



WALSINGHAM PLANNING

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FAX

TO Caroline Roche FROM Stephen Brooker

FAX 01295 221856 PAGES 6 (inc this one)

PHONE 01295 221816 DATE 22/11/10

RE Land at Kraft CC

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

Caroline, Sorry, still cannot make email work! Good old fashioned fax!

Please see attached letter + revised Certificate B as discussed over the telephone this morning.

I urge you and your colleagues to reconsider the matter, a postponement to the next Committee is acceptable to the applicants.

Please ring me with any queries

If you do not receive all the pages, please contact Walsingham Planning on 01628 532244

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Our Ref: SB/CC/B0073/09

Your Ref: 10/01347/FUL

22 November 2010

Chief Planning Officer
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

Dear Sir

Land at Kraft, Southam Road, Banbury

I write further to my telephone conversation on Thursday afternoon with your assistants Ms Roche and Mr Duxbury in respect of the above.

It is very disappointing and frustrating that after some 15 months of regular contact with your officers, 12 weeks into the application and less than 2 weeks prior to Committee that officers should suddenly perform a complete reversal of the advice to date and now wish to recommend refusal of our proposal. Our Sequential Test analysis was submitted in advance of the application and agreed to be satisfactory.

I understand that the proposed sole reason for refusal stems from your belief that there are sequentially preferable sites that are reasonably available, suitable and viable, viz

- Bolton Road car park
- Former Spiceball Leisure Centre site
- Unspecified site(s) within the Canalside redevelopment
- Crown House, Christchurch Court

The applicants have included all of these within the Sequential Test analysis and concluded that they are not reasonably available, viable and suitable.

In the event that your recommendation should prevail Whitbread will either

- a) simply cut their losses which means that the investment, new employment and benefit of improved hotel facilities in the town will be lost, or,
- b) an appeal will be fought on this sole point.

It seems to me that the former would be a very significant loss to the town, particularly at a time when there are very few investors willing and able to undertake new development and create new jobs.

In the case of the latter you will be required to demonstrate the availability, within a reasonable timescale, suitability and viability of the sites you have listed. I understand that your disagreement with the Sequential Test conclusions essentially amounts to "availability".

Paragraph 6.37 of the Practice Guide to accompany PPS4 sets out the definition of availability "whether sites are available now or are likely to become available for development within a reasonable time period (determined on the merits of a particular case, having regard inter alia, to the urgency of need)" Paragraph 6.38 goes on "A site is considered available for development, when, on the best information available, there is confidence that there are no insurmountable legal or ownership problems such as multiple ownership, ransom strips, tenancies or operational requirements of owners"

Bottom Road – your officer commented that the site has fragmented ownership and requires land assembly "it is capable of being put together...", this does not pass any test of being reasonably available Whilst your officer has provided no plan of the site he had in mind he also observed that the existing multi-storey car park remains in use Given the shortage of car parking in Banbury town centre it seems very unlikely indeed that the Council would wish to remove such a prized facility until it could be replaced. This is also a very strong indicator that the site will only be available in the medium/long term and therefore cannot be regarded as reasonably available Whilst it is understood that the Council may be in the process of preparing an SPD for this site, this is not yet in the public domain and the prospect of availability for development seems distant

Former Spiceball Leisure Centre – enquiries reveal that this site is not currently available and it is understood that any proposal will be likely to be a mixed development Your officer referred to uncertainty regarding the future of the site in view of the severe restrictions on County Council expenditure following the recent Public Spending Review These restrictions place provision of a public library on site into some doubt and may result in the site being "reserved" for a future provision. It is therefore unknown when, or in quite what form, the site will become available Once available it is unknown if, or when, any proposed development, of which part could provide hotel bedrooms might take place in the current climate, particularly given the reliance on value derived from other types of development The provision of hotel bedrooms on site therefore comprises one uncertainty upon another, i.e. not reasonably available Furthermore, it is understood that this site is within the flood plain

Canalside – even your own officer conceded that this is a long term prospect, i.e. not reasonably available Furthermore these sites are mainly within the flood plain

Crown House – whilst your officer may believe that the site could become available this is a long way short of being "reasonably" available. I understand the site to be owned by a developer who has not made it available and we are unaware of any intention for it to be made available. You will also wish to note that the existing building is too small to accommodate 100 hotel bedrooms, it only has a span of c 12m and it is therefore not possible to have bedrooms perpendicular on both sides of a central corridor

Your officer was dismissive of the Whitbread business model requirement that a Premier Inn of this scale in this location needs to be accompanied by a restaurant and advised that such a requirement need not be taken account of in any Sequential Test I therefore take the opportunity to remind you of policy EC15.2 of PPS4 " local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site" (my underlining)

Your officer's dismissive approach was therefore inappropriate and is unsupported by PPS policy

You will of course also wish to bear in mind that availability is not the only criteria by which sites should be judged. It is also necessary to assess suitability and viability. None of these sites are on the market, some would involve any hotel as part of a more comprehensive scheme. Accordingly, there can be no certainty at all whether or not any of them would be viable. Viability involves an assessment of market factors, cost factors and delivery factors (including "developers realistic build out rates") (para 6.47 PPS4 Practice Guide). None of the 4 sites suggested can be shown to be viable.

With regard to suitability it is noted that 2 of the suggested sites are known to be within areas liable to flood. Hotels are a "more vulnerable use" in PPS25 terms and a flooding sequential test would have to be met before any hotel permission could be granted – such a test would reveal the application site to be suitable, available, viable and outside of any flood plain and so the suggested sites must fail the test.

I urge that you recognise the benefits of this definite proposal with specific benefits that the applicants propose deliver in the short term.


You should also take into account the very significant advantage that the proposal brings by helping to facilitate future development of the redundant Max Pax building by providing an access.

I trust that you will wish to review the position. If it is of any assistance I can advise that the applicants are willing to extend the period for determination of the application.

You have kindly advised that the District Council owns a strip of land between the site and the highway and that Notice should therefore have been served. I have also noted that we should have served Notice on Oxfordshire County Council as owners of the highway verge. I have therefore served Notice on Cherwell and Oxfordshire County Council today. Please find attached a revised Certificate B.

I look forward to hearing from you and hope that you will be able to revise your commendation and help to secure a valuable development for the town.

Yours faithfully


Stephen Brooker Dip T&CP MRTPI
Director
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