

**NORTHAMPTONSHIRE POLICE AUTHORITY**

**CRIMINAL JUSTICE CENTRE, PAVILION DRIVE, NORTHAMPTON**

**PLANNING APPLICATION REFERENCE: 08/0283/FUL**

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**OPINION AS TO PROSPECTS OF SUCCESS OF AN APPEAL**

**AGAINST REFUSAL OF PLANNING PERMISSION**

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**1 INTRODUCTION**

- 1.1 I am asked to advise Northamptonshire Police Authority (“NPA”) in relation to its proposals for a criminal justice centre (Use Class C2a) with associated parking, landscaping and access (“the Development”), on land at Pavilion Drive, Northampton.
- 1.2 The proposals are the subject of an application for full planning permission (“the Planning Application”), submitted to West Northamptonshire Development Corporation (“WNDC”) on 24 November 2008.
- 1.3 The Application has been considered at two meetings of WNDC’s Planning Committee (on 29 May and 29 September 2009) and is due to be determined at a further meeting on 17 November 2009.

1.4 At the meeting on 29 September, members of WNDC's Planning Committee indicated that they were minded to refuse to grant planning permission in respect of the Planning Application for reasons relating to:

- (i) failure to comply with policy B14 of the Northampton Local Plan; and
- (ii) failure to demonstrate the securing of a robust detainee release policy resulting in a degree of fear of crime that is to the detriment of the reasonable expectations of both the existing business community of Pavilion Drive and the residential community of Hardingstone.

1.5 I have reviewed the relevant planning application documents, the development plan context, the various objections to the Planning Application (produced at each stage of its consideration) and the various officers' reports to both Northampton Borough Council and WNDC. I am asked to advise as to the prospects of an appeal under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission, should that be the decision of the WNDC planning committee, on 17 November 2009.

## **2 BACKGROUND**

2.1 The background to these proposals is helpfully summarised in the WNDC officers' reports to committee dated 29 May 2009 and 29 September 2009. As such, it is unnecessary for me to summarise the background to this proposal at this stage.

2.2 I have also considered the Supplementary Report (August 2009) prepared by Savills on behalf of NPA, which was submitted to WNDC in advance of the 29 September committee meeting. Again, that report provides a helpful summary of the arguments put forward by NPA in further support of the Planning Application. Finally, I have considered the terms of a report prepared by WNDC to a meeting of its planning committee on 27 October 2009. I understand that an agenda item relating to the Development was not taken forward to that committee meeting, with the item withdrawn from consideration. Instead, the Planning Application is to be determined at a meeting of WNDC's Planning Committee on 17 November 2009.

### **3 THE PROPOSED REASONS FOR REFUSAL**

3.1 As noted above (paragraph 1.4), members of WNDC's planning committee resolved to refuse to grant planning permission at the meeting on 29 September 2009. I am instructed that at that meeting, officers of WNDC were asked to formulate the proposed reasons for refusal in full and for those reasons then to be ratified at a future meeting of the committee. That meeting was to have taken place on 27 October 2009 (see 2.2 above).

3.2 Notwithstanding that intention, it is clearly open for members of WNDC's planning committee to reconsider their decision and resolve to take a different decision in relation to the Planning Application at any subsequent meeting of that committee. As such, if they were so minded, members of the planning

committee could determine to refuse or approve the Planning Application at its meeting on 17 November 2009.

3.3 **Reason for refusal 1 – Compliance with Policy B14 of the Northampton Local Plan**

As formulated in its report to the 27 October meeting, the first reason for refusal is as follows:

*“(a) The proposed development fails to demonstrate that it would be of significant benefit to the local community therefore in being a use which sits outside the Business Use Classes of the Town and Country Planning (Use Classes) Order 1987 is contrary to Policy B14 of the Northampton Local Plan.”*

The wording of Policy B14 is as follows:

*“B14. Within existing and proposed business areas planning permission will not be granted for development outside the Business Use Classes of the Town and Country (Use Classes) Order 1987, unless such development would be of significant benefit to the local community and would lead to substantial employment opportunities.”*

In my opinion, the Development is compliant with Policy B14 for the following reasons:

(a) The proposed use does not fall within the Business Use Classes of the Town and Country (Use Classes) Order 1987 (as amended) and as such it is necessary to consider the development against the criteria contained within the second part of the policy.

(b) The first criterion requires that the development be of “substantial benefit to the local community”. As explained within the planning application documentation, the Supplementary Report and as summarised in the various officers’ reports to committee, the Development is an integral and essential part of NPA’s estate management strategy and its plans for dealing with both existing and future operational requirements as a result of the proposed growth in population of Northampton and the surrounding area<sup>1</sup>. The provision of effective and efficient policing is self evidently of significant benefit to the wider community and as a sub-set of that, to the local community. To argue that such wider benefit in some way precludes the more local benefit would in my opinion be perverse in planning terms and as a matter of common sense. As well as assisting the Police in discharging their duties (as is required by the comprehensive statutory framework within which they operate), at the most local level the presence of a criminal justice centre at Pavilion Drive would increase visibility, to the benefit of the local business and residential community.

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<sup>1</sup> The Development will provide an essential component of infrastructure to meet the growth in population in West Northamptonshire that will result from the Milton Keynes and South Midlands Sub-Regional Strategy towards 2031

(c) For these reasons, I am satisfied that the Development would be of significant benefit to the local community in compliance with Policy B14.

