

Representation to the Planning Committee regarding the report to the Planning Committee 2nd March 2011. 11 Mayfield Road, Girton S/2155/10

INTRODUCTION

1. We believe the report to the Planning Committee lacks balance; it is tendentious in tone; it will admit of no possible outcome other than the approval of this application. From the erroneous statement in paragraph 4 that *'The application is a resubmission of application reference S/0468/08/F with an amended access arrangement'* to the conclusion in paragraph 52 *'It is considered that there are no justifiable grounds to prevent planning permission from being granted in this instance'* the report appears to be promoting the application.

The Application

2. The application before you is dated 1st December 2010. It is a new application made by a new applicant – David Hargrave, Lon-ist – on a site which is different from the site which received approval under S/0468/08/F in 2008.
3. The application is a new application which has to be considered against the policies which are in force today. There have been many new policy initiatives in the last year which are relevant and have to be taken into account. Not all have. On the application form the applicant says this; *'the scheme should gain support as there are no new planning policies of particular relevance'*. The report to the Planning Committee March 2010 appears in part to take the same view.

New Policies

We submit that these new policies are relevant:-

Changes to PPS3

The Design Guide adopted March 2010

The Affordable Housing SPD adopted March 2010

Landscape in New Developments SPD

Manual for Streets 2 issued September 2010

4. If the Committee is to come to a correctly reasoned decision it must be made aware of all relevant material considerations. We would like to address that by placing before you what we consider to be relevant and should be the basis for a refusal of this application.
5. Changes to PPS3. These changes were introduced to prevent the undesirable practice of 'garden grabbing'. In introducing the changes the Minister Greg Clark said. *'These changes will dramatically transform council's ability to prevent unwanted gardens where local people object and protect the character of the neighbourhoods.'* The changes are a) the removal of gardens from the category of 'brownfield' and b) remove the national indicative minimum density of 4 of 30 dph. Introducing these changes to this Committee in the August 2010 report on S/0731/10 it said this.

At paragraph 18 'In addition, the Government's recent decision to re-write PPS3 – Housing, removing the minimum density requirement of 30 dwellings per hectares is considered to have material weight in this case. Local Authorities are now encouraged to consider a range of densities across plan areas which takes into account various factors including the character of the area. It is considered that the relatively low density of housing in the immediate area indicates that adopting a lower requirement in this case is a reasonable approach.'

At paragraph 19 'It is therefore considered that, given the practical constraints of the site and the relaxation of national requirements for density and the advice to give more weight to local character in deriving density targets, that the failure to meet the density targets set out in Policy HG/1 is justified in this case.'

The proposed density for S/0731/10 was 15 dph. The density in Mayfield Road is 13 dph and to be in keeping with the density a proposal for one or two dwelling would now be appropriate.

6. Policy HG/1

Policy HG/1 of the Local Development Control Policies requires densities of at least 30 dph **UNLESS** there are exceptional local circumstances. Higher densities are needed to reduce the use of greenfield land. To achieve an average density of 30 dph some schemes will have higher densities and some will have lower. The proposed scheme has a density of 47 dph.

The average density of the properties on the east side in Mayfield Road is 14dph. Mayfield Road is a semi rural road made up with detached properties backing onto the green belt. The introduction into this area of a high density (47 phd) block of flats would be totally out of keeping with the character of the area. The proposal site is 0.11 hectares if the density of 30 dph was applied this would give 3 dwellings. But if more weight was given to the existing character of the road and the changes to PPS3 then one or two dwellings would be more in keeping with the character of the road.

7. Policy HG/2.

Housing Mix. This policy requires for development of up to 10 dwellings to provide

- a) at least 40% homes with one or two bedrooms
- b) approx. 25% homes with 3 bedrooms
- c) approx.25% homes with 4 or more bedrooms.

