improvements and public open space.

Reasons

Parking and Highway Safety

5. The proposed development would be accessed by a relocated entrance and exit road, connecting it directly with Victoria Street. This access would lead into a private car park situated at the rear of the proposed complex of three detached buildings. Parking would be arranged in linear blocks of single marked bays. The proposed development would provide for 68 apartments, served by a total of 73 car parking spaces.
6. The Council's Draft Interim Planning Guidance Note 10 (DIPG) recommends developments comprising 1-2 bedroom apartments should provide 1.5 spaces per apartment plus one visitor space per five. If the figures set out in the DIPG are followed, a total of just less than 116 would be provided. The actual provision vs the DIPG requirement would therefore represent in the region of a 40% difference. Whilst not explicit on how far, the DIPG makes it clear that these standards can be relaxed where there is a reduced need to travel by car. 300 metres from the town centre boundary is given by the DIPG as a 'reasonable walking distance' for where such relaxation can be applied.
7. The appeal site is less than 300 metres from the town centre boundary as it is defined by the adopted Local Plan¹. This is a mainly flat and lit route where segregated footways and designated pedestrian crossings are available. I am therefore minded to agree with the appellant that the appeal site is eminently walkable from the town centre where there is a wide range of services on which future residents could rely for their day to day needs. The train and bus stations are also close by which would give access to locations out of town. I am satisfied that such accessibility to sustainable transport modes and services, as well as the provision of secure cycle storage shown on the proposed plans, would actively reduce reliance on and discourage the use of the private car.
8. The appellant has provided robust evidence supported by the most up to date census data to highlight what is clearly a low level of car ownership in the area. Whilst I accept that it cannot be assumed that all future residents would come from the area referred to in this evidence, it gives an indication of the scale of ownership nonetheless. This was the type of evidence that the Council confirmed at the hearing they would expect to see as part of a justification for relaxing the aforementioned standards as well as being referred to by paragraph 39 of the Framework².
9. As I have said, the location of the proposed development would play a significant part in actively discouraging the use of the private car. In some cases, which would not be uncommon, future residents may work in the town centre or surrounding area and thus not need a car at all. Indeed, the provision for car parking on the site would be known from the outset and would thus be a factor on which occupiers would base their decision to either purchase or rent from the site in the future.
10. Both the Council and local residents were concerned that the reduced level of parking provision within the site would lead to parking on the street. I heard evidence on behalf of local residents of on street capacity problems with

¹ Mansfield District Local Plan 1998

² The National Planning Policy Framework 2012

- respect to the residential areas around Princes Street to the west of the appeal site where there are no on street restrictions. There are double yellow lines outside the appeal site, running the majority of the length of Victoria Street.
11. To my mind, the restrictions on Victoria Street exist as an active deterrent to any parking along its length. Indeed, I did not observe any deliberate flaunting of these parking restrictions during my time at the appeal site as alluded to by the Council at the hearing. In any event, one cannot legislate for the choice of an individual to do so. Parking on the streets around the area mentioned above is unrestricted but somewhat spatially detached from the appeal site. Notwithstanding my findings on the level of onsite car parking for the proposed development, I do not consider that occupiers would find parking this far away from where they lived desirable should they have access to a car.
 12. I also accept that one cannot legislate for people wishing to own more than one vehicle albeit I do not agree with the Council that this would be inevitable. Consideration surely needs to be given to the fact that anyone living within the proposed development would consider whether they could park a second car should they determine to own one as well as taking into account whether they would need one in the first instance. In addition, and a debate on incomes, tenure and property prices aside, the fact that people may move from the site in the future should they outgrow it cannot be ruled out as a possibility.
 13. The parking on these streets to the west may be nearing or at capacity and obviously football match days may have an exacerbating effect on demand. However, these are clearly existing situations over which the proposed development would have no influence. It can only be assessed whether it would have an effect in itself that would create a problem or make an existing one worse which would not be case here as I have described.
 14. Whist relied upon for decision making purposes; the guidance set out by the DIPG was never adopted by the Council which inherently limits the weight I can ascribe to its provisions. A replacement document was sent out for public consultation but withdrawn from publication with a view to new standards being part of the replacement Local Plan which is still in its early stages.
 15. Taking all of these matters together, I am not persuaded that the level of provision for parking at the appeal site would lead to additional parking on the street which would in turn result in a highway safety problem. This is with specific regard to the location of the appeal site and the characteristics of its surrounding area, the nature of the development and the levels of car ownership locally. As a result, I do not see any clear conflict with the recommendations of The Council's Draft Interim Planning Guidance Note 10 or saved Policy M16 of the Local Plan. This policy and additional guidance seek to ensure, amongst other things, that parking provision for new development is appropriate and does not lead to problems with highway safety.
 16. In addition, The Framework places a strong emphasis on encouraging access and movement via the most sustainable means, an objective that the proposed development would clearly meet given how close it would be to multiple and sustainable travel options.

