Department for Communities and Local Government

Dr Thomas Rocke
Rocke Associates Limited
Number One
Queen Square Place
Bath
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Our Ref: APP/Y1110/W/15/3005333

30 June 2016

Dear Dr Rocke

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CPG DEVELOPMENT PROJECTS LTD
AT LAND NORTH OF HONITON ROAD AND WEST OF FITZROY ROAD, EXETER EX1 3RS
APPLICATION REF: 14/1615/01

1. I am directed by the Secretary of State for Communities and Local Government ('the Secretary of State') to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry on 1-4 and 7-8 December 2015 into your client's appeal against the decision of Exeter City Council ('the Council') to refuse planning permission for mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafés), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping at land north of Honiton Road and west of Fitzroy Road, Exeter EX1 3RS, in accordance with planning application reference 14/1615/01, dated 27 June 2014.

2. On 31 March 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because the appeal involves any main town centre use or uses where that use or uses comprise(s) over 9,000m^2 gross floorspace and which are proposed on a site in an edge-of-centre or out-of-centre location which is not in accordance with an up-to-date development plan document.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with

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his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Procedural matters

4. Footnote 1 on page 1 of the Inspector's report states that the application form reads 'west' of Fitzroy Road, but that this was subsequently corrected. In fact the application form reads 'east' of Fitzroy Road, and this was subsequently corrected to 'west'.

5. On 1 June 2016, you wrote to the Secretary of State advising him that an undetermined application by British Land for a retail park development at a 3.15 hectare site currently occupied by a B&Q warehouse store (Exeter City Council ref: 15/1065/01), which was referred to in the proofs of evidence of Richard Short (paras 12.9-12.10) and Matt Morris (para. 6.35), had been withdrawn, and stated that it should therefore not be given any weight in the current decision. You also stated that since this withdrawal, interest by prospective anchor tenants, including Next, in the current appeal scheme has been consolidated, and discussions regarding heads of terms have progressed.

6. On 9 June 2016, a response was received from Exeter City Council enclosing a Certificate of Lawfulness, granted on 15 April 2016, for the proposed subdivision and use of the B&Q warehouse building for unrestricted Class A1 sales, and an email from the agent for the withdrawn B&Q planning application informing the Council that their clients will determine how to proceed with their scheme once the current appeal by CPG is determined, but that in the meantime they will submit a planning application for external alterations to initiate a fall-back position of subdividing the existing building into a number of unrestricted Class A1 non-food and drink retail units. A further letter from Next Group plc was attached which confirmed Next's interest in either the proposed retail park scheme or the proposed fall-back scheme on the B&Q site. The Council reiterated their view that should the appeal be allowed, strict controls must be placed on the retail units to ensure they will not harm centres in the catchment area of the appeal proposal, and that this does not change the position that the appeal should be dismissed.

7. On 10 June 2016 a further response was received from Steven Ardron of Next Group plc, stating that the Certificate of Lawfulness does not itself make the premises suitable for the requirements of Next, and that it has become clear to Next that the only credible and deliverable development within the vicinity of J29 is the appeal site. Terms have been agreed between Next and CPG (subject to consent) to occupy a unit with a footprint of circa 26,500 sq. ft on the appeal site.

8. The above representations were circulated to CEH on 16 June 2016, inviting their comments. A response was received on 21 June 2016, summarising the contents of the objection letter CEH had submitted in February 2016 to the application for the redevelopment of the B&Q store, in which they also doubted the viability of the fall-back position. They consider the interest now confirmed by Next confirms the degree of risk to the City Centre arising from the appeal proposal, in that it would be directly competing with the City Centre for the

same catchment area. They also note that only heads of terms are agreed between CPG and Next, and state that in their view, this non contractual interest does not add any material evidence to the CPG case. CEH continue to promote their outline application for the redevelopment of Exeter Bus & Coach Station site, with a view to confirming the formal planning permission within the next few weeks.