For this proposal that would suggest this. Three with one or two bedrooms, one with 3 bedrooms and one with four bedrooms. However, this proposal offers only one or two bedroom dwellings The average density sought by policy HG/1 indicates three dwellings which HG/2 would suggest ought to be, perhaps, one, one bedroom, one two bedroom and one three bedroom. However, the character of the local area of Mayfield Road suggests that a development of one or at the most two houses would be in keeping with the existing pattern of development. This applicant (page 9 under Design in the Design and Access Report) says options other than a block of flats were considered but rejected because (five) is the minimum number of flats that would

make the proposal financially viable assuming a modest contribution to public open spaces and affordable housing. This raises points relevant to the consideration of this application.

First financial viability of the scheme. The courts have ruled (*Walters v Secretary of State for Wales 1979*) that this is not a material consideration. Second the 'modest' contribution for Affordable Housing – in this case £10,000 is offered - is not what is envisaged by the Affordable Housing SPD adopted in 2010. The methodology set out would suggest a cumulative sum in lieu of between £160,000 and £200,000.

8. The Design Guide

The Design Guide was adopted in March 2010. This is new policy that has to be taken into account in considering this application. For infill plots such as this it says this:-

From table 6 – *'Buildings scale form and alignment should be determined primarily by the immediate townscape context'*.

Para. 5.60 ...*'Requires new development to complement the street pattern by continuity of form and design'*.

Para. 6.153 *'Composition and elevational rhythms should clearly reflect context – even if the form is contemporary'*.

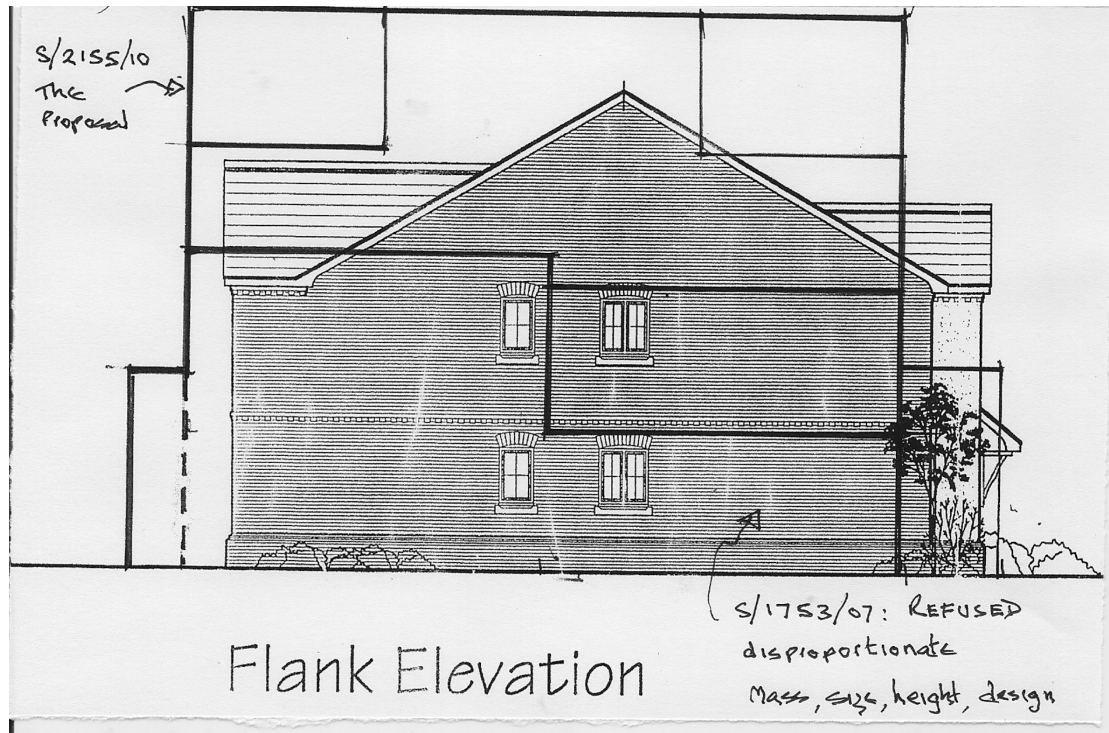
The report to Committee refers (p.30) to the general feeling of harmonious variety that characterises the street. This harmony is provided principally by the roofscape which in most cases is formed of hipped roofs that contain the walls to the front elevations. This is the elevational rhythm that the proposal ignores. But the context is also determined by the scale, mass, form, height and size of the buildings. The proposed block of flats is out of scale – has a greater mass, size and height than any other building in the road. The misunderstanding over the context results in an inappropriate design solution which has a three storey gable to the front elevation rising to a ridge over ten metres high dominating its surroundings and sitting uncomfortably with the adjacent properties.

