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HIGH PEAK
14 MAY 2013
BOROUGH COUNCIL

Application by High Peak Developments
Land at: Hogs Yard, Buxton Road, Whaley Bridge, Derbyshire

PLANNING STATEMENT

EPP reference: S1-9097-CP

May 2013

1. INTRODUCTION

1.1 This statement is submitted on behalf of High Peak Developments in support of an application to extend the time limit for implementation of planning permission reference HPK/2010/0206. The permission proposes a mixed use scheme of (B1) offices, (A3) food and drink and (D2) assembly and leisure. The permission was granted on 19 July 2010 and therefore expires on 19 July 2013. This application is submitted to protect the applicant's position with regard to the future development of the site.

1.2 The Town and Country Planning (Development Management Procedure) (England) (amendment No. 2) Order 2012 provides a one year extension to the temporary provisions introduced in October 2009 for the renewal of planning permissions. The amendments allow applicants with unimplemented extant planning permissions granted on or before 1 October 2010 to apply for replacement permission for the same development, subject to a new time limit for implementation.

1.3 This statement will demonstrate that there has not been any material change in planning policy or other circumstances since permission was granted in 2010 that warrants refusal of the present applications. .

2. SITE LOCATION AND DESCRIPTION

2.1 The site lies within the defined built-up area of Whaley Bridge. It comprises the southern parcel of land at Hogs Yard situated to the west of the River Goyt and Bingswood Industrial Estate and to the east of Buxton Road. Access would be obtained from the existing internal access road from Buxton Road which provides access to the existing Tesco Store. It is an area of cleared vacant land extending to 0.48 hectares.

2.2 The area surrounding the site is characterised by retail development (Tesco store) and employment uses on Bingswood Industrial Estate. There is an extant planning permission for retail, offices and restaurant use on the remainder of the Hogs Yard site.

3. RELEVANT PLANNING HISTORY

Site history

3.1 Outline planning permission HPK/2004/0590 was granted in 2005 for offices, food and drink and leisure and assembly on this site. Reserved matters consent reference HPK/2008/0360 was granted in August 2008.

3.2 A subsequent planning permission was granted on 19 July 2010 (HPK/2010/0206) for the extension of the time limit for the renewal of the planning permission enabling development to commence by 19 July 2013. It is this permission to which this application relates.

Other relevant history

3.3 The wider Hogs Yard site has a complex planning history which we do not intend to repeat here. One specific scheme which is of relevance is application HPK/2012/0087 (appeal reference APP/H1033/A/2187670) for mixed use development of retail, business and restaurant. Planning permission was granted on appeal in April 2013.

3.4 The application proposed to renew planning permission HPK/2003/0791 (granted in 2009) for new mixed use development of retail, business and restaurant on part of the wider Hogs Yard site. The application was refused on 15 May 2012 for one reason which states that the development would cause harm to the character and appearance of the street scene and injure the visual amenities of the area contrary to Policy GD4 and guidance in the National Planning Policy Framework.

3.5 Planning permission was subsequently granted on appeal on 19 April 2013. In reaching his decision, the Inspector concluded that:

> *"All in all, for the above reasons, I do not consider there has been a material change in policy or other circumstances since permission was granted in 2009 that merits refusal of the present application. The advice in* Greater flexibility for planning permissions *is therefore entirely pertinent and there is no justification in all the relevant circumstances for taking an alternative view as the Council has done."*

3.6 The circumstances of this appeal are comparable with this application.

4. POLICY CONTEXT

National Planning Policy Framework

4.1 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 (paragraph 14). For decision making this means:

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:
  - Any adverse impacts 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.

4.2 Paragraphs 11 to 16 and Annex 1 on implementation set out clearly how the NPPF should be used in practice. This can be summarised as follows:

- The Planning and Compulsory Purchase Act 2004 requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise (paragraphs 11 and 210)
- The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise (paragraph 12).
- The NPPF is a material consideration in determining planning decisions which must be taken into account from the day of its publication (paragraph 1, 13 and 212)
- Local plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF (paragraph 211).
- From March 2013, due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given) (paragraph 215).

Design

4.3 Paragraphs 56 to 68 deal with good design. These paragraphs clarify that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people (paragraph 56).

