

Mr R McMurray
Principal Planning Officer
South Cambridgeshire District Council
South Cambridgeshire Hall
Cambourne Business Park
Cambourne
CAMBRIDGE CB23 6EA

2 Colmore Square
38 Colmore Circus
Queensway
Birmingham
B4 6SH
DX 701863 Birmingham 8

T 03700 864000
F 03700 864001

tim.willis@shoosmiths.co.uk
T 03700 864095

Delivered: by email and post

Your Ref S/0645/13/FL
Our Ref TDW ljp 206008
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Dear Sir

S/0645/13/FL - ERECTION OF 60 DWELLINGS (CLASS C3) INCLUDING AFFORDABLE HOUSING, ACCESS, CAR PARKING, AND ASSOCIATED WORKS, OPEN SPACE, LANDSPACING AND A CHILDREN'S PLAY AREA

LAND AT CODY ROAD WATERBEACH

We act for Manor Oak Homes Limited and have been provided with copies of recent correspondence passing between our client's planning consultant, Peter McKeown and the planning officer, Ray McMurray, in relation to the above Application.

Specifically, we have been referred to Mr McMurray's email dated 9 July and Mr McKeown's response of the 18 July.

As far as we are aware, the LPA has not replied to Mr McKeown's letter. We would confirm at this stage, however, that we agree entirely with the points made in that letter and endorse Mr. McKeown's approach to the application of National and Local Planning Policy.

Suffice to say, we are very surprised by and have deep concerns about the LPA Policy Team's own interpretation of NPPF Policies and their application to our client's site. The arguments raised and conclusions reached are totally misconceived and expose a worrying misunderstanding of the relevant policy framework.

To be clear, the correct approach to determination of this Application should be as set out below.

THE CORE STRATEGY

We note that the LPA's Core Strategy Development Plan Document was adopted in January 2007 and contains the most up-to-date and tested figures on housing provision.

Policy ST/2 "Housing Provision" states that 20,000 new homes will be provided in South Cambridgeshire during the period 1999-2016 and that provision of affordable housing will be sought as part of overall housing provision.

One of the objectives of the Core Strategy as set out by the LPA is to

"...reflect the strategy in the Cambridgeshire and Peterborough Structure Plan 2003 with the focus on locating new development in the most sustainable locations..."

The LPA has already identified Waterbeach as one of the most sustainable villages in the District. Indeed as stated in the Planning Statement supporting our client's Application:

"...there are a wide range of services and facilities present within the village and Waterbeach also benefits from having a railway station offering direct access to Cambridge, Ely and London Kings Cross. The application site is accessible to the services and facilities provided within the village by walking cycling and public transport and the proposals will provide much needed housing for the District."¹

In addition, the proposed development would make an immediate and crucial contribution towards the LPA's five year supply of deliverable housing sites. Critically, the development proposed includes 24 affordable dwellings for which there is a significant need across the District.

THE NATIONAL PLANNING POLICY FRAMEWORK

Since adoption of the Core Strategy, the National Planning Policy Framework issued in March 2012 ("NPPF") has re-emphasised that sustainable development should go ahead, without delay. Indeed, paragraph 14 of the NPPF states:

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking... for decision taking this means ...where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole or specific policies in this framework indicate development should be restricted." (Our emphasis).

It is accepted by the LPA that its current housing land supply is 2.4 years based on the Core Strategy Policy ST/2.² A point which is reiterated in the Policy Team's email of 9 July 2013.

That document also states that:

"...the Council has a shortfall in five year housing land supply against the Core Strategy target to 2016. Government Policy in the National Planning Policy Statement is that Council's should have a rolling five year supply of housing land."³ (Our emphasis).

It must be of some considerable concern to the LPA that between 2009 and 2012 the Annual Monitoring Report shows a deteriorating five year land supply as a:

"...result of the recession and the major reduction seen in housing completions nationally, combined with a development strategy that expected the major sites to come forward towards the end of the plan period which are themselves being delayed by the recession."⁴ (Our emphasis).

¹ Paragraph 10.3 of the Planning Statement dated March 2013

² Paragraph 5.23 of the Annual Monitoring Report dated December 2012

³ Paragraph 5.24 of the AMR dated December 2012

⁴ Paragraph 5.25 of the AMR dated December 2012

In short, there is a shortfall in achieving five year housing land supply targets which is ongoing. As such the LPA has to look favourably upon those housing development sites which are **available now, deliverable and sustainable**. Our client's site satisfies all of these specific criterion.

The LPA's position as expressed in the Policy Team's email is not assisted by paragraph 47 of the NPPF which suggests that the LPA should be looking here at a five year plus 5% supply of housing land. Potentially as a result of persistent under delivery of housing, that buffer should be 20% i.e. a six year housing land supply figure. At present, the LPA is woefully short of the five year figure in any event.

