



Notice of Planning Decision

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER
2010

In pursuance of the powers exercised by it as District Planning Authority this Council, DOES HEREBY GIVE NOTICE of its decision to REFUSE PERMISSION for the development detailed below.

APPLICATION NO: 120965

APPLICATION DATE: 31 May 2012

PROPOSAL: Change of use and development of land to form 'The Stour Valley Visitor Centre at Horkesley Park' comprising a country park; art and craft studios ('The Chantry'); public gardens; a central building complex to provide an indoor display ring, 'suffolk punch breeding centre', entrance building, shop, cafe, 'field to fork', 'farming through the ages', 'active learning', 'nature watch', and retained greenhouse as a 'demonstration nursery and gardens', and energy centre; main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision. The application includes an Environmental Statement.

LOCATION: Land & other property North of London Road & West, of the A134 Including, The Chantry, The Chantry Lodge, Hillside & Nursery Site, Hillside & Nursery Site

APPLICANT: Bunting And Sons, Westwood Park, London Road, Little Horkesley, Colchester, CO6 4BS

1. The Council has determined that this application is not in accordance with the development plan (the Core Strategy Adopted December 2008 ('CS') and Development Policies Adopted December 2010 ('DP')). It also concluded that material considerations did not indicate that planning permission should nevertheless be granted, balancing the harmful effects of the development described at paragraphs 2 & 3 below against the public benefits, in terms of the local economy and employment in particular, that the applicant claims to arise from the proposal. The Council does not consider that the normal presumption in favour of sustainable development described in the National Planning Policy Framework

IMPORTANT – ATTENTION IS DRAWN TO THE NOTES ATTACHED

(‘NPPF’) can be properly applied to the proposal in that, more specifically, it would not result in sustainable growth and expansion and would not generate sustainable rural tourism that respects the character of the countryside in accordance with NPPF paragraph 28.

The site is remotely located some 8km from Colchester Town Centre and poorly served by sustainable modes of transport. Whilst the application includes a package of sustainable transport measures, the applicant predicts that a maximum of 82% of the predicted 316,250 visitors will visit the site by private car. This is reflected in and reinforced by the proposed over-provision of car parking spaces. Having regard to the large scale of the development and the high number of visitors predicted to travel by private car, it is considered that the development is sited in an unsustainable location. The NPPF (Part 4) seeks, by contrast, to ensure that patterns of growth make the fullest possible use of public transport and that developments that generate significant movement are located where the use of sustainable transport modes can be maximised (taking into account NPPF policy on development in rural areas). The proposals run contrary to these strategic aims to achieve a sustainable pattern of development. The proposal is contrary to CS Policies SD1 (growth to be located in the most accessible and sustainable locations), CE1 (small scale employment developments in the countryside where travel needs and impacts low), TA1 (encouraging development that reduces the need to travel and not supporting development that are car-dependant or promote unsustainable travel behaviour) and TA4 (demand for car travel to be managed to prevent adverse impacts on sustainable transportation). It is also contrary to DP Policies DP9 (provision of small scale employment development in the countryside), DP10 (large scale tourist and leisure development focussed on urban areas), DP17 (development to enhance accessibility for sustainable modes of transport and give priority to (inter alia) public transport access) and DP19 (car parking standards).

The application site has an area of 47.4 hectares and over 75% is sited within the Dedham Vale Area of Outstanding Natural Beauty (‘the AONB’). The intensity of proposed uses at and within the vicinity of the site, including human and associated vehicular movement and activity, would result in an alien and contextually incompatible development that is considered incapable of assimilation with the intrinsic character and beauty of the AONB and the wider countryside. The visitor numbers and traffic associated with the proposed operation including park-wide and special events would have an adverse impact on the AONB by reason of the uncharacteristic intensity of human leisure activity within this farmland landscape. No details of the Chinese Garden have been provided as part of the application and the Council has not been able to fully assess the qualities of this major component or its impact on the AONB. The proposal is contrary to CS Policies ENV1 (development needing or compatible with a rural location should demonstrably be in accord with other policies for development in rural areas, appropriate in terms of scale and protect conserve or enhance landscape character) and ENV2 (small-scale tourism schemes appropriate to local employment needs minimising negative environmental impacts and harmonising to the local character and natural environment). It is also contrary to DP Policies DP1 (development to demonstrate social, economic and environmental sustainability) and DP22 (development only supported in or near the AONB where it makes positive contribution to special landscape character and qualities of the AONB and does not adversely affect the character, quality of views and distinctiveness of the AONB or threaten public enjoyment of these areas including by increased vehicle

movement). The development would introduce an incongruous and harmful element into the AONB thereby harming its landscape and scenic beauty contrary to the NPPF (paragraph 115). NPPF (paragraph 116) states that permission should be refused for major developments in an AONB except in exceptional circumstances and where it can be demonstrated they are in the public interest; and these requirements are not satisfied. The proposal would also be incompatible with its context and in conflict with Policies SP2, SP5, SP7, EtA2, EtA3, EtA4, EtA5, TaT1, and TaT5 of the Adopted Dedham Vale & Stour Valley Management Plan 2010-15.