4.4 Paragraphs 59, 60 and 61 state:

- Design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.
- Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is however, proper to seek to promote or reinforce local distinctiveness.
- Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

4.5 Paragraph 64 is clear that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Decision taking

4.6 Paragraphs 186 and 187 require local authorities to approach decision taking in a positive way. It is clear that local planning authorities should look for solutions rather than problems and should seek to approve sustainable development wherever possible (emphasis added).

Greater Flexibility for Planning Permissions (October 2010)

4.7 This document provides practical guidance on the use of measures introduced by the Town and Country Planning (Development Management Procedure) (Amendment No. 3) (England) Order 2009, one of which is extensions to time limits for implementing planning permissions.

4.8 Sections 23 and 24 provide guidance on determining the application. These state:

"23. How should local planning authorities approach these applications?

In current circumstances, local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for an extension will by definition have been judged to be acceptable in principle at an earlier date. Whilst these application should, of course, be determined in accordance with s.38 (6) of the Planning and Compulsory Purchase Act 2004, local planning authorities should, in making their decisions, focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of planning permission.

24. Do local planning authorities have to grant an application to extend the time limits for implementation?

No. This process is not a rubber stamp. Local planning authorities may refuse applications to extend the time limit for permissions where changes in the development plan or other material considerations indicate the proposal should no longer be treated favourably."

Development plan context: The High Peak Borough Local Plan Saved Policies

4.9 The High Peak Borough Local Plan was adopted in March 2005. Under the provisions of the Planning and Compulsory Purchase Act 2004, policies were saved in 2008. The Council produced a Saved Policies Local Plan in March 2008 and it is these policies that are referred to below. The High Peak Local Plan Saved Policies (March 2008) comprises the development plan for this application.

4.10 The site is situated within the settlement boundary of Whaley Bridge as defined by Policy GD2 of the Local Plan.

4.11 The adopted Local Plan proposals map identifies the site under Policy TC14 as the regeneration area at Hogs Yard, Whaley Bridge. Within the regeneration area, planning permission will be granted for a range of uses including business, hotels, assembly and leisure, food and drink, tourist accommodation and non-food retail.

4.12 The policy states that within the development land will be reserved to allow for the construction of an access road and new bridge over the River Goyt to provide a new access to the Bingswood Industrial Estate.

4.13 In addition the site is situated within an improvement corridor where Policy GD3 states that high priority will be given to environmental enhancement. Proposals in improvement corridors are required to enhance the appearance of the area and have no undue

detrimental effect on existing important landscape, townscape, historic, wildlife or water features.

4.14 Policy EMP6 relates to industry and business within the built-up area boundaries. The policy is permissive of business development within the built up area boundaries provided the development does not harm the character or appearance of the premises or amenity of the area.

4.15 Policy GD4 on character, form and design is not referred to on the decision notice. This states that:

> *"planning permission will be granted for development provided that:*
>
> *Its scale, siting, layout, density, form, height, proportions, design, colour and materials of construction, elevations and fenestration and any associated engineering, landscaping or other works will be sympathetic to the character of the area, and there will not be undue detrimental effect on the visual qualities of the locality or the wider landscape."*

5. PLANNING CONSIDERATIONS

5.1 The document 'Greater Flexibility for Planning Permissions' is pertinent to this application. It provides advice on how local authorities should deal with applications for extensions to time limits for implementing planning permissions. In essence local authorities should take a positive and constructive approach to applications which improve the prospect of sustainable development being taken forward quickly. Local planning authorities should focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of planning permissions.

5.2 In this context, there are two key issues in respect of this application:

1. Whether there has been a change in circumstances in respect of the development plan.
2. Whether there has been a change in circumstances in respect of other material considerations.

1. The development plan context has not materially changed since the grant of planning permission in 2010

5.3 At the time of the grant of the original planning permission in 2009, the development plan comprised:

- The Regional Spatial Strategy for the East Midlands (March 2005)
- The High Peak Borough Saved Local Plan Policies (March 2008).

5.4 It is the saved 2008 policies that are referred to on the original planning permission. The final page of the decision notice states that the policies relevant to the decision are:

- EMP6 - Industry and business within the built up area boundaries and homeworking
- GD2 - Built up area boundaries
- GD3 - Improvement corridors
- TC14 – Regeneration area at Hogs Yard, Whaley Bridge

5.5 The East Midlands Plan was revoked in its entirety on 12 April 2013, however, it is only the saved policies of the High Peak Local Plan that are cited on the decision notice. The proposed development would still accord with the four policies listed on the decision notice and would contribute positively to the regeneration area at Hogs Yard.

