

Your Reference:

Our Reference:

0632/9057/10607/6

24 July 2012

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Dear Sirs

Objection to Warwick District Council Local Plan Consultation response on the Preferred Options May 2012

Our Client: Leamington County Golf Club

We are instructed by the Leamington County Golf Club ("Golf Club") and are duly authorised by them to submit a formal objection to the consultation of the preferred options intended to inform the Local Plan.

The main focus of this objection relates specifically to the land at Golf Lane which is identified by the Strategic Housing Land Availability Assessment ("SHLAA") with (site reference) L12 and equates to an area of 0.26 hectares; L11 identified as Golf Lane/Fieldgate Lane and equates to 4.01 hectares. Our client's objections are therefore in relation to L11 and L12.

Housing

The starting point for our objection relates to the evidential base for housing availability which is proffered through the SHLAA. The SHLAA constitutes a key component in the District Council's delivery of housing within the borough. This document informs the consultation of the "Preferred Options" stage of the Local Plan. It is therefore crucial that the basis upon which this document has been compiled must be 'sound' (test of soundness examined in more detail below).

The District Council issued its SHLAA in May 2012.

It is important to recognise the primary function of the SHLAA and this is set out at below;

- Identify buildings or areas of land (including previously developed and greenfield land) that could have potential for housing, including within mixed use developments;*
- Identify sustainability issues and physical constraints that might make a site unsuitable for development;*
- Identify constraints that might make a site unachievable or unviable for development;*
- Identify what action, if any, could be taken to overcome constraints on these sites;*
- Assess the potential level of housing that could be provided on developable sites;*
- Assess the timescale for delivery of housing on developable sites;*
- Where appropriate, evaluate past trends in windfall land coming forward for development and estimate the likely future implementation rate;*
- Assess the likely level of housing that could be provided if unimplemented planning permissions were brought into development;....."*

Under the Planning and Compulsory Purchase Act 2004 S 20(5)(a) an Inspector appointed to undertake an Examination in Public is charged with firstly checking that the plan has complied with legislation. This includes amongst other things, checking that the Local Plan has been prepared in accordance with the District Council's Local Development Scheme, compliance with its Statement of Community Involvement and has also been subject to sustainability appraisal.

In addition, Section 20(5)(b) of the Act requires that an Inspector is to determine whether the plan is "sound", which means the Local Plan (including the SHLAA) should be justified, effective and consistent with national policy. This means that the SHLAA which will inform the Local Plan must be founded on a robust and credible evidence base and the most appropriate strategy when considered against the reasonable alternatives. There has been no evidence of this and the soundness of the SHLAA will be tested.

By the District Council's own admission in the SHLAA, it has considered only those sites which in **their view** were in sustainable locations consistent with national planning policy and these sites were assessed in order to **avoid wasting resources**. It is not clear how the District Council reached this conclusion or how those sites that are currently being identified by the District Council are likely to bring forward housing growth (given the reasons set out below). Again by its own admission the District Council has not complied with the guidance issued by the Communities for Local Government on the compilation of the SHLAA. The soundness and the reliability of the SHLAA in its assessment of L11 and L12 is both questionable and doubtful.

Page 6 of the SHLAA the District Council sets out the assessment and suitability of sites for housing using the following criteria;

- the location of the site;
- existing policy restrictions;
- the existence of any physical constraints on development of the site;
- the potential impact of development of the site (in relation to surrounding areas); and,
- the environmental conditions which would be experienced by residents of the development.

Assessment of L12

In terms of the District Council's assessment of L12, the following applies;

Firstly, this site falls within an Area of Restraint, which means the District Council should be protecting this site from unsuitable development.

Secondly, the physical restraint identified by the District Council is such that the local highway network is inadequate at the junction of Golf Lane and Whitnash. In terms of the topography, the site has a fairly steep slope to the south.

Thirdly, the potential impact associated with the site is the impact on the worsening highway safety at junction of Golf Lane and Whitnash Road and the potential impact of the junction of Heathcote Road and Tachbrook Road. There is also an impact on the open countryside.

Fourthly, the environmental constraint is considered to be the noise from the adjacent railway line.

Fifthly, the District Council's assessment of the overall suitability of this site is that there is potential but this site is dependent on the findings of a full Transport Assessment and improvements to the highway network to mitigate any transport safety issues.

Assessment of L11

In terms of the District Council's assessment of L11, the following applies;

Firstly, this site falls within an Area of Restraint, which means the District Council should be protecting this site from unsuitable and unsustainable development.

Secondly, the physical restraint over this site is that a public footpath runs from north to south of the site and there is utility cabling along the boundary of the site.

Thirdly, there is a potential impact on the open countryside.

Fourthly, the District Council considers there are no environmental constraints associated with the proposed development for housing.

Fifthly, the District Council considers the site is potentially suitable subject to the amendment of the boundary of the area of restraint. However there is a caveat to this assessment, in that the District Council will require significant contributions towards improved infrastructure and services, which is not guaranteed.

