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By email and post

11 May 2016

Our ref: SEF/121123/000021

Your ref: APP/16/00319

Dear Ms Lealan

Outline Application for Proposed Residential Development on Land Adjacent to Victoria Road, Hayling Island (ref. APP/16/00319) ("the Application")

We are instructed by Mr Shawn East and Mrs Geraldine East of 186 Havant Road, Hayling Island, PO11 0LJ.

The Application is for a "*proposed residential development*" ("**the Proposed Development**") on land adjacent to Victoria Road, Hayling Island ("**the Site**"). Although the Application is for outline permission for residential development with the number of residential units to be reserved, it is our client's position that the Site is not suitable in principle for housing development.

Our client objects to the Application on the grounds that it does not comply with the Havant Borough Core Strategy ("**the Core Strategy**") policies *Policy CS15: Flood and Coastal Erosion Risk* ("**Policy CS15**") *CS17: Concentration and Distribution of Development within the Urban Areas* ("**Policy CS17**") and *DM9: Development in the Coastal Zone* ("**Policy DM9**").

Our client also objects on the grounds that it does not comply with Havant Borough Local Plan (Allocations) ("**the Allocations Plan**") policies *AL2: Urban Areas Boundaries and Underdeveloped Gaps Between Settlements* ("**Policy AL2**"), *DM23: Sites for Brent Geese and Waders* ("**Policy DM23**").

Furthermore, our client objects on the grounds that the Application fails to comply with Paragraphs 100 to 102 of the National Planning Policy Framework ("**NPPF**").

The Policy Position

Housing Allocation

The applicant has stated in its planning statement, dated October 2015 and submitted as part of the Application ("**the Planning Statement**") that *"the site is located within one of the five urban areas identified on the Proposals Map and Spatial Distribution Map"*.

This is, however, incorrect. The Site is a greenfield site which falls outside of the five urban areas identified in the Core Strategy and Allocations Plan, and also falls outside of the housing allocations as identified on the Allocations Plan.

The first limb of Policy CS17 states that:

"Development will be permitted that...concentrates new...housing within the five urban areas...as shown on the proposals map...prioritises development on previously developed land...[and]...broadly distributes the new housing...development in the five areas of the borough as identified on the Spatial Distribution Map".

Therefore the Site falls outside of the requirements of Policy CS17 and the Application fails to meet the requirements of Policy CS17.

This is consistent with the pre-application advice received by the applicant.

Starter Homes

The Planning Statement states that: *"the intention is to construct a modest estate of two-storey starter homes"*.

According to the Government guidance issued in March 2015 by the Department for Communities and Local Government entitled "Starter Homes exception sites: Guidance", Starter Homes will only be allowed for "exception sites".

Exception sites *"are expected to be on land that has been in commercial or industrial use...suitable sites are likely to be underused or no longer viable for commercial or industrial purposes"* [emphasis added].

Since the Site is a greenfield site which has not previously been in commercial or industrial use, the Site does not fall within the Government definition of sites which will be suitable for Starter Homes, and will not be suitable as a site for use for the promotion of Starter Homes.

Policy AL2 states that:

"Land outside of the defined urban area on Hayling Island is "non-urban"...Development of exceptional affordable housing in the non-urban areas of Hayling Island is not considered appropriate or necessary and is likely to be refused".

The Site falls outside of the defined urban area on Hayling Island and is therefore "non-urban". The applicant proposes the development of exceptional affordable housing on the Site and therefore, as set out in Policy AL2, the Application is not therefore "not considered appropriate or necessary" and should be refused.

Flood Risk

The Site is located in Flood Zone 3 which is an area of high probability of flooding having a greater than 1 in 200 or greater annual probability of tidal flooding.

Policy CS15 states that "Development in areas at risk of flooding now and in the future...will only be permitted where...it meets the sequential and exception test". These tests are set out in the NPPF.

The NPPF states that:

"Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk [("the Sequential Test")], but where development is necessary, making it safe without increasing flood risk elsewhere [("the Exception Test")]" (Para 100) [emphasis and parentheses added]

The NPPF then states that the "Sequential Test is to steer new development to areas with the lowest probability of flooding...If following the Sequential Test it is not possible...consistent with wider sustainability objectives for the development to be located in zones with a lower probability of flooding the Exception Test can be applied".

For the Exception Test to be passed it must be demonstrated that "the development provides wider sustainability benefits to the community that outweigh the flood risk" and "that the development will be safe for its lifetime...without increasing flood risk elsewhere".