Developer Contributions

17. Under the requirements of the Council's Interim Planning Guidance Note 7 and saved Local Plan Policy H14, having regard to the scale of the development and taking into account Vacant Building Credit, the appeal scheme would be required to provide nine affordable units. As the Education Authority, Nottinghamshire County Council set out that, based on the Department for Education's calculations multiplier, funds to support the provision of four primary and three secondary school places would also be required. Interim Planning Guidance Note 3 sets out the Council's requirements for open space contributions from development which, taking into account the relevant factors, equated to £1,100 per dwelling.
18. As part of the documentation supporting the planning application, the appellant provided an appraisal of the costs associated with the proposed development, factoring in the likely incomes vs the requested developer contributions. The findings of this assessment are clearly known to both parties. I have also had chance to digest this assessment as well as its independent review. Further, I note that the viability of the appeal scheme going forward is common ground between the appellant and the Council.
19. With this in mind, and through discussion at the hearing, I was able to understand that the mainstay of the Council's concerns in this respect amounted to the pressure the proposed development may bring to bear on local schools. The Council advanced that through contact with two local primary schools confirmation was given that capacity had been reached although there was no specific evidence available to the hearing to support this supposition. The Council's concern was, in effect, that in the absence of the requested contributions, the development would be unsustainable. Referring as they did to relevant sections of the Framework.
20. To consider the appeal scheme unsustainable for this reason alone is, in my view, short sighted. It seems clear on the evidence before me that the appeal scheme would be unviable and as such could not be delivered should the contributions be sought. This arose out of a robust assessment which was concurred by an independent review as I have set out.
21. Planning Practice Guidance suggests that, where affordable housing contributions are being sought, obligations should not prevent development from going forward. Paragraph 007 elaborates, stating that on individual schemes, applicants should submit evidence on scheme viability where obligations are under consideration. Wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency. As I have set out above, this has been done.
22. The Council were unable to confirm to me what projects the requested education contributions were earmarked for. Moreover, I was not advised of any development plan policy derivation for them. I cannot be satisfied therefore that this element would not be pooled. It is also perhaps fair to suggest that the flatted nature of the proposed development, a proportion being one and two bedroom apartments, means that they would not be ideal for family living which needs to be factored in to whether the development would, in itself, place the same level of pressure on local schools as a conventional housing development would.