9. The Impact Upon Residential Amenity

The Design Guide adopted in March 2010 deals with this. It did not apply when the application (S/0468/08/F) was considered in 2008 but it does apply now. The proposed block has twin ridges that extend over 13 metres – in an east/west direction – at a height in excess of 10 metres. This is directly to the south of number 12 Mayfield Road. This will cause overshadowing. The Design Guide says para. 6.65 *'buildings must not significantly overshadow a neighbouring properties windows or garden, or where possible block their views, and evidence will need to be shown that this is the case.'*

No evidence has been provided. The only comment in the Design and Access Report is *'no. 12 will be the most effected'*.

The Design Guide dealing with privacy and overlooking say para. 6.68 *'where blank walls are proposed opposite the windows to habitable rooms the distance (i.e. between the properties) can be reduced further with a minimum of 12 m. between the wall and any neighbouring windows that are directly opposite'*. The windows to the side wall of number 12 are less than 7m. from the blank wall on the flank of the proposed block and the side wall of number 10 which also has windows and is about 7m. distant.



10. Parking and Highway Safety

A Planning Inspector, in approving what is now 16 Mayfield Road, considered there were two major issues to be determined the second was *'whether harm would be caused to the safe or convenient use of Mayfield Road'*. And he decided that. *'It seems to me that the addition of one dwelling, and the small amount of extra traffic that would be generated, would not have any material effect on the present use of Mayfield road; particularly as the 4 extant garages on the site, which in use must generate some traffic, would be removed. As I find no similar potential development sites along the road, allowing this appeal would not be likely to result in pressure for additional development in the street which cumulatively might have a harmful effect on the safe or the convenient use of Mayfield Road.'*

The Inspector clearly felt that with the approval of number 16 the road had reached its capacity and that any further development would have a harmful effect.

The report to the Planning Committee acknowledges that no parking provision has been made – as required by Policy TR/2 which states *'Provision (should be made) for short term parking generated by service vehicle, salesmen and some visitors will need to be incorporated into residential developments.'*

The report also acknowledges that the concerns raised by objectors are valid but then rejects them on the spurious grounds that if it is not the traffic generated by the proposal that causes harm to the safe use of the road then it will be traffic from somewhere else. This is a solecism. The test here is will the traffic generated by the proposal have a harmful effect on the safe or convenient use of Mayfield Road. The report to the P.C. agrees that it will. This is grounds for refusal.

11. Landscaping

DCLG Circular 01/2006 requires the Design and Access Report to provide not only full landscaping details should be provided but it should also be explained how the landscaping is to be maintained. This is particularly important with a block of flats. Who is to be responsible? The freeholder? A management company? Or the individual lessees?

12. The Proposal as a Precedent

If this proposal is approved then it would act as a precedent for further such undesirable developments in the road which would totally destroy the existing character of the neighbourhood. Precedent is a material planning consideration which needs to be taken into account. The courts have held that planning permission – that is otherwise acceptable – can be refused solely on the grounds of the possible precedence impact of the decision. See for example *Anglia Building Society v Secretary of State for the Environment* (1984 JPL 175).

13. Relevant Appeal Decision

On the 4th January 2010 the appeal against the refusal relating to 28 Hinton Way, Great Shelford (S/0680/10) was dismissed. The Inspector determined that *'The main issue is the effect of the proposal on the character and appearance of the area.'* The proposal was to demolish the existing dwelling and replace it with a two and a half storey dwelling. The Inspector said:

5. 'There is no reason, in principle, why a modern design could not be integrated satisfactorily into this varied streetscape. However, the front of the proposal would appear as a single large gable that would rise above the ridge of no 30 and would cover much of the width of the site. Therefore, although only slightly higher than the neighbouring property, the new dwelling would have a far taller wall on its front elevation. This would mean it would be at odds with the pattern of 2-storey houses nearby, as its scale and mass would be notably greater.'

and concluded

11 'Accordingly the proposal would detract unacceptably from the character and appearance of the area, and so would conflict with Policies DP/2 and DP/3 in the Council's Local Development Framework Development control Policies DPD.'

