



Report by:

Interim Director of
Planning and
Development Control

Applicant:

Northamptonshire
Police Authority

Application No:

08/0283/FULWNN

Date Registered:

25/11/2008

Expiry Date:

24/02/2008

Grid Ref: 476515/258290

Ward: Nene Valley

Northampton UDA Planning Committee Paper

Report by Interim Director of Planning and
Development

Date of Committee Meeting: Tuesday 17th November 2009

Agenda Item:

Description: Criminal Justice Centre (Use Class C2a) with associated parking, landscaping and access (Full Application).

Address: Land at Pavilion Drive, Northampton, NN4 7YL

1. Recommendation

1.1 The Interim Director of Planning and Development's recommendation remains as set out in the appended report which is to support the application for the reasons set out therein (see para. 1.1). However, in the event the Committee are minded to refuse the application pursuant to the two main principle concerns raised at the meeting on the 29th September 2009, which are set out in this report then an appropriate form of wording for the two reasons for refusal are as follows:

a. The proposed development fails to demonstrate that it would be of significant benefit to the local community and 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.

b. The proposed development fails to demonstrate that a robust detainee release policy can be secured which would result in an increased fear of crime that to the detriment of the

reasonable expectations of both the existing business community of Pavilion Drive and the residential community of the nearby Hardingstone contrary to Policy E40 of the Northampton Local Plan.

2. Considerations

- 2.1 This application was presented to the Northampton UDA Planning Committee (the Committee) on 29th September 2009 with an officer recommendation to APPROVE subject to conditions and a S106 agreement. A copy of the report is appended for information.–The application was due to be heard by the Committee again at a further meeting on Tuesday 27th October. However, representations were received from a number of consultants representing the objectors to the proposal challenging the interpretation of our standing orders with regard to public speaking. In light of these objections the Interim Director of Planning and Development withdrew the application from the agenda.
- 2.2 At the meeting on the 29th September the Committee considered the application and supporting information, including presentations from speakers both against and in support of the proposal, and after a lengthy debate, were minded to disagree with the officer recommendation. In accordance with standing orders it was resolved to defer the application to enable the Interim Director of Planning and Development to prepare a further report, this report, to specifically address the reasons provided by members at the last Committee meeting.
- 2.3 The concerns of the Committee centred on two key elements of the proposal:
1. The failure of the application to demonstrate that the proposed use would be of ‘significant benefit’ to the local community.
 2. The fear of crime that would be experienced by both the existing business community and residential community of Hardingstone.
- 2.4 Regarding the first element above, Policy B14 of the Northampton Local Plan states that *‘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’.*

- 2.5 The proposed use does not sit within one of the business uses of the Town and Country Planning (Use Classes) Order 1987. Therefore for the proposal to be wholly compliant with the second half of the policy, which permits exceptions to 'business uses', one of the criteria to be satisfied is the proposed development will bring significant benefits to the local community.
- 2.6 There appeared to be a general acceptance that the provision of this facility would bring benefits to the wider community of Northampton in meeting the modern day needs of Northamptonshire Police in dealing with persons whom they detain for whatever reason. However, at the 29th September Committee meeting member felt that the proposal would not comply with Policy B14 as it would not bring significant benefit to the local community. The main part of the related debate centred around the Committee not being convinced that the benefit was sufficiently local and was much wider than the local area and Northampton.
- 2.7 If members maintain this view and it forms part of any reason for refusal the Corporation will have to defend this position at appeal. The applicant has already indicated that it intends to appeal any refusal of planning permission.
- 2.8 Members should therefore give further consideration as to the reasoning behind adopting this position, as it is this, which will form the basis of any evidence that will need to be presented at any appeal to defend the Corporation's position. Failure to present a robust case at any subsequent appeal could likely result in potentially significant costs being awarded against the Corporation. This risk overall is considered low as the main element that will be tested at any appeal will be over subjective matters as to what is considered significant and what is considered local.
- 2.9 Regarding the second element, Policy E40 states that *'planning permission will not be granted for development unless its design, layout, and landscaping pay adequate regard to the need to deter crime and vandalism'*.
- 2.10 There was concern that the applicant had failed to develop a wholly robust detainee release policy that would guarantee that all detainees released from the facility would be transported away from the site. The statistical information presented by the applicant failed to persuade the Committee that the degree of risk from those detainees that may choose to be released directly onto Pavilion Drive was sufficiently small to be acceptable and not give rise to any fear of crime or actual crime being undertaken in the immediate environs of the site by the released detainees.

- 2.11 Again if members wish to confirm this concern as a reason for refusing the application then it will be necessary to expand upon the reasoning behind this and in particular state why they consider the proposed detainee release policy is so deficient that it gives rise to an undue level of fear of crime. Failure to do so will again put the Corporation at risk at any possible appeal of having a successful claim of costs made against it if it cannot robustly defend its reason for any refusal reason on this point.
- 2.12 The Committee debated this point extensively as the fear of crime is based on a perception that something may happen. Again, this is a subjective matter and carries less risk of costs, but in this case some evidence was discussed where it was reported that out of 10,000 detainees released last year from the existing facilities in Northampton, only 6 re-offended within 24 hours of being released. When viewed as a percentage this is only 0.006%. This on the face of it would appear small and be difficult to defend as a reason for refusal. This is especially made more difficult to defend when those re-offending are in the category of petty crime. But this is still a serious matter for public concern when there are extensive people employed on the adjacent employment sites and local residents close by.