The Council considers that the harm resulting from the breaches of development plan and other planning policy would be such that planning permission should be refused (see paragraphs 2 & 3 above). For that harm to be justified to any degree and the development considered sustainable, it would be essential that the benefits claimed should be shown to be capable of viable and sustainable delivery. It is in this context that the Council has considered that the viability and financial sustainability of the proposal is a material planning consideration though its conclusions on these matters do not amount of themselves to a further reason for refusal. It has not been demonstrated to the Council's satisfaction that the proposed development is commercially viable and sustainable. The Council accepts its independent experts' conclusion that the proposal would attract less than 50% of the applicant's predicted visitor numbers. They also found, inter alia, that the lead price, penetration rates and average spend-per-head on both retail and catering operations would all be materially lower than predicted on behalf of the applicant. The Council is not satisfied that the applicant has provided sufficient information to provide an appropriate level of confidence of the satisfactory delivery of two components critical to delivery of a major attraction with a wide catchment, i.e. the Chinese Garden and Chantry Art Gallery. There is insufficient evidence that the Chinese Garden would be delivered. Material submitted confidentially to the Council in respect of the deliverability of the Chantry Art Gallery has not satisfied the Council that the deliverability of this key component of the proposal has been demonstrated.



Date: 28 March 2013

Signed:

Beverley Jones

Head of Environmental & Protective Services

Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application.

Prior to the submission of the planning application the subject of this decision the Council as local planning authority entered into a Planning Performance Agreement (PPA) with the applicant. Amongst other things this PPA identified the key planning issues likely to require careful consideration in any subsequent submission. These included the sustainability of the proposed development, its viability, its impact on the AONB and landscape, highways and traffic along with an appraisal of any new proposal against the reasons for refusal of an earlier unsuccessful proposal

reference: 090231. The PPA identified how both parties would work collaboratively and how Community Engagement would be achieved.

The local planning authority has had detailed negotiations over the entire PPA period which has taken the proposal from pre-application through to presentation to the Council's Planning Committee. The local planning authority has proactively sought views and explored issues raised by the public and statutory consultees directly with the applicants and has sought clarification, explanation, additional material and amendments where appropriate to respond to such contributions.

Whilst some material submitted with the application was provided to the local planning authority on a confidential basis by the applicants (as it contained sensitive financial details) the Authority has employed relevant independent expert advice to review this material in respect of those matters where such information is relevant to consideration of the merits of the proposal. The Council as local planning authority has also employed independent consultants to review other aspects of the proposal in order to provide additional perspective unrelated to that provided by the applicant, their supporters and those opposing the application.

In assessing the merits of the proposal the Council has had regard to all relevant material considerations, including planning policies and representations received and subsequently determined to refuse planning permission as the normal presumption in favour of sustainable development, as set out within the National Planning Policy Framework cannot be properly applied to the proposal.

The Chair of the Planning Committee, Councillor Theresa Higgins, agreed at the Committee meeting to discuss the Horkesley Park proposal she would, as she is duly authorised at her discretion, exercise her authority to suspend normal 'Have Your Say' rules and allow more than one person to speak for and one person against the proposal in a direct address to the Committee. This was publicly communicated well in advance of the meeting. This resulted in 36 minutes being allocated for speakers for (3 minutes each) and 36 minutes being allocated for speakers against (3 minutes each). This is further evidence of a positive and protective approach as it allowed all parties to make comprehensive representations to help inform the Committee.

Additionally the agenda for the relevant Planning Committee meeting was deliberately planned as a 'one-item' agenda to allow an entire evening to be dedicated to debating and considering the merits of the Horkesley Park proposal. Such was the level of public interest in the proposal both for and against the proposal that a larger venue was used that was capable of seating all of the people who wanted to attend the meeting.

The Planning Committee also made a full day's accompanied (by officers) site visit prior to the Committee meeting. During this visit members of the Committee extensively toured the application site and viewpoints around it, including north of the River Stour at Stoke by Nayland.

As a result of their own full consideration of the merits of the proposal and after considering the weighting given by officers in their recommendation to the various key planning considerations the Planning Committee determined that despite the proposal potentially containing a number of benefits these did not outweigh the identified disbenefits such as to warrant an exceptional approval of permission as a Departure from policy. The reasons for refusal fully describe these.

Reason for Decision

In determining this application the Council has taken into account the following policies:

Core Strategy Adopted December 2008

SD1, SD2, SD3, CE1, CE2, CE2a, CE3, UR1, UR2, TA1, TA2, TA3