9. Copies of these letters are available from the address at the foot of the first page of this letter.

Policy considerations

10. In determining these applications, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Exeter Core Strategy 2026 (adopted in February 2012) and the Exeter Local Plan First Review 2011 (adopted in March 2005). The Secretary of State considers that the development plan policies most relevant to this case are those set out at IR3.2-3.9.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the NPPF), the associated Planning Guidance, and the other matters set out at IR3.1.

Emerging policy

12. In determining this application, the Secretary of State has also had regard to the emerging draft Development Delivery Development Plan Document. He considers that the relevant emerging policies include those dealing with sustainable development (DD1), employment allocations (DD3), provision of local services (DD4) and the Bus and Coach Station site (DD14).

13. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the comments of the Inspector on the first two elements at IR3.10. With regard to the third element, the Secretary of State considers that at this stage the relevant policies in the emerging DPD do not appear to contain obvious inconsistencies with the Framework, but are still subject to change. Overall he agrees with the Inspector that the relevant emerging policies carry limited weight. He has also taken into account the Monkerton and Hill Barton Masterplan Study IR3.11-3.12 and the documents set out in IR3.13.

Main issues

<u>Development plan</u>

14. The Secretary of State has considered the Inspector's analysis at IR11.2-11.23. He agrees with the Inspector's assessment of the appellant's argument as set out at IR11.20, that it is wrong to argue that CP19 is inconsistent with

the NPPF, or that it is out-of-date, on the grounds that whether development is acceptable is now only to be determined by reference to the sequential and impact tests. He agrees with the Inspector that while the NPPF may only set two tests, it expects LPs to fill the gaps, as it were, by meeting the criteria in NPPF 23, including *a network and hierarchy of centres,* and also agrees that this is what the LP does, and that the changes over the years do not mean that the existing policies are out of date (IR11.20). He further agrees that as long as the CS is not out-of-date, which it is not as it satisfies the criteria for plan making in NPPF 23, then it is proper, indeed essential, to weigh the scheme against policies CP8 and CP19 in assessing its compliance or otherwise with the development plan. He therefore agrees with the Inspector's conclusion at IR11.22 that CP19 is not inconsistent with the NPPF, and that neither it, nor the Core Strategy as a whole, are out of date (IR11.22). He further agrees that the proposals would go well beyond any reasonable interpretation of a *local centre*, and that the scheme would therefore be contrary to policy CP19 and, albeit less specifically, to CP8 (IR11.23).

15. The Secretary of State further agrees with the Inspector at IR11.58 that the scheme would be contrary to the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Employment land

16. For the reasons set out in IR11.24-11.26, the Secretary of State agrees that use of the site other than for offices would not be in direct conflict with policy CP19, there would be no significant harm to the supply of employment land in Exeter and no significant conflict with the development plan (IR11.26).

Sequential test

17. For the reasons set out at IR11.27-11.29, the Secretary of State agrees with the Inspector that the NPPF 24 test should apply, and that preference should be given to the Bus and Coach Station site as sequentially preferable if it is suitable and available (IR11.29).

18. For the reasons set out at IR11.30-11.37, the Secretary of State agrees with the Inspector that given no more than reasonable flexibility, the Bus and Coach Station site would be suitable for the town centre uses proposed for the appeal site (IR11.37). The Secretary of State has taken into account the Inspector's reasoning at IR11.38-11.40. He agrees that there is no rationale for concluding that the site must be on the open market to any developer, and that the new retail floorspace would be marketed to traders who would occupy it regardless of who developed or owned the scheme (IR11.39). He further agrees that the requirement for a bus station and a leisure outlet on another part of the Bus and Coach Station site does not mean that the area earmarked for retail development is not available (IR40). Overall he considers that the Bus and Coach Station site is available.

19. Overall, the Secretary of State agrees with the Inspector's conclusion at IR11.41 that the Bus and Coach Station site is relevant, highly accessible and well connected to the city centre. He concludes that it is sequentially

preferable, suitable and available. The appeal proposals therefore fail the sequential test and would be contrary to paragraph 24 of the Framework. Paragraph 27 of the Framework indicates that applications should be refused in these circumstances.