23. With regards the open space request, this reads to me as a means to improve an existing provision rather than to physically provide more space. There is very limited evidence before me to suggest that the proposed development would in any event place the degree of pressure on the space at Moor Lane to the extent that the amount for improvements could be justified. Taking into account my other findings on the nature of the proposed development.
24. The appeal site is vacant and partially cleared brownfield land. It is located close to the town centre and it would not be amiss to describe its current state as dilapidated. Whilst anecdotal, I have heard evidence of antisocial behaviour at the site. It is overgrown with some buildings partially demolished. To my mind, and in respect of those living locally, a refurbished and operating residential development would be considerably less unneighbourly than the existing situation in visual and functional terms. There would therefore be a positive social and environmental effect on the area of some substance.
25. As well as the matters I refer to here, the proposed development would result in a deliverable scheme for 68 new homes. Whilst I do not have precise evidence before me in respect of housing supply, the Council did not object to the appellant's assertion that they were a persistent under deliverer for housing, had lost a number of appeals in respect of housing supply and their local plan is of some considerable age. Taking all of these matters together with the viability of the scheme, I do not consider that the absence of requested contributions would amount to the proposed development being unsustainable. Specifically, and with regard to the above benefits and the assertions of paragraph 14 of the Framework, the adverse impacts in this particular case, do not significantly and demonstrably outweigh them.
26. I acknowledge that the lack of contributions in respect of affordable housing specifically would result in the proposed development not complying with the relevant policies of the development plan. Saved policy H14 in particular. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require decisions on planning applications to be made in accordance with the development plan unless material considerations indicate otherwise. As I have set out above, there are clearly a number of significant material considerations that justify departure from Policy H14 which regard to the particular circumstances of this case.

Other Matters

27. It is notable, albeit not determinative, that Nottinghamshire County Council as the Highways Authority did not object to the proposed development, citing the existing permitted use as one of the reasons for the site having previously been a traffic generator. The hearing discussed that the site benefited from a B1/B2 general industrial use and whilst of a scale that could accommodate a large business, it would not be inconceivable for the site to be able to accommodate several smaller ones under the existing lawful use. Historically, previous uses of the site involved large vehicles and comings and goings of a number of different vehicles were regular. Whilst this is not relevant to parking provision within the site per se, it adds to my view that the residential use of the site would represent an improvement for existing local residents over the historical or potential situation given that movements would mostly involve smaller vehicles from one development with more structured comings and goings.

28. There is, I accept, a degree of noise associated with traffic movements but this has to be placed in context. Specifically taking into account the existing traffic situation. Victoria Street is a through road, accessing a densely populated residential area to the west as well as being home to a number of small and medium sized commercial premises. In addition, and as I have set out above, there is a lawful use at the site which could operate as industrial regardless of the outcome of this appeal. I do not therefore see that the traffic generated by the proposed development would be so significantly different to give rise to harm in this respect. I am also unaware of a direct correlation between additional traffic and a rise in antisocial behaviour.
29. The proposals are for a flatted development and as such the expectation for open space, gardens specifically, would be different than a development of conventional dwellings. As a direct result of this, play areas for young children would not be provided. This would not however mean that safety would be compromised. Residents would be aware of the areas of space available prior to purchasing or renting and there is arguably the matter to consider as to the area of the market that some of the smaller units are aimed. In addition, there is a fully equipped open play space associated with a field of some substantial scale located in the region of a ten to fifteen minute walk away from the appeal site. It is accessible via segregated and lit pavements through a populated area along Princes Street, Victoria Street and Moor Street.
30. The Council Officer's report to planning committee sets out a detailed assessment of the effects of the proposed development on the living conditions of nearby residents. I have no compelling evidence before me to disagree with the findings of the assessment which concludes that, taking into account building sizes, locations and previous uses, the living conditions of existing neighbouring occupiers would not be adversely affected.
31. With regard to access for emergency vehicles, the appellant has undertaken a transport assessment which for some of its content demonstrates, through track path analyses amongst other things, how the largest vehicles will be able to access the site. The assessment clearly shows that this could be achieved through adequate visibility from and turning and manoeuvring space within the appeal site. There is no other compelling evidence before me to lead me to a different conclusion on this matter.
32. The Council and local residents drew my attention to what is known as the Shoe Co development. This is a complex of apartments reasonably local to the appeal site. It was pointed out to me as part of the site visit. There was concern that much of this building suffers from low occupancy rates and thus questions the need for another flatted development. I heard evidence at the hearing that this development was brought forward at a time when the buy to let market was at its peak and as such prices were high. Rents therefore to cover this cost have subsequently been unattractive against comparable accommodation elsewhere. This seems to me to be a logical explanation for the low occupancy rate with regard to this particular building. In any event, the need for the proposed development is not a matter before me.
33. Whilst the matter of the viability of the site was agreed as common ground between the appellant and the Council, the latter did query at the hearing as to why it could be the case, compared to what was referred to as the Pyramid Products site which was viable with the developer contributions that were

requested at the time. This site, I was lead to understand, was an outline planning permission for in the region of 60 new build dwellings. The absence of any further details of this planning permission means that I am unable to conclusively say whether it has any clear parallels with the appeal site. As what has evidently now become a lapsed planning permission for new build dwellings however, it does not appear on the available evidence to be sufficiently similar to the scheme before me to be apportioned a great deal of weight. At least to the point that it could question the non-viability of the appeal scheme.

34. Local residents have expressed concern about the existence of asbestos at the appeal site which I acknowledge. A report into this by Inspect Asbestos Solutions is included with the appeal documentation. A further report on the demolition of some of the structures on the site which has occurred since the planning application was determined was presented at the hearing. A report on which I have given parties other than the Council and the appellant further opportunity to comment. The reports set out the material that is present at the site and the methods for handling and disposal. There is now very stringent health and safety legislation that covers all matters concerning the use of asbestos products and the measures for safe removal and disposal. Such material at the site, previously or in the future, would have to be dealt with under this legislation. It is separately enforceable to planning controls and not optional. With this in mind, I am satisfied that there are adequate and appropriate controlling measures in place to deal with this matter.

Conditions

35. I have had regard to the conditions that have been suggested by the Council. I have imposed the following for the reasons that I have given, making some changes to the wording in the interests of clarity and enforceability.
36. As well as the standard time condition, I have specified the approved plans for certainty. In the interests of an appropriate appearance to the proposed development, I have set out that the external materials shall be agreed. Since this matter goes to the heart of the planning permission, this needs to be done prior to the commencement of development. For further clarity, and in the interests of finished appearance, I have imposed a condition requiring final details of the proposed ground and finished floor levels. This is a matter that also goes to the heart of the planning permission and as such needs to be agreed prior to the commencement of development.
37. Given the scale of the development and in the interests of the final appearance of the site, I consider that a landscaping scheme would be justified. This should take the form of a detailed scheme, setting out proposed planting and landscaped areas. I have imposed a condition setting out what I consider to be an appropriate period of management for the agreed landscaping scheme. To overcome expressed concern about the proximity of the appeal site to the railway line and the visual amenities of the finished site, I have attached a further condition to agree boundary treatments. Since this may be integral to locations, buildings and other areas, it would be correct to agree these prior to the commencement of development.
38. Given that the appeal site is within a residential area, it seems prudent for the appellant to agree a construction and demolition management plan/method statement. This should set out, amongst other things, hours of operation and

what measures will be in place on the site to manage the physical works. Given the nature of this detail, it will need to be agreed prior to the commencement of development.

39. To ensure the appropriate functioning of the proposed development, I have set out that the car park as shown on the approved plans shall be laid out prior to development being brought into use. I accept the appellant's concerns regarding the phasing of the development going forwards and the inherent logistical problems of having the entirety of the car park laid out to final finish prior to the first use of what may conceivably be one building. As such, the laying out of the parking and turning areas shall be carried out in accordance with an agreed phasing plan. The plan shall be agreed prior to the commencement of development given what it needs to achieve. Since the area identified as parking is by definition a car park and a distinct part of the approved development, to restrict it to the parking of cars seems to me a control too far.
40. Staying with the functioning of the proposed development, and specifically the access thereto on which construction traffic would also rely, the radius kerb and visibility splays shown on transport plan reference F14151/01 Rev A need to be provided. By its nature and requirement, this part of the approved development needs to be carried out prior to any other demolition or construction works in respect of the buildings.
41. For reasons of highway safety, and to reflect the intentions of the development for access purposes, I have stated that the existing access that will become redundant should be permanently closed off and an extended footway put in place in accordance with a scheme to be agreed. It seems logical to agree the scheme prior to the commencement of development but sufficient that it can be implemented it prior to the development being brought into use.
42. In the interests of the living conditions of neighbouring occupiers, I have imposed a condition requiring the agreement of the location and specification of any external lighting. It would be sufficient in my view to agree such details prior to the development being brought into use. In the same respect but focussing on the living conditions of future occupiers, and again with regard to the location of the proposed development in relation to the nearby railway line, appropriate sound insulation needs to be installed. Whilst usually a matter for the building control regime, further work will be necessary due to the location of the appeal site. As such, I have set out that appropriate measures shall be agreed. These details, given they may be integral the buildings' fabric, need to be agreed prior to the commencement of development.
43. With regard to the concerns of existing neighbouring occupiers as well as to ensure appropriate functioning, agreement of bin storage and waste management/collection needs to be agreed. It would be sufficient for these details to be agreed prior to the development being brought into use. I have not included the suggested condition with regard to the hours of operation for works at the site since this matter would be covered as part of the construction/demolition method statement/management plan.

Conclusion

44. I have found that the parking provision for the proposed development would be sufficient and due to a combination of other factors that I have identified above, it would not lead to an on street parking problem that would compromise the safe use of the highway.
45. The consideration of whether a given development is sustainable or not hinges on matters considerably broader than the level of financial contributions that can be reasonably made. It seems clear to me that sufficient evidence has been submitted to demonstrate that the appeal scheme could not be delivered if the required contributions were sought and, for the reasons I have set out, I do not find that the proposed development would be unsustainable in their absence.
46. It is therefore for the reasons set above and subject to the conditions listed in the attached schedule that the appeal succeeds.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mike Downes (Asbury Planning)	Agent
Mr Jon Powrie (Powrie Smith Architects)	Architect
Mr Rayond Valenti (Ray Valenti Property Consultants)	Viability
Mr Andy Chera (Chera Developments)	Appellant
Mrs Ranjana Chera (Chera Developments)	Appellant

FOR THE COUNCIL:

Mr John Krawczyk	Mansfield District Council
Councillor Brian Lohan (Local Ward Member)	Mansfield District Council

FOR LOCAL RESIDENTS:

Mr D Brassington

ADDITIONAL DOCUMENTS SUBMITTED:

FOR THE APPELLANT:

- A4 Google Maps aerial photograph extract with annotated town centre boundary and walking route from appeal site to edge of town centre
- 14 page A4 additional information regarding the identification and removal of asbestos from the appeal site during demolition works

FOR THE COUNCIL:

- Response to the appellant's claim for an award of costs

FOR THE LOCAL RESIDENTS:

- A copy of the A4 site notice advertising the planning application

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SX016.01A, SX016.02B, SX016.03, SX016.04, SX016.05, SX016.06, SX016.07, SX016.08, SX016.09, SX016.10, SX016.11, SX016.12E, SX016.13D, SX016.14D, SX016.15D, SX016.16E, SX016.18D, SX016.20E, SX016.21E , SX016.22E, SX016.23C, SX016.25A, and SX016.26A.
- 3) No development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 4) No development commence until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing and proposed external ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development shall commence until a plan indicating positions, heights, designs and materials to be used in the construction of boundary treatments has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage and usage of plant and storage of materials used in constructing the development;
 - iv) measures to control the emission of dust, dirt and other debris during demolition and construction;
 - v) a scheme for recycling/disposing of waste resulting from demolition and construction works;

- vi) delivery, demolition and construction working hours;
- vii) construction traffic routing;
- viii) protection measures for cyclists and pedestrians

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 9) No development shall commence until a plan showing the phased provision of the permitted onsite car parking and turning areas has been submitted to and agreed in writing with the local planning authority. The approved parking and turning areas shall be provided on site in accordance with the agreed details prior to the first use of the relevant phase.
- 10) The radius kerb and visibility splays hereby permitted and as shown on transport plan reference F14151/01 Rev A shall be constructed in their entirety on site prior to the commencement of any demolition or construction works.
- 11) No part of the development hereby permitted shall be brought into use until the existing site access that will be made redundant as part of the development hereby permitted has been permanently closed off and a footway reinstated in accordance with details that have been first approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No part of the development hereby permitted shall be brought into use until a scheme to show details of any external lighting that would be installed on the buildings or within the site has been submitted and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 13) No development shall commence until a scheme to attenuate internal noise levels within the apartments hereby permitted has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of each apartment.
- 14) Notwithstanding the plans hereby permitted, no part of the development hereby permitted shall be brought into use until a scheme to show the arrangements for onsite bin storage and methods for collection have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.



Costs Decision

Hearing Held on 26 July 2017

Site visit made on 26 July 2017

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 August 2017

Costs application in relation to Appeal Ref: APP/X3025/W/17/3172241 Factory, Victoria Street, Mansfield NG18 5RW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Chera Developments for a full award of costs against Mansfield District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for the conversion of existing mill building into 24 No. of flats and construction of 44 No. of Flats within 2 No. of blocks
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application for the award of costs was submitted in advance of the appeal hearing and a response from the Council was given during proceedings on the day. The crux of the applicant's case relates to substantive grounds, specifically that they consider the Council has acted unreasonably by not providing sufficiently sound justification for the decision that was taken.
4. The Council's planning officers recommended approval of the appeal scheme to their elected ward members who decided on a course of action contrary to that recommendation. Whilst this is not an unusual situation and is indeed part of the democratic process under local planning authorities' adopted schemes of delegation, members are required to offer clear justification on relevant planning grounds in the same way officers would be if that recommendation was to refuse planning permission.
5. At the hearing I heard evidence from the Council as to the reasons for the decision contrary to officers' advice. With regard to the matter of car parking provision, there was concern that the number of provided spaces set against the number of apartments was disproportionate and would lead to parking on the street.

6. My findings on this matter aside, these concerns relevant to a potential direct effect of the appeal scheme. The Council cited existing on street parking problems, the views of local residents and local highway conditions more generally in support of their case. Whilst members clearly disagreed with officers and the more specialist advice from relevant advisors at Nottinghamshire County Council, they did so with regard to legitimate concerns as well as in the limited and somewhat vague relaxation guidance provided by an adopted supporting planning document. Members' view on this matter was therefore one of subjective planning judgement.
7. Consequently, I am not persuaded that the Council has acted unreasonably in this respect. The cases I heard from both the appellant and the Council cited evidence and this was necessary and relevant to the appeal proceedings on the day.
8. On the matter of developer contributions, the concern for the Council was that the proposed development would be unsustainable without them. This was in the face of a detailed and focussed viability appraisal that was submitted by the appellant and independently reviewed. Whilst the findings' final amounts varied, both the appraisal and the review confirmed that the appeal scheme would be unviable if contributions were sought. Drilling down, it was evident that the Council's main concern was the pressure on local schools and when pressed on the matter, the Council were unable to provide any detailed corroborative evidence.
9. With regard to this main issue alone therefore, I am of the view that the Council have provided a reason to refuse planning permission without a suitably robust justification. The one offered was vague and generalised in the face of evidence to the contrary was strong and substantial. In essence, it should not have been a matter before me as part of the appeal. This behaviour has, for this reason, been unreasonable with specific regard to paragraph 049 of PPG¹.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Mansfield District Council shall pay to Chera Developments, a proportion of the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mansfield District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Morrison

INSPECTOR

¹ failure to produce evidence to substantiate each reason for refusal on appeal ID:16-049-20140306