The assessment of L11 and L12 clearly highlights the physical and policy restraints for housing development. The promotion of these two sites for housing, in our view do not comply with the primary objectives of the SHLAA (set out above). It is evidently recognised by the District Council as a matter of fact, that the impact of housing for each plot will need to be mitigated quite significantly. Given the District Council's current car parking standards, this will allow on average two cars per dwellings and would as a direct result put a huge additional burden on the existing highway and other infrastructure within the locality.

The District Council has recognised there is likely to be a significant impact with on top of what is already a problem of congestion and road safety for the Highway Authority. The suitability of L11 and L12 has to be met with some significant highway safety and road traffic investment and the District Council has not considered the feasibility or the deliverability of such investment to make the proposed sites sustainable (see below reference to the Inspector's Report for further comments on the impact of housing on L11 and L12).

Highways

The Local Plan preferred options consultation document states;

*"Warwickshire Highway Authority, in partnership with the Highways Agency, undertook a strategic transport study in 2011 based on 3 growth options for the District looking at the capacity of the District's transport networks to cope with increased movements associated with growth. This study showed that all three options (low, medium and high growth) would be possible with associated mitigation measures. However the study recognized that the increase in road congestion would be closely related to the level of growth. In February 2012, the County Council undertook a further study which modelled the potential transport impacts of four combinations of sites. The study concluded that all options could be accommodated, subject to mitigation measures. The mitigation would need to take the form of **substantial transport and highway improvements** (my emphasis)".*

The road network in the immediate vicinity and beyond is not sufficient to withstand the additional traffic under L11 and L12, requisite highway infrastructure may not be feasible given the substantial improvements that would be required to make all three proposed sites sustainable. The uncertainty surrounding the economy and the ability to promote viable development is becoming increasing difficult. Against this backdrop, the District Council has not assessed any evidence that would show achievability of housing on the above sites, whether it is viable for a developer or land owners to bring sites forward and contribute to infrastructure. Given the traffic impact and road safety issues that already which the District Council recognise there is no evidence in support of the SHLAA that substantial transport and highway improvements could be delivered. Achievability under the SHLAA in respect of L11, L12 is therefore not made out.

The SHLAA and the District Council's formulation of the Preferred Options document will almost certainly fail to meet or will at least contradict one of its objectives set out a paragraph 4.11 (4) of the consultation document, which states;

“Providing well designed new developments that are in the right location and address climate change;

*Make sure that new developments are in places that will **reduce the need for people to use their cars** (my emphasis)”.*

It is a matter of fact as to the current capacity of the local road network surrounding L11 and L12. The District Council accepts these roads are struggling to cope with the current capacity and in particular the Tachbrook Road/Harbury Lane Junction already has heavy traffic loads which result in long delays. Any further development will compound the current situation. As set out above, the District Council has failed to address how it will overcome the impact on the existing infrastructure given that there is real and credible concern on the inability to deliver sustainable development. This again calls into question the soundness of the SHLAA (also see Inspector’s Report below on the highway impact).

The National Planning Policy Framework at paragraph 29 states;

“Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”.

The current transport infrastructure for L11 and L12 clearly cannot cope and without sustainable solutions to accommodate additional need to travel. The District Council has not addressed how to deal with additional demand that will be generated by the preferred options more specifically in relation to L11 and L12, given that there is currently an identifiable traffic and road safety problem.

Environment

Given the nature of our client’s business, there will be an increased risk of stray golf balls flying into the proposed development site. If housing development is proposed on L12, there is a propensity for stray golf balls to cause considerable damage and annoyance to those new residents, their property and the impact on them enjoying the gardens for children and social activities within their own curtilages. The quality of life may therefore be impaired.

The preferred option for L12 may have an undesired effect on the commercial operation of the golf course through the very real possibility of creating a statutory or private nuisance of straying golf balls from our client’s site. There is therefore a genuine concern by our client that if residential development is allowed on L12 it will attract complaints to District Council’s Environmental Health and may possibly also lead to private nuisance actions per se against the golf course. Such undesirable consequence will impact on the golf club’s commercial operation.

It is settled law that an environmental prosecution or abatement action can still be pursued by the District Council against an established outfit which precedes any development. The following recent case in the Court of Appeal highlights the possibilities that may be open to third parties and council’s in respect of statutory and private nuisance actions;

Jackson LJ gave the leading judgment in **Coventry (trading as RDC Promotions) v Lawrence and Shields [2012] EWCA Civ 26**, summarised the case law on nuisance and planning permission.

He said the grant of planning permission “may change the character of the locality” and it was a “question of fact in every case” whether the grant and implementation of planning permission had that effect.

If the character had changed, the question of whether activities constituted a nuisance “must be decided against the background of its changed character” and a consequence may be that “otherwise offensive activities in that locality cease to constitute a nuisance”.

The area surrounding L12 is a golf course, the character of which is synonymous with outdoor sports and leisure. There is therefore a genuine concern by our client that any residential development on L12 will trigger complaints to the District Council under the Environmental Protection Act 1990.