Impact test

20. The Secretary of State has considered IR11.42-11.50, and considers that the appeal proposals pose a moderate risk to planned investment with an additional risk of delay. He considers that given its size, strategic importance, and prominence in the Core Strategy, if allowing the appeal resulted in the PHL scheme being prevented, there would be a significant adverse impact on planned public and private investment. The Secretary of State agrees with the Inspector's conclusion at IR11.51 that this risk would conflict with the aims of policy CP8 for the regeneration of the BCS site.

21. However, the Secretary of State does not consider that this risk is 'likely' to occur in terms of the test in paragraph 27 of the Framework. He agrees with the Inspector that any impacts on Cranbrook and Exe Bridges Retail Park are unlikely to meet this test (IR11.53). He therefore does not consider that the appeal should be dismissed on this basis.

22. For the reasons given in IR11.43 and 11.52, the Secretary of State agrees with the Inspector's conclusion at IR11.52 that the potential harm to the vitality and liability of the City Centre in general should be given little weight.

Other matters

23. For the reasons set out in IR11.53, and subject to proposed conditions dealing with highway works and reserved matters, the Secretary of State agrees that concerns over the height and location of built development, and any risk to highway safety should not be a bar to development.

Economic, social and environmental dimensions of sustainable development

24. The Secretary of State has taken into account the economic benefits of the scheme, which include the creation of around 400 full time equivalent jobs, and facilities for local businesses (IR11.55). He gives this significant weight. However, he considers that the risks to development on the Bus and Coach Station site carry moderate weight against the proposals. Overall he considers that there is moderate weight in favour of the proposals on economic grounds.

25. The Secretary of State agrees with the Inspector that the proposals would provide accessible local services (IR11.56), but considers that this social benefit carries moderate weight in favour of the proposals rather than being broadly neutral as the Inspector suggests.

26. The Secretary of State agrees with the Inspector that while the appeal site is generally well-located for public transport, it is in a less accessible location than the sequentially preferable BCS site. The appeal scheme would include a large new car park and 'drive-through' restaurants which would be likely to encourage rather than deter the use of the private car. The Secretary of State therefore considers that the environmental harm carries limited weight against

the scheme, rather than being broadly neutral as the Inspector concludes (IR11.56).

Planning conditions

27. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.3. He has also taken into account the recommended conditions set out at the end of the IR and the reasons for them, and national policy in paragraph 206 of the Framework, along with the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing this appeal.

Planning balance and conclusions

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. As outlined above at paragraph 15, the Secretary of State agrees with the Inspector that the scheme would be contrary to the development plan as a whole. He has therefore gone on to consider whether there are any material considerations sufficient to outweigh the conflict with the development plan. He has considered the benefits of the scheme in terms of job creation, accessible local services and environmental considerations, and has concluded that the economic and social benefits carry moderate weight in favour of the proposals, and the environmental harm carries limited weight against the proposals

29. However, he does not consider that the benefits of the scheme outweigh the conflict with the development plan and the environmental harm. The scheme also fails to satisfy the sequential test, and paragraph 27 of the Framework indicates that planning permission should be refused in those circumstances. Therefore, the Secretary of State finds that there are no material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses the appeal and refuses planning permission for mixed use development to provide a District Centre comprising uses within some or all of Classes A1 (Retail) with associated Garden Centre, A2 (Financial and Professional Services), A3 (Restaurants and Cafés), A5 (Hot Food Takeaway), D1 (Non-residential institutions), D2 (Leisure), associated means of access, access road, car parking, infrastructure works, public realm and landscaping at land north of Honiton Road and west of Fitzroy Road, Exeter EX1 3RS, in accordance with planning application reference 14/1615/01, dated 27 June 2014.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to Exeter City Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

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Authorised by the Secretary of State to sign in that behalf