(d) The second criterion is a requirement that the Development would lead to “substantial employment opportunities”. The policy does not require the creation of “new” employment opportunities. In this case, the Development will provide up to 200 jobs across a variety of disciplines, employing different skills and levels of experience. Those jobs will involve both operational and non-operational (i.e. administrative) staff. All employees will benefit from NPA’s comprehensive training and continuing development programme. Over time, new job opportunities will be created through the usual process of staff turnover and as teams expand to meet operational requirements. As such, it is in my opinion clear that there would be “substantial employment opportunities” in accordance with the second criterion of the second part of Policy B14.

3.4 For these reasons, in my opinion the Development and its proposed operation would comply with Policy B14 and as such, I do not think that a reason for refusal alleging non-compliance with Policy B14 would be well founded.

3.5 Whilst not determinative, it is also instructive to consider the supporting text to Policy B14. As that supporting text has not been provided in any of the various reports to committee, I set it out in full below:

*“In recent years proposals have been made and some implemented for non-business purposes such as leisure uses in business areas. Often this arises when properties have been vacated and an alternative planning permission would help to market the property. Such changes need to be approached with caution. Each one represents a loss of business premises and may result in loss of local job opportunities. However, if the former activity was an established “bad neighbour” use or if support services are to be provided for the business area, then change of use may bring positive benefit. The Council has a responsibility to seek to ensure the provision of business premises and it is important that planning policies seek to retain as much existing business floor space as is practicable, especially in the older business areas which are likely to offer the cheapest premises.”*

- 3.6 This supporting text, which provides the justification for the policy, indicates that the justification was not to prevent development of the type proposed by the Planning Application. Rather the policy was designed to prevent the conversion of existing business premises to non-business uses. That is not proposed here. The application site is currently vacant. In the past over a number of years it has been marketed, without success, for business use. The Development would not lead to a loss of employment opportunities. On the contrary, as noted above, substantial employment opportunities would be made available.

3.7 **Proposed reason for refusal 2 – Failure to demonstrate the securing of a robust detainee release policy**

3.8 As I have noted above, the NPA, in common with all Police forces in this country, operate within a strict and regulated statutory framework. That framework embodies significant safeguards in relation to the way in which the Police (and other stakeholders in the Criminal Justice System) deal with those who have been detained. In particular, there are comprehensive safeguards in relation to the process by which such detainees are assessed and, if appropriate, released either on bail, or unconditionally.

3.9 In this case, NPA have, through the written application documentation, explained the very comprehensive risk assessment process that will be undertaken in relation to each and every detainee before they are released from the criminal justice centre, or otherwise. That process accords with the statutory framework that I have referred to.

3.10 As an additional safeguard and as a direct result of representations received from those objecting to these proposals, NPA propose to put in place a “detainee release policy” which will operate for the life of the criminal justice centre.

3.11 That detainee release policy would be secured under the terms of a planning obligations agreement, made pursuant to Section 106 of the Town and Country Planning Act 1990. That agreement would impose binding covenants on the NPA, capable of enforcement by WNDC (or any successor authority). I am instructed that the draft terms of a Section 106 Agreement

have been subject to negotiation between NPA and WNDC and that its terms are largely agreed. As such, in the event that members resolved to grant planning permission in relation to the Development, I understand that the terms of that agreement will be finally settled and completed contemporaneously with the grant of planning permission.

- 3.12 Similarly, if the planning application were to be determined, as part of any appeal process, again, that agreement would be put in place prior to the final decision being made.
- 3.13 In that way under the agreement WNDC can independently ensure that, in addition to the safeguards of the statutory framework that I have referred, the “detainee release policy” would be operated in respect of the Development.
- 3.14 In relation to the issue of “the fear of crime” in common with the legal analysis provided by WNDC’s officers in their report to the 29 September committee at paragraphs 9.17 and 9.18, I consider that the proper approach is set out in the Court of Appeal’s judgement in the case of *N Smith v The Secretary of State (2005)* at paragraphs 8 and 9.
- 3.15 Whilst “fear of crime” can be a material consideration in the determination of a planning application of this nature, there must be a reasonable basis for that fear and such fear must be connected with the proposed use of the land.
- 3.16 While the fear expressed by members of the local business and residential communities may well be real, that is not the determinative test. The decision maker must go on to consider the basis of that fear and reach a properly considered judgement as to whether such a fear has a reasonable basis.

3.17 In this case, NPA have undertaken an extensive comparable analysis, examining similar facilities currently operating in different parts of the country. That analysis has demonstrated that, even where there were initial concerns arising at the planning stage, or when the facilities were first brought into use, those concerns, which were shown to be without foundation, reduced over time. That experience also needs to be considered in combination with the operational safeguards that I have summarised above (paragraphs 3.9-3.14).

3.18 Thus, in my opinion, whilst I acknowledge that the fears may well be real, the weight to be attached to those fears should not in these circumstances support the refusal of planning permission in this case.

3.19 Absent a reasonable basis for a fear of crime, I do not understand it to be suggested that it could properly be said that an independent concern over amenity arises in the circumstances of this case.

#### **4 PROSPECTS OF SUCCESS**

On the above basis and in the event that members resolve to refuse planning permission on the grounds suggested in the report on 27<sup>th</sup> October 2009, in my opinion a subsequent appeal against the refusal would have a very good prospect of success. Should my Instructing Solicitors wish to discuss anything arising on the above further with me, I would be happy to do so on

the telephone or as appropriate.

**Robin Purchas QC**

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**6th November 2009**