Other cases that support this premise are as follows;

Wheeler v Saunders Ltd 1995 2 ALL ER 697

Gillingham Borough Council v Medway (Chatham) Dock Co Ltd [1993] QB 343

Attorney-General v PYA Quarries Ltd

The Physical restraints of L12 in terms of its topology would question the huge engineering operation that would be required to level off this site. The District Council do not appear to have considered the huge costs that may be associated with the engineering operation, which could make the 'achievability' unviable (also see below Inspector's Report on impact of views and visual intrusion).

Inspector's report Warwick District Local Plan 1996-2011 Inquiry – Inspector's Report

In addition to the reasons set out above, the Inspectors Report on the objections to the Warwick District Local Plan 1996-2011 agreed that these areas (L11/L12) are not suitable for development. The areas identified for development are part of the area of restraint and indeed separate Whitnash from nearby Bishops Tachbrook. This development would go some way and set a precedent for infilling between the two urban areas which would eventually merge. The Inspector agreed that the development off Golf Lane ***"would be clearly seen from southern parts of Whitnash where the land contributes to the rural setting of the town"***. He goes onto say ***"it would also, I feel, be intrusive in long range views from east of the railway line."*** The Inspector further agrees that the land has a role to play in the structure and character of this part of Whitnash and helps to prevent urban sprawl.

In his overview the Inspector specifically states that the **Woodside Farm and Land at Golf Lane sites should not be allocated for housing**. We do not see how the factual situation has changed since the Inspector made his findings. This would support our objection to the preferred options on the basis that the compilation of the SHLAA is sustainably flawed.

The Inspector in his report also recognised that the circumstances had altered since the Revised Deposit Plan was published. The final version of the Warwickshire Local Transport Plan 2006 ("LTP") did not show 'Quality Bus Corridors' although it still makes reference in the text to such corridors within Warwick, Leamington Spa and Whitnash. Instead, the latest LTP shows a broad North/South Corridor linking the urban areas of Nuneaton, Bedworth, Kenilworth, Leamington Spa, Whitnash and Warwick where there is a need for a step change in public transport provision.

The Inspector's report stated as follows;

*"Clearly, the debate surrounding this topic has been overtaken by the more up-to-date policy document. The District Council concedes that the basis upon which Policies UAP2 and UAP8 included a criterion on the matter has now changed. The transport corridors shown on the Proposals Map no longer have significance. I accept that they should be deleted. But in order to satisfy the general thrust of PPG13 I agree with the District Council that a fresh criterion should be added to each Policy requiring **locations to be genuinely accessible and well served by a choice of means of transport** (my emphasis) - similar to the requirements in Policies UAP3 and UAP9".*

There has clearly been a strong recognition by the Inspector of the impact on the transport infrastructure and the need for sustainable modes of transportation. The Preferred Options consultation document clearly ignored without justification the findings by the Inspector. It is our submission that the Inspector's findings constitute a **material planning consideration** and therefore should be addressed by attaching significant weight to it, in relation to the infrastructure issues and the visual intrusion of L11 and L12.

Miscellaneous

The local services such as fire, police and the hospitals are all currently located north of the river and are therefore difficult to access given the traffic impediment at present. These services will be further stretched and even more difficult to access with further development of the area.

In addition the local facilities such as schools, libraries and open spaces and other infrastructure, will struggle with the impact of proposed development.

The character of the area in Whitnash will be severely altered by the urban sprawl proposed. Currently the areas identified provide a green area between towns which is enjoyed by local residents. The proposed development through the Preferred Options will destroy the open countryside of Whitnash and demonstrate overdevelopment.

Summary

Leamington County Golf Club are not objecting in principle to the need for additional housing but are objecting to the areas identified in Whitnash, L11 and L12, these areas will have a hugely negative impact on the vicinity if developed for the reasons set out above

The SHLAA is seriously questionable in informing the Preferred Options over sustainable development. The primary objectives of the SHLAA in part have not been met which again casts doubt over the reliability of how the SHLAA has been compiled. It is also doubtful that the SHLAA will pass any test of soundness. The District Council appeared to have ignored Inspector's report to the Warwick Local Plan 1996-2011 which upholds the fact that L11 and L12 are protected as an areas of restraint and that no housing development should take place. The Inspector has shown that these sites are unsuitable and unsustainable for housing. The Inspector's Report will constitute a material planning consideration in the formulation of the new Local Plan and there is no factual, practical or legal reason why the District Council should **not** attach significant weight to the Report. Given there does not appear to be any real change in terms of the facts relating to these sites, it therefore places the District council in position whereby it cannot lawfully ignore the Inspector's findings, given that it constitutes a material planning consideration.

The District Council itself has accepted there is a serious issue with the likely impact on the existing infrastructure and if the District Council is not willing to underwrite the desired infrastructure then, there is absolutely no guarantee that the appropriate infrastructure will be delivered, thereby calling into question the ability to deliver and the sustainability.

The District Council is therefore invited to reconsider suitable alternative sites.

Yours faithfully

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