Further paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing **should not be considered up-to-date if the LPA cannot demonstrate a five year supply of deliverable housing sites**. That in turn triggers paragraph 14 and planning permission should be granted unless any adverse impacts of doing so would **significantly and demonstrably** outweigh the benefits when assessed against the policies in this Framework.⁶

The LPA has already assessed Waterbeach as a sustainable location for development and there are no other "**significant**" adverse impacts which "**demonstrably**" outweigh the benefits of providing much needed housing (including affordable housing), in this location. In fact, there are no "technical" objections at all.

Given the factual matrix that applies here, the only conclusion that can and should be reached by a "reasonable" local planning authority (acting "reasonably"), in this case, therefore, is that planning permission should be granted for our client's application without delay.

Any decision other than to grant permission will be entirely perverse and unreasonable and potentially open the Council to legal challenge and the significant costs associated with that.

THE EMERGING LOCAL PLAN

Again, we find the comments made by the LPA's Policy Team in relation to the emerging Local Plan quite surreal, particularly with regard to the weight to be attributed to emerging (i.e. draft), policies, given that the Plan is at first consultation stage and unlikely to be formally adopted until Summer 2015 at the earliest.⁶

The NPPF is clear that while decision takers may give weight to relevant policies in emerging plans, that very much depends upon the stage of preparation of that plan (the more advanced the preparation the greater the weight that may be given), but importantly, that weight is tempered by any unresolved objections to relevant policies and the degree of consistency of the relevant policies in the plan to the Framework.⁷

⁶ The Secretary of State's Decision Letter dated 14 May 2013 (Jelson Homes Reference APP/X2410/A/12/2173673) confirmed in Paragraph 8 that once the Framework is engaged a failure to demonstrate a five year deliverable supply of housing sites is a matter to which substantial weight must be accorded.

⁶ In Appeal Decision (APP/H2835/A/12/2182431) (Irchester) the Inspector concluded at Paragraph 48 that dismissal of the Appeal on the grounds of prematurity would effectively delay a final decision on the development for at least 18 months stating "In the context of the housing land shortfall that I have identified such delay is clearly undesirable." The draft Core Strategy review in that case was at first consultation stage and unlikely to be submitted for examination for about a year.

⁷ Paragraph 216 of the NPPF

It is neither reasonable or logical for the LPA's Policy Team to give "*significant weight*" to emerging Local Plan policies, not least because the Local Plan is still in the consultation stage, has not been tested and has yet to be the subject of independent examination.⁸

Housing supply/needs have to be an objectively assessed (see paragraph 47 of the NPPF), and crucially, the LPA cannot rely on untested five year housing land supply figures which clearly contradict the (tested) figures in the adopted Core Strategy and evidence collated as part of the Annual Monitoring Report published a mere seven months ago.⁹

Even if this were not the case, Planning Policy Statement 1 "General Principles" remains extant advice on "*prematurity*" of applications and states:

"Where a plan is under preparation or review it may be justifiable, in some circumstances, to refuse planning permission on the grounds of prematurity. This may be appropriate in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant permission would prejudice the outcome of the plan process by pre-determining decisions about the scale, location or phasing of new development which ought properly to be taken in the development plan context. A proposal for development that has an impact only a small area would rarely come into this category, but a refusal might be justifiable where a proposal would have a significant impact on an important settlement, or a substantial area, with an identifiable character..."¹⁰ (our emphasis)

Further, paragraph 47 states:

"Other than in the circumstances described in paragraph 46, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications will continue to be considered in the light of current policies."¹¹

As our client's proposed development amounts to 60 residential dwellings, we fail to see how this has any impact (significant or otherwise), on the LPA's strategic plan or indeed would cause any or substantial prejudice to that plan.¹²

On the contrary, given the LPA's dire five year housing land supply position, it is clear that our client's application will actually complement and contribute towards the LPA achieving its current five year / six year housing land supply requirement in that this site is **deliverable now, available now and in a suitable location for development now**. (See footnote 11 to Paragraph 47 of the NPPF).

In other words, our client's site does not compete or impact upon the strategic objectives of the LPA. There are also no significant adverse impacts which demonstrably outweigh the benefits of our client's scheme. As indicated above, those benefits include provision of much needed housing (including affordable housing), as well as those other community benefits set out in the supporting Planning Statement lodged with our clients application.

⁸ In Appeal Decision (APP/H2835/A/12/2182431) (Irchester) the Inspector also concluded at Paragraph 52 that a dismissal of the Appeal on the grounds of prematurity could not be justified as the neighbourhood plan was unlikely to come forward until the second half of 2014 stating that "...If development proposals were to be put off until then there would be a serious risk of adversely affecting the performance of the local economy and allowing the housing shortfall to continue".

⁹ In the Irchester Decision the Inspector also stated at Paragraph 45 that the five year land supply figure should be calculated on the requirements of the adopted Core Strategy. In Paragraph 44 he made the point that the underlying housing need remained as set out in the Core Strategy and that nothing "...has yet taken the place of the adopted Core Strategy... which in the meantime remains the only authoritative basis on which to assess district housing requirements"

¹⁰ Paragraph 46 of PPS1 General Principles

¹¹ Paragraph 47 of PPS1 General Principles

The LPA's stated position as far as this application is concerned is also inconsistent with its approach to other recent housing applications. For example, Members resolved to grant permission for 47 dwellings in Long Drove Cottenham in February 2013 on the basis that it was *"...the only option available to the Council to increase (housing) supply in the short run..."* This is an express acceptance of the dire housing land supply position and the need to address that *now*.