5.6 A Scottish decision of the Supreme Court, *Tesco Stores v Dundee City Council* [2012] has recently dealt with the matter of interpretation of development plan and national policies.

5.7 It is paragraphs 18 and 19 which are of particular relevance. This case comments that:

> *"The development plan is a carefully drafted and considered statement of policy published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in R (Raissi) v Secretary of State for the Home Department [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." (paragraph 18)*

5.8 The case is summarised at paragraph 19 by Lord Reed JSC:

> *"Nevertheless planning authorities do not live in the world of Humpty Dumpty; they cannot make the development plan mean whatever they would like it to mean"*

5.9 In this case, the proposed development is unchanged from that approved in 2010 and the relevant development plan policies continue to be the 2008 saved policies. The development proposed is identical to that approved in 2010 therefore an assessment of the same development against the same policies should result in the same conclusion.

5.10 In short, there has been no material change in the development plan context in relation to the appeal application. The application proposal complied with the development plan in 2010 and must therefore comply with it now.

2. There has been no other material change in circumstances since the grant of planning permission in 2010

5.11 In terms of other material considerations it is necessary to consider the NPPF and site specific considerations.

National Planning Policy Framework

5.12 The National Planning Policy Framework was published in 2012 and is a material consideration in determining this application. It replaces all previously published national planning policy guidance and planning policy statements. However, whilst the NPPF is new, its guidance with regard to the application proposal has not materially changed.

5.13 Paragraph 215 of the NPPF states that from March 2013 due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF

(the closer the policies in the plan to the policies in the Framework, the greater the weight to be given).

5.14 There is no conflict between the policies listed on the decision notice namely EMP6, GD2, GD3 and TC14 and the NPPF. These policies encourage economic development and regeneration within the settlement boundary and are in accord with the presumption in favour of sustainable development set by the NPPF.

5.15 The consistency of Policy GD4 which deals with character, form and design, with the design policies in the NPPF was considered in the April 2013 appeal decision for the wider Hogs Yard site (HPK/2012/0087). The Council argued that the NPPF's guidance as a whole justified a change of stance in respect of design from that in 2009. The Inspector disagreed and his conclusions on this matter are relevant in the context of this application. He stated at paragraphs 14 and 15 that:

> *"However, bearing in mind the consistency of the basic intentions of policy GD4 with those of the Framework in respect of design in context, I consider special justification would be needed to turn down an application considered to be of an acceptable design in 2009 and there is nothing in the paragraphs citied or the Framework as a whole to suggest that it would be justifiable to take such a radically different view on the design merits of the proposed development, the context for which is inescapably dominated by the perhaps rather utilitarian appearance of the Tesco store...*
>
> *The appellant's comparative analysis of the intentions of the Framework in respect of design and those of the superseded PPS1 Delivering Sustainable Development is persuasive in demonstrating that the essential national context that might justify a different decision on design merits (in the context of a development plan context that has also remained unaltered in the material sense) is effectively unaltered."*

5.16 The general thrust of the design guidance within the NPPF is the same as the now superseded PPS1, adopted in 2005 and the extant national planning policy on design at the time of the determination of the 2010 application. There has been no material change in circumstances in this regard.

The site

5.17 There has been no change in circumstances on site since the previous grant of planning permission.

6. SUMMARY AND CONCLUSIONS

6.1 This statement supports an application to extend the time limit for implementation on planning permission HPK/2010/0206 for a mixed-use development incorporating (B1) offices, (A3) food and drink and (D2) leisure and assembly at Hogs Yard, Whaley Bridge.

6.2 The permission expires on 19 July 2013 and it is requested that the time limit for implementation is extended by a further 3 years.

6.3 The document 'Greater Flexibility for Planning Permissions' provides advice on dealing with renewal applications. It is clear that local authorities should take a positive and constructive approach to such applications and focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of planning permission.

6.4 This statement has shown that whilst there have been changes to national guidance, , these changes results in no change in circumstances to justify a different decision being reached. There has been no change to development plan policy with regard to this site.

6.5 In summary, there has been no material change in planning policy or other circumstances since permission was granted in 2010 that warrants refusal of the application.