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My Ref:

Your Ref

Dear Alan

Letter of Concern – Hencote Inquiry

I refer to your letter regarding the recent public inquiry as referred to above. It is always helpful to share thoughts and concerns. The planning process including public inquiries is heavily legislated. There are rules and regulations that the government has set that have to be adhered to and the local planning authority, members and residents as well as the appellant are required to follow them. I have set out below comments in red on each point you have made in your letter. Inevitably, we all reflect on cases of this scale and significance and will feel there are things we may have done differently or better. You have alluded to that in your letter. Equally, it is easy to criticise without knowing and understanding the process fully, particularly when the outcome is not the one you (or we) wished for. Just to put it into perspective, the appellant may be dealing with only this scheme, whereas my officers have 5000 applications a year, a number of these will be as significant if not more so than Hencote.

- What council processes and procedures exist to provide a framework for the consideration of the abandonment of a planning appeal defence?

The handling of appeals is delegated to officers. (The delegation scheme says “(e) To respond to all appeals on planning matters” are delegated down to Assistant Planning Officer level). This includes deciding how to deal with appeals, for example deciding what grounds to fight. Local Planning Authorities are obliged to keep evidence under review during the course of an appeal and not persist with grounds for refusal for which they cannot produce evidence in support. For clarity, the decision to refuse this application initially was taken by officers as a delegated decision.



- In this case, how was consideration of the public interest, as defined by the refusal reasons, undertaken?

We proceeded to inquiry, despite the likelihood of success was very low, given Counsel advice on case law and other appeal decisions. The proposal heard at the inquiry was different to the one for which planning permission was refused, as further information and modifications had been made in the interim. It was the professional opinion of officers, after taking advice from the Counsel, that these modifications, along with the offer of a financial contribution, tipped the balance in favour of the application being approved

- Was the decision to abandon defence of the appeal taken by elected members or if it was taken by officers what delegated authority was relied upon and were members informed?

As stated above, the defence of the appeal was not abandoned. The Inspector was clearly convinced by the Council to continue with the inquiry, despite the offer of the contribution being on the table. As bullet 1, matters relating to appeals are delegated to officers; there was no trigger for requiring the Council's consideration of appeal matters to be referred to elected members.

- If taking the decision, how were elected members briefed to enable their consideration of the matter and decide on the recommended action?

As above

- If written briefing was prepared, why was this not made available to appeal parties and Shrewsbury Town Council?

As above

1. We were surprised that this application did not raise a number of planning reasons for refusal particularly as it did not accord with Countryside Development, Housing Type & Affordable Housing and Sustainable Development within both the Core Strategy and SAMDev but seemed to be dealt with in a catch-all statement of not being in accordance with the local plan; thereby not wholly strengthening the Council's case ultimately for appeal.

The refusal reasons did raise several planning reasons: outside Development Boundary; land not allocated for development; lack of overriding need; impacts on road network; visual impacts. These reasons were backed up by reference to the applicable planning policy. The reasons were those that we originally considered would be defensible.



2. Additionally, the Local Authority has done considerable work to ensure a robust Local Plan with the Core Strategy & SAMDev together with the emerging Local Plan provide clear guidance on sustainable development alongside the National Planning Policy Framework. This development site was not in the allocations of the current or emerging plan and should have been vigorously defended. If development has been accepted here the creep of the development limits of Shrewsbury will continue and will be hard to defend should future applications be submitted. Any deviation should only be done in very exceptional circumstances and should always be supported by member decision.

The importance of the DP and consideration of the emerging LP were fully recognised in the original officer report. Applications must be determined in accordance with the DP unless material considerations indicate otherwise. The officer's view was that there were other material factors of sufficient strength to outweigh the development boundary policies. The inspector also came to this view. Future applications will be considered on their own individual merits and would need strong material considerations to justify a departure from the development boundary policies. However, legally the bar is not set so high as to be only in "exceptional circumstances". To import this into decision taking would be adding an unlawful gloss on the legislation.

3. Whilst we note that the predominance of applications is dealt with at officer stage, we do believe that applications like this should have been presented to the Planning Authority to give weight to the decision process. We also question how an application which has been refused by officer delegation could be overturned ahead of the appeal particularly given the weight of consultee and public comment against this application. This we believe has done significant reputation damage to the planning system to allow for such a democratic deficit to occur.

The application did not meet a trigger for needing to be considered by planning committee (the officer recommendation was in line with the views of the Town Council; there was no member 'call-in'). As such it was correct that it was determined under delegated powers. Officers are not able to take an application to committee if it does not meet the triggers in the constitution as the decision may be challenged.

In relation to the changes that were made to the proposal between the refusal of planning permission and the inquiry, the inquiry inspector was of the view that interested parties would not be prejudiced. Such parties were able to play a full part in the inquiry proceedings.



4. At the application stage and ahead of the appeal stage, there seems to have been little regard for challenging the robustness of the Landscape & Visual Impact Assessment given such high visibility profile of this site. The fact that you appointed a Landscape Consultant to review the Assessment should have been commended, but the consultants had a duty to provide the planning authority with a comprehensive assessment of the validity of the LVIA. The consultants did not bring to the attention of the Planning Authority some of the long-range visual receptors from key viewpoints within the centre of the town northwards given this highprofile location. This should be a lesson that developers' reports should never be taken at face value.

The Council's landscape consultant did provide a full review and assessment of the submitted Landscape and Visual Appraisal. This included appraising the methodology used and its findings. The consultant had also undertaken his own site visit and was fully aware of visual receptors including those at distance. The landscape consultant fully acknowledged that the proposal would result in some adverse landscape and visual effects, that these would reduce as landscaping developed, but ultimately these impacts needed to be weighed in the planning balance. The applicant's reports were given careful scrutiny and were certainly not simply taken at face value.

5. There seems much confusion as to whether the inclusion of a unilateral undertaking at the last minute constitutes a material amendment to the application so late in the appeal process as to whether such an undertaking should be considered enough to warrant no defence of a planning refusal or consideration by the Planning Inspectorate. It would appear that the Case Officer thought the principles applied and based his lack of defence on such, yet the Planning Inspector didn't.

The proposal that was heard at the inquiry was based upon a scheme that had been modified since the refusal of planning permission and in comparison, to the original proposal, was a better scheme. During this process it was considered necessary to require that some financial contributions were made, such as to require highway network improvements as part of a Section 106 agreement. This is not unusual in schemes of this nature. In addition to this the appellant offered, late in the process and after the proofs had been exchanged, a financial contribution towards affordable housing. The Council put a legal case to the planning inspector that this contribution should not be allowed to be taken into consideration, as it would prejudice other parties involved in the appeal. However, the inspector rejected this argument. Although the Council considered that the



financial contribution was CIL regulations compliant, this view was not shared by the planning inspector. Although the professional opinion of officers was that in the overall planning balance, the financial contribution towards affordable housing was sufficient to overcome the adverse impacts that the scheme would have, in her appeal decision the inspector did not agree with this opinion and was of the view that “the benefits of the scheme are substantial and compelling in the planning balance” anyway (ie even without the affordable housing contribution).

I hope the above helps to explain the processes we have to follow. Perhaps there is an opportunity to assist town and parish councils understand the public inquiry rules and procedures by arranging some workshop sessions. If this is something that you believe will be worthwhile, we can look at arranging and facilitating the sessions.

Finally, to say, the planning service has been going through an improvement programme over the last few years and will continue to do so. We are open to having dialogue with you on further improvements in the future. Tabitha Lythe, who is responsible for the service, is your contact point.

Yours sincerely



Prof Mark Barrow
Executive Director Place