In light of the above, any decision to refuse our client's application on the basis that it is premature to the emerging Local Plan would be entirely unreasonable and a flagrant disregard of National Planning Policy. It would also be inconsistent with recent "called in" decisions made by the Secretary of State. As such, it would potentially open the LPA to a successful costs application, should our client be compelled to appeal against such refusal.

In the circumstances, we should be grateful for your immediate confirmation that the LPA does not intend to pursue those fallacious arguments raised by its Policy Team.

GREEN BELT ISSUES

Finally, we have noted the LPA's intention to include our client's land within the Green Belt.

The LPA's justification for this appears to be linked to the proposed provision (through the Local Plan), for a new town north of Waterbeach of between 8,000 to 9,000 homes. As stated in the Policy Team's email the LPA is to "seek" to *"...protect and ensure separation between the existing village and the new town by designating land as Green Belt at Bannold and Cody Roads..."*

The fact is, however, that our client's application for housing *on this site and in this location* has to be determined on the basis of *existing policy and other material considerations which have weight*, not on an aspiration expressed in an emerging Local Plan which is yet to be tested at independent examination.

Again, the LPA cannot place any weight or reliance on its intention to allocate the land as Green Belt for the same reasons that we have specified above. Specifically, we would refer you to paragraph 83 of the NPPF which states:

"Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, the authority should consider the Green Belt boundaries, having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period."

Paragraph 84 goes on to state that:

"When drawing up or reviewing Green Belt boundaries Local Planning Authority's should take account of the need to promote sustainable patterns of development."

Again, the fundamental flaw in the LPA's proposal to extend the Green Belt in this case is that it will immediately sterilise a number of available, deliverable and sustainable sites for housing which it will quite clearly need to rely on if it is to achieve its housing land supply targets in the next five years.

It is highly unlikely that the LPA could demonstrate that the extension of the Green Belt in this case is justified given existing circumstances. The policy hurdle in paragraph 83 of the NPPF is high and requires *"exceptional circumstances"* to be shown. If such exceptional circumstances exist, why then did the LPA not choose to extend the Green Belt when it pushed through the existing Core Strategy in 2007, or indeed as part of the numerous other reviews/revisions of the Local Plan prior to that?

¹² Paragraph 17 of the Jelson Homes Decision stated that as a neighbourhood plan was "clearly some time from fulfilment" Paragraph 14 of the NPPF is "...inescapably influential in the context of the Framework as a whole bearing in mind the sustainability of the appeal scheme in terms of its location and characteristics."

In this respect it is also noted that the land to the North of our client's site was occupied by the MOD as a barracks, airfield and surrounding quarters from 1940 until relatively recently and is now to be re-developed for private housing. Surely if the LPA realistically wanted to prevent future integration and the separation of development as asserted, it has had ample opportunity to do so in the past 50-60 years? As such the Policy Team's reference to and justification for extension of the Green Belt appears, at best, to be a desperate and cynical attempt to construct any argument which frustrates our client's proposals; whether or not these arguments have any merit on the facts

Clearly, any reason for refusal raising issues relating to the extension of the Green Belt would be entirely unreasonable and unsustainable as an objection. The Local Plan is at a very early stage and our client's has raised and will continue to pursue significant concerns over the LPA's application of NPPF policy with regard to extensions of Green Belt given the historical context.

CONCLUSION

In summary, we have no hesitation in advising our client that the arguments put forward by the LPA's Policy Team are fundamentally flawed, misconceived and entirely unreasonable.

It is apparent from our review of the relevant documents that this is an application for development which is entirely consistent with the Government's primary objective that sustainable development should go ahead without delay.

Importantly, by allowing our client's development of 60 residential dwellings, no prejudice will be caused to the LPA's strategic Housing Policies as set out in the emerging Local Plan. To the contrary, our client's development will make an immediate and valuable contribution to the LPA's five year housing land supply figure and complement the LPA's own objectives in this regard.

In addition, the benefits of our client's scheme are many. It is development in a sustainable location and will include much needed affordable housing and other community benefits as detailed in the supporting Planning Statement.

For all of the above reasons, any decision other than to grant planning permission for our client's proposal would be perverse, unreasonable and subject to potential appeal. That in turn will inevitably lead to a costs application based upon the LPA's failure to engage and apply, adequately or at all, with the Government's advice as set out in the NPPF, which clearly supports *this* development in *this* location.

In the circumstances, we await your urgent confirmation that our client's application will now proceed to a swift recommendation for approval.

We look forward to hearing from you.

Yours faithfully

Shoosmiths LLP

SHOOSMITHS LLP

cc: Director of New Communities and Planning – Mrs J Mills
Legal and Democratic Services Manager – Mrs F McMillan