3. Further representation on behalf of objectors

- 3.1 A further representation has been received from one of the planning consultants on behalf of the Barclaycard and 400 Pavilion Drive Ltd. It was requested that this letter be circulated to all members of the Committee, and this has now been done.
- 3.2 The representation also makes the point that as one of the possible reasons for refusal is that the proposed development is contrary to Policy B14 of the Northampton Local Plan *'the subject of alternative sites for the proposed criminal justice centre has represented an important material consideration by those supporting and objecting to the same development throughout the time the application'* has been with the Corporation.
- 3.3 The writer goes on to state that its relevance becomes self evident by quoting from a recorded comment from, the Corporation's legal advisor, in the draft Minutes of the Committee meeting which states that 'If there are clear planning objections to a development then it may be appropriate to consider whether the development should be located elsewhere and whether or (not) alternative sites should be considered'. members should note that this advice should not be taken on its own in isolation, and

that the advice given at committee went on to qualify in what instances the consideration of alternative sites may be a material consideration albeit concluding, as per the previous committee report that in this instance it was not something officers considered applied.

- 3.4 If members resolve to refuse the application as being contrary to the development plan then the planning consultant considers it appropriate to add a further reason for refusal as follows:

The Development Corporation is not convinced that there are no more suitable alternative sites for a proposed criminal justice centre to serve the southern part of the County which will have less detrimental impact on the local community than that now proposed in the Northampton Business Park.

- 3.4 The planning consultant also recommends a further reason for refusal to recognise that the Northampton Business Park is as a high quality employment area as recommended in the SELA study (Strategic Employment Land Assessment). The wording is as follows:

The application site comprises part of the Northampton Business Park, being of the highest quality in terms of suitability for employment provision. The proposed development would lead to a loss of an important site to a non-Class B1 use, at time when both existing commitments and emerging supply of land for Class B1 development in West Northamptonshire is insufficient in quantitative terms to meet existing and future market demand.

- 3.5 Notwithstanding the above, it is not open to officers in this report to put forward reasons for refusal that do not reflect the specific concerns expressed by members at the meeting on the 29th September 2009. This is clearly set out in the standing orders. It is for members of the Committee, if they determine to refuse planning permission, to decide what precise reasons for refusal they wish to formulate. Members may recall that they made clear on the 29th Sep that there were only two areas they wished to be taken forward to be formulated into reasons for refusal.

- 3.6 Officers are however able to offer comments on the merits of the Committee adopting these suggested additional reasons for refusal either in their own right or as additional ones to those set out in the Recommendation to this report.

- 3.7 The issue of alternative sites and the assessment thereof is one that has evolved through planning case law; and is not directly referred to in Policy B14 of the Northampton Local Plan. It is acknowledged that it can be a material planning consideration in circumstances where *'there are clear planning objections'* to a proposed development.
- 3.8 It is evident that the applicant has considered alternative sites during both the initial site selection stage and additionally during the course of the consideration of this application to date and discounted them for the reasons given. The inference from the suggested reason for refusal is that the applicant has not made a 'serious' effort to find an alternative site and that some could exist. Keeping in mind that if the application is refused and an appeal is made such a freestanding reason will have to be robustly defended and the appropriate evidence presented to justify the refusal reason. Members will have to satisfy themselves such evidence exists if they wish to pursue such a reason. Also, the alternatives sites issue is not required to be considered by the policy and that matter was discussed at some length by the committee and were satisfied that it was not a material consideration here and that there was no case for another reason for refusal.
- 3.9 In commenting on the planning consultant's second suggested reason for refusal which seeks to recognise the high quality of the site for B1 uses and the need to safeguard it for this purpose—does not reflect the concerns expressed by Members at the last meeting. As above, if Members wanted to adopt this reason as a freestanding one then at any appeal evidence has to be presented robustly to defend it. There is some evidence that recognises the high quality of employment on offer at the Northampton Business Park and it is possible that—may be ultimately recognised in the emerging Joint Core Strategy. However, the—most relevant development plan policy is B14 of the Northampton Local Plan and this is the policy by which Members have to consider the application against.
- 3.10 Policy B14 seeks to safeguard the site for a wider range of employment uses, not just B1 (office, light industrial and research and development) but also B2 (General Industrial) and B8 (storage and distribution). Members are advised to note this in considering this further suggested reason of refusal.
- 3.11 A letter was received on the 9th Nov from the applicants legal advisor containing Counsel's opinion on the applicants prospects of success of an appeal against refusal of planning permission. This opinion restates the applicants position on the compliance with

policy and the issue of the fear of crime. Therefore it is not considered necessary to comment on this opinion. This opinion is appended to this report as an appendix 2.

3.12 The applicant's counsel's opinion goes on to advise on the success of any appeal should planning permission not be forthcoming. Members have been advised by officers separately in this report on the risks associated with refusing planning permission and a possible appeal. Members should ultimately consider the application on its planning merits and avoid taking into account, when determining the application; the counsel's opinion expressing the success or otherwise of any appeal against the refusal of planning permission is advice to the applicant and not to members of this committee.

3. Conclusion

3.1 If members wish to depart from the recommendation of the Interim Director of Planning and Development then suggested reasons for refusal are set out at the front of this report and would, if accepted, be the objections of the Committee to the planning application.