That case appears to be in an important respect directly analogous to this one. This proposal also has a large gable to the front which rises to a ridge 10 metres high – at least 2 metres higher than the neighbouring properties and in contrast to the elevational rhythm of the road. The proposal also will detract unacceptably from the character and experience of the area in conflict with policies DP/2 and DP/3.

Planning History

In the case of R(oao Paul Havard) v South Kesteven it was confirmed that previous decisions are material planning considerations. The judge also said *'In order for a previous decision properly to be taken into account it is necessary that not just the fact of the determination, grant or refusal of planning permission, should be known to the decision maker and taken into account, but that regard should be had to the basis of the decision.'* In paras. 7, 8 and 9 of the report to Committee it does not give full or adequate details.

We ask you particularly to consider S/1753/07 – the most recent refusal and S/0468/08 the approval on a different site.

S/1753/07. The reasons for refusal are summarised in para. 8 – the key reasons being *'refused on the grounds of design, lack of landscaping, failure to provide a sufficient level of affordable housing provision.'*

The parts of the refusal of which this is a summary read.

'By virtue of the disproportionate, mass, size, height and design, the proposal would result in a poor relationship with the existing surrounding buildings, which would be out of character with the local area of Mayfield road. The proposal would be contrary to policies DP/2 and DP/3.'

The proposal would be contrary to Development control Policy HG/3 of the south Cambridgeshire Local Development Framework 2007 in that it does not provide the required allocation of affordable housing. This policy states that proposals for housing developments will only be permitted if they provide an agreed mix of affordable housing, as defined in PPS3, to meet local needs. The amount of affordable housing sought will be 40% or more of the dwellings for which planning permission may be given on all sites of two or more dwellings. i.e. In this case two of the dwelling would need to be allocated for Affordable Housing.

The proposal which you have to consider now S/2155/10 does not address or overcome these reasons for refusal.

This building is also of disproportionate mass, it is of greater size. The height of the proposal is just over 10 metres. The height of the proposal that was refused on height grounds was 8.7m. The current proposal is 1.4m higher than that refused on height grounds. That cannot just be ignored. This proposal is of excessive height.

The question of design has been discussed in para. 8 of this representation.

The reason for refusal makes it clear that the affordable housing should be based on 40% or more of the dwellings. In this case that would be two dwellings. The Affordable Housing SPD adopted in March 2010 allows – in developments of this type – a commuted sum in lieu. The updated report dated 2nd March 2010 states that the applicants are offering £10,000. in lieu. It is quite clear that the methodology set out in para. 5.22 – 5.27 of the Affordable Housing SPD adopted in 2010 has not been followed. It is also clear that the Council's valuer has not been asked to prepare the

three valuations required. This in no way overcomes the reason for refusal in S/1753/07.

No details have been submitted to comply with the landscaping requirements.

The 2008 Approval

S/0468/08 was approved in 2008. The decision in South Kesteven requires that if this approval is to be taken into account it is not just the fact of the decision but the reasons behind the decision.

First the report to Committee that approved the application did not report fully the reasons for the previous refusal – no mention was made of the fact that the height of the previous blocks was a factor in the refusal. The current report para. 33 accepts that the height was not thoroughly addressed in the Committee's report. In the terms of the decision in the South Kesteven case this would have rendered the approval unlawful. It would be wrong to cite the approval in support of this application (S/2155/10).

But there are other matters that have to be considered. S/0468/08 related to a different larger site. The inclusion of the extra land – that is not included in this application – offered a number of advantages that are not included now.

