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Mr N. Bryan
Principal Planning Officer - Development Services
Gedling Borough Council
Civic Centre,
Arnot Hill Park
Arnold,
Nottingham NG5 6LU

7th February 2022

Dear Mr Bryan

Land At Top Wighay Farm Wighay Road Linby Nottinghamshire: Outline planning application for mixed-use development comprising; 805 homes, land for employment purposes (up to 49,500m² of B1/B8 uses), a Local Centre comprising A1-A5, B1(a) and D1 uses (up to 2,800m²), a 1.5 form entry Primary School and associated infrastructure, open space and landscaping (EIA Development). Reference 2020/0050.

Urban Vision Enterprise CIC has been appointed by Linby Parish Council (LPC) to submit a representation with regard to the above planning application.

The above application has been considered by the Planning Committee on the 31st March 2021, with the resolution to approve it in line with officer recommendations. However, the section 106 Legal Agreement in support of the application remains outstanding, and therefore the decision notice has not been issued to grant permission.

Statutory Duties

The statutory steps the Local Planning Authority (LPA) must take to consult members of the public on planning applications is prescribed in article 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (the 2015 DMPO).

The circumstances in which LPA's must notify a Parish Council are set out in Schedule 1, paragraph 8, of the Town and Country Planning Act 1990 and article 25 and 25A of the 2015 DMPO. Planning law also prescribes circumstances where LPA's are required to consult specified bodies prior to a decision being made on an application. A list of statutory consultees on applications for planning permission is set out in Table 2 of the Consultation and pre-decision matters guidance, DLUHC, July 2021.

Applications for outline planning permission must be made in the prescribed form. The law, under s.327A of the Town and Country Planning Act (the Act) says the LPA must not entertain applications which fail to comply in form, manner or content with those prescribed requirements.

According to the Encyclopaedia of Planning Law LPAs have no discretion here. "The test in s.327A is absolute". An invalid application does not constitute a planning application in the meaning of Articles 7 and 34(4) of the 2015 DMPO. Article 34 of the 2015 DMPO states that a valid application shall not be taken as being received until such of the documents, particulars or evidence required to make it valid have been lodged with the LPA.

"Access" in the context of outline applications for planning permission is defined in article 2(1) of the 2015 DMPO:

"access", in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding network..."

Description of Development

The exact nature of what is being applied for needs to be understood. The application description does not accurately reflect the proposed works in the application.

The description of development is for "Outline planning application for mixed-use development comprising; 805 homes, land for employment purposes (up to 49,500m² of B1/B8 uses), a Local Centre comprising A1-A5, B1(a) and D1 uses (up to 2,800m²), a 1.5 form entry Primary School and associated infrastructure, open space and landscaping". It refers to landscaping and open space, but landscaping and layout are stipulated on the application form as being reserved matters.

Furthermore, it appears that the application is in fact seeking approval for "access" only, but access is not mentioned in the description. The description of development is therefore unclear.

Details of Submission

Planning Practice Guidance states that an applicant can choose to submit details of any of the reserved matters as part of an outline application. However, where the applicant has indicated that those details are submitted for illustration purposes only the LPA must not treat them as part of the development in respect of which the application is being made (Paragraph: 005 Reference ID: 21a-005-20190723).

The application is accompanied by a Masterplan drawing P19-0346_007 Revision K that is labelled as being for illustrative purposes only and is presumably not for formal determination (if it was it would not be 'illustrative'). This is not acceptable. It is the opinion of LPC that a clear considered masterplan, supported by Design Codes and developed in conjunction with the local community, is the key to creating a successful development.

Officer Committee Report:

There were no details in the Officer's Committee report (March 2021) on exactly what the Committee was being asked to determine. There was explanation of what an outline application for "access" entails, or indication that the submitted masterplan was for illustrative purposes only. In

fact, the Committee report stated that the overall form of development would be guided by the masterplan submitted in support of the application. This was a clear error, as the masterplan could carry no weight in determining any future reserved matters application(s).

Details of Access

The application provided details of the access into the application site, but provided no material details of the access routes for vehicles, cycles and pedestrians within the area of the outline application. For an application for outline planning permission, where approval of access is sought, the applicant cannot limit the details provided to the access point(s) into the site from the public highway and provide no or insufficient details of the access intended to be provided within the site.

The 2015 Order makes clear that an applicant for outline planning permission seeking approval of access cannot provide details of only part but not the whole of the proposed access.

For the avoidance of doubt, any suggestion that the outline application can refer to all matters being reserved “save for means of access into the site” does not meet the issue set out in this representation. “Means of access” is not a reserved matter; “access” as defined in article 2(1) of the 2015 Order is a reserved matter. “Access” as so defined may be reserved or approved at the outline stage, however it is not possible to seek approval for some element of “access” but not others.

For the avoidance of doubt, the result of an outline planning permission approving “access” is that those accesses (meaning the positioning and treatment of access and circulation routes for vehicles, cycles and pedestrians both to and within the site and how these fit into the surrounding network) become fixed. They cannot subsequently be changed without a further planning permission.

Planning Practice Guidance makes it clear that the only conditions which can be imposed when reserved matters are approved are conditions which directly relate to those reserved matters (Paragraph: 025 Reference ID: 21a-025-20140306). Following this outline application, the LPA must know that it could not lawfully impose any condition(s) that relate to access (as defined in article 2(1) of the 2015 Order) on any subsequent reserved matters application(s) where access is excluded.

In view of the points made in this representation, the application is invalid by law until full details have been submitted to the LPA of the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding network.

Once this information has been received to the satisfaction of the LPA, only then should the statutory public consultation period begin with an accurate description of development.

At the current time it would be improper for planning permission to be granted subject to planning condition(s) requiring detailed plans of access arrangements to be submitted at a later date. The law requires that those consulted on this planning application and the determining Planning Committee should (where relevant) have the right to know what planning permission is being sought for, the precise nature of the application, how the access required for the development will affect them, and to comment on those detailed proposals. Until this right is conferred to those interested parties, a decision by the LPA on this application would be unlawful.

Conclusion

We are concerned the decision has been based on inaccurate and insufficient information as set out in the correspondence and has not met the requirements of Section 38 of the Planning and Compulsory Purchase Act. We would therefore ask you to review the decision and refer it back to the planning committee. We have advised the Parish Council that anyone adversely affected by the decision could refer the matter to the ombudsman. The ombudsman would then decide if there had been maladministration. We are also advising on other steps that could be taken.

Yours faithfully

A handwritten signature in black ink, appearing to read 'HLB', written in a cursive style.

Hannah Barter
Director