

ANNEX C

Our Ref PJF/JF/PF/8391

29th November 2007

Mr H Gore
The Tyler Parkes Partnership
Centre Court
1301 Stratford Road
Hall Green
Birmingham
B28 9HH

Dear Mr Gore

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING APPLICATION FOR THE PROPOSED REPLACEMENT OF
EXISTING DWELLING AND RE-USE OF TWO SMALL BARNs FOR FURTHER
ACCOMMODATION AND GARAGING AT OXHAY FARM, MOLLINGTON
ROAD, CROPEDY, BANBURY
PLANNING APPLICATION REF 06/01346/F**

I refer to the enclosures provided by Mr Pritpal Singh-Swarn of Wright Hassall comprising a Supporting Statement dated November 2007, and a set of Appendices thereto

I make the following submissions on behalf of the agricultural tenants of Oxhay Farm, Messrs J C and T F Hill, in response

The planning relevance of the Agricultural Tenancy

Mr Singh-Swarn seeks to suggest that the existence of the agricultural tenancy is irrelevant within the planning process. That suggestion is misleading and incorrect. Messrs Hill commenced judicial review proceedings against the District Council on the basis of its failure to take account of the existence of the agricultural tenancy as a material consideration. The District Council submitted to a court order quashing its original decision so that the application could be properly re-determined.

Article 19 (i) of the Town and Country Planning General Development Procedure Order 1995 states

'A local planning authority shall in determining an application for planning permission take into account any representations made, where any notice of the application has been -

b) served on –

(i) *an owner of the land or a tenant of an agricultural holding under Article 6* '

The agricultural tenancy is material to this application in the context that

A - the current position

- The agricultural tenants reside in the existing dwelling and use the farm buildings in connection with their agricultural business at Oxhay Farm
- The agricultural tenancy extends to the entirety of the holding, beyond the land included in the landlord's planning application. The tenancy of the farmland (the freehold of which has recently been transferred from the landlord to his sister) will remain whatever the outcome of the planning application
- Currently the landlord has no right to occupy the land which is the subject of his planning application. In his statement, Mr Singh-Swam confirms that the landlord is intending to use any new dwelling for himself and his family. However, at present, and until such time as the agricultural tenancy is determined, the landlord has no right to possession and (in the event that planning permission is granted) no right to implement any permission
- It is therefore material to consider whether the proposed accommodation is commensurate to the agricultural holding because that is the current use of the land. The landlord's intentions, or otherwise, to operate any farming activity in the future are irrelevant. What is relevant is the current use of the land by the agricultural tenants in actual occupation

B – the impact of a grant of planning permission

- Under Case B of the Agricultural Holdings Act 1986, a landlord is entitled to recover possession for a use, other than for agriculture, for which planning permission is required. When the previous planning permission was granted, the landlord purported to serve a Notice to Quit on Messrs Hill to determine their tenancy of the farmhouse, buildings and access drive
- In the event that planning permission is granted, it is anticipated that the landlord would serve a further Notice to Quit on the tenants and seek to argue (again) that the grant entitles him to terminate their tenancy of the farmhouse and buildings. The landlord's right to recover possession would be determined by arbitration, but it is the grant of permission that would trigger the Notice to Quit
- If the landlord were successful in his argument, the tenants would be dispossessed of the farmhouse, land and buildings included in the landlord's application

- In such circumstances, there will be a requirement for
 - (i) a new farm dwelling (the proposed replacement dwelling is not of a size commensurate with the functional requirements of the agricultural holding),
 - (ii) replacement agricultural buildings to support the tenants' farming of the remainder of the holding (which, at present, comprises bare land), and
 - (iii) a new access from the farmland onto the highway

It would be entirely wrong for the District Council to determine this application without paying sufficient regard to (a) the existence of the present agricultural tenancy and (b) the future land use planning implications that would arise from the implementation of a planning permission for the proposed replacement dwelling. The potential land use planning consequences of a grant of planning permission on the agricultural tenancy are clearly material considerations.

Relevance of the Report of Ms Charlotte Cox

Charlotte Cox, as independent agricultural consultant to the District Council, is not being asked to consider whether there is a justification for a new agricultural dwelling. Ms Cox has properly considered the functional need for a farm dwelling in the context of this long established agricultural holding.

Mr Singh-Swarn invites you to consider the 'viability' of the holding by reference to the provisions of The Agricultural Holding (Units of Production) (England) Order 2006 and 2007. In doing so, he uses the Orders entirely outside their appropriate statutory context. The Orders provide a basis, in the context of succession applications, for calculating whether a would-be agricultural tenant satisfies the "commercial unit occupation test" required to succeed to a tenancy under the Agricultural Holdings Act 1986. They are not intended to provide a general test of 'viability' and are irrelevant for planning purposes.

In contrast, Ms Cox has been instructed on behalf of the District Council to determine whether the holding would be viable as an agricultural unit without the farm buildings and dwelling. In making that assessment, Ms Cox has had regard to Standard Man Day requirements (which are an industry standard for assessing the requirement for a full-time agricultural worker on site) and to animal health and welfare legislation.

Ms Cox is very clear in her expert opinion that there is a continuing functional need for a dwelling to serve the existing agricultural enterprise. She finds that the holding is currently a viable agricultural unit but would cease to be viable without the dwelling and associated buildings.

Conclusion

The granting of planning permission for a replacement dwelling – of a size that is commensurate with the ‘established functional requirements’ – coupled with the imposition of an agricultural worker's occupancy condition, would secure the improvements to the domestic accommodation which the landlord accepts need to be undertaken, while ensuring that the dwelling is available to serve the agricultural holding

However, manifestly the provision of improved domestic accommodation for the tenants is not the underlying purpose of this application. This application is for -

- a replacement dwelling which is not similar in size and scale to the existing building (Policy H18)
- is unrelated to the needs of the agricultural holding
- may (in the event planning permission is granted and the landlord, in reliance on that permission, recovers possession of the holding) lead to a need to
 - provide a new farm dwelling
 - provide replacement farm buildings
 - provide replacement access from the highway

I submit that, on re-consideration of all the material planning considerations raised by this proposal, planning permission should be denied on the basis that the proposal is in conflict with the provisions of Policy H18

The proposed replacement dwelling is not ‘similar in size and scale to the existing building’. Fundamentally, in the absence of control over the existing property, the application can not establish that the proposal is a ‘one for one replacement’. The balance of probability – evidenced by the expert opinion of Ms Charlotte Cox - is that if the applicant secured possession of the existing dwelling, there would be a need for a second dwelling in the open countryside to serve the continuing agricultural need of the holding (as the tenants would remain in possession of the farmland). Furthermore there would be a requirement for replacement agricultural buildings arising directly from the loss of farm buildings in order to provide domestic accommodation unrelated to the farm.

In my submission planning permission should be refused for the sound and clear cut reason the proposal is contrary to Policy H18

Yours sincerely,

PP 

P J Frampton

(Signed in the absence to avoid delay)

cc Mr T Hill
Mr G Baddeley
Mr F Harrison-James
Mr D Chadwick
Mr P Singh-Swam