Flood Risk - The Sequential Test

In the Flood Risk Assessment, dated January 2016, submitted as part of the Application ("the FRA") the applicant states that "in terms of applying the sequential test it is inappropriate to look for alternative sites Borough wide when there is evidently a need for housing on Hayling Island...there are large areas of residential development situated within Flood Zone 3 which pre-date current concerns about flood risk...opportunities for development are constrained by proximity of the road network and other planning considerations. Therefore there are relatively few potential sites for this type of residential development..It is noted that the Havant Local Plan identifies several sites on the island for residential development towards the southern end of the site...There is no choice of sites towards the middle or north of Hayling Island".

The FRA does not reflect a proper interpretation of the Sequential Test. As set out in the NPPG:

"The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding...The aim is to steer new development to Flood Zone 1...Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2...applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required." (NPPG, Para 19)

The Application has failed to establish that there are "no reasonably available sites in Flood Zones 1 or 2" before considering the suitability of this Site. Therefore, it cannot properly be considered "necessary" to develop on land which falls within Flood Risk 3.

Flood Risk - The Exception Test

On a proper application of the NPPF, only where development is "necessary" can one apply the Exception Test and consider the wider sustainability benefits of the development and the effect of mitigation measures. Since the Application fails to make the case that the Proposed Development at the Site is "necessary" the Exception Test may not be applied.

However, should the Council consider that the Proposed Development at the Site is "necessary", it would fall upon the applicant to demonstrate that "*the development provides wider sustainability benefits to the community that outweigh the flood risk*" and "*that the development will be safe for its lifetime...without increasing flood risk elsewhere*". It is our view that these requirements have not been discharged.

Therefore, the Application fails to meet the requirements of the NPPF and of Policy CS15.

Development in the Coastal Zone

The Site sits within the coastal zone as shown on the Havant Borough Local Plan Policies Map. The Site also lies almost immediately adjacent to Chichester and Langstone Harbour SPA site at a distance of approximately 0.06 miles, designated for its nationally and internationally important bird species

As set out in Policy DM9:

"Planning Permission will only be granted for development in the coastal zone which addresses all of the relevant criteria [including that the development] has no harmful effects on nature conservation within the Chichester and Langstone Harbour SSSIs and SPA" [parentheses and emphasis added]

The Application does not establish that there will be "*no harmful effects on nature conservation within the Chichester and Langstone Harbour SSSIs and SPA*" and therefore the Application is contrary to Policy DM9.

The Proposed Development has potential impacts on the Chichester and Langstone Harbour SPA through increased recreational disturbance on the protected coastline, amongst other potential impacts.

Under Article 6(3) of the Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna ("**the Habitats Directive**"), an appropriate assessment is required where a plan or project is likely to have a significant effect upon a European site, either individually or in combination with other projects or plans.

In accordance with the requirements of the Habitats Directive, due to the very close proximity of the Proposed Development to Chichester and Langstone Harbour SPA the Application should be supported by sufficient information to enable the Council to properly determine whether Proposed Development is likely to have a significant adverse impact on a European site alone or 'in combination' with other projects or plans.

Sites for Brent Geese and Waders

The Site sits within an area identified as "Uncertain Sites Brent Geese and/or Waders".

Policy DM23 states that *"planning permission will be granted for development on or adjacent to uncertain sites for Bent Geese and/or waders outside of the statutory designated areas, where appropriate surveys are undertaken and it is determined that the site has not importance"*.

The Application does not include any such surveys or assessment and therefore does not meet the requirements of Policy DM23.

Summary

Given that the Application would result in a housing development which:

- sits outside of the housing allocations as identified in the Allocations Plan;
- sits outside of the defined "urban area" on Hayling Island, as identified in the Core Strategy and Allocations Plan;
- sits on a site which falls outside of the Government definition of Starter Homes exception sites;
- sits in Flood Zone 3, and does not satisfy the Sequential Test, namely that there are no reasonably available sites in Flood Zones 1 or 2; and

also given that the Application has not established that there will be no harmful effects on nature conservation within the Chichester and Langstone Harbour SPA or on Brent Geese and waders, the Council is urged to refuse the application on the grounds that it is inconsistent with local and national policy. There are no material considerations that would justify a departure from policy.

Yours sincerely



Sophie Flax

Solicitor

For and on behalf of Blake Morgan LLP