David Rush explained in letter dated 30th June 2008 that the proposal required the hedge to be removed entirely on the western boundary. Vehicles will be able to access the site as though it were a 'carriage' type. The need for a manoeuvring area is removed. A tree will be sited centrally as a 'roundabout' facility for residents. Earlier Michael Jones – the case officer – described this use of additional land in letter dated 25.01.08. *'The car parking and access arrangement is deemed a vast improvement upon the previous application. This addition allows for an improved user-friendly outlook to the street scene and an enhancement to the public realm'*.

What is being described here is 'planning gain' that resulted directly from the inclusion of extra land to make this a larger site. This 'gain' is not available with this application. This application is on a different smaller site on which two previous applications were refused.

But Mike Jones letter of 25.01.08 also expressed concerns over the height of the building. He said *'notwithstanding this it is the view of the area team that the proposal should be revised to lower the overall height of the building as well as decreasing or masking the mass of the front elevation'*.

It is believed that the height was lowered a little, but at over 10m. it is still far higher than the blocks that were refused on height grounds.

S/2155/10 was approved because the Committee were not told of the previous refusals on height grounds and because it included extra land in the application which gave planning gains which were not available for the previous refused schemes.

CONCLUSIONS

In a letter to David Rush – Head of Development Control – dated 17th July 2008 following the approval of S/0468/08 the occupant of 12 Mayfield Road said *‘(the planning team) acted in a partial way that was biased in favour of the applicant’* and *‘The block that has now been approved (S/0468/08) is of greater mass, size and height (than the one refused S/1753/07). Why this makes the proposal acceptable was not discussed or explained at the Committee Meeting. The glossing over (of the 10m high ridge) favoured the applicant’*. Mr Rush did not deny this. It seems that that partiality is alive today; there is no other explanation for the Unsupportable assertion that *‘there are no justifiable ground to prevent planning permission from being granted in this instance’*.

The application should be refused for the following reasons.

1. The changes to PPS3 mean that this high density development (47 pdh) is no longer appropriate on a Greenfield site in the low density (13 dph) residential road.
2. The proposed block of flats does not comply with the requirement of The Design Guide adopted in March 2010. Specifically:-
 - a) The building in scale and form is out of character with the immediate townscape context.
 - b) The front elevation does not reflect the elevational rhythm of the road; it is not in keeping with the roofscape.
 - c) The building will not provide a continuity of form and design with the street pattern.
3. The proposal is contrary to Development Control Policy HG/2 of the Local Development Framework adopted 2007 in that it does not provide the required allocation of housing. Nor does it offer an adequate sum in lieu. The methodology for calculation an appropriate sum as set out in The Affordable Housing SPD adopted in March 2010 has not been followed.
4. The application provides insufficient detail of landscaping and how the landscaping is to be maintained as required by DCLG Circular 01/2006 and The landscape in New Development SPD adopted March 2010.
5. The proposal fails to provide any on site parking for short term parking generated by service vehicles, salesmen and visitors. This potentially causing harm to the safe and convenient use of Mayfield Road.
6. The proposal does not comply with the requirements of Policy HG/2 of the Local Development Framework regarding housing mix.
7. The building will cause overshadowing of neighbouring properties and the application fails to comply with The Design Guide which states that *‘buildings must not significantly overshadow neighbouring properties windows or garden or where possible block their views, and evidence will need to be shown that this is the case’*. No evidence has been provided.

8. The proposal does not address or overcome reasons for refusal given in S/1753/07 particularly those relating to
 - a) mass, size, height and design
 - b) landscaping
 - c) affordable housing

9. In both form (notably the front gable rising to a ridge over 10m high) and function the proposal would be out of character with the local area of Mayfield Road and so would conflict with Policies DP/2 and DP/3 in the Local Development Framework Control Policies DPD.

10. The approval of the block of flats would provide an undesirable precedent for further such schemes in the road – which would then be difficult to refuse – and would have an everlasting damaging effect on the appearance and character of the road.

Keith & Gillian Thomas, 12 Mayfield Road
His Honour Colin Kolbert & Mrs Jean Kolbert, 13 Mayfield Road
Kate Gaylor, 14 Mayfield Road,
Alan & Elizabeth Rendell, 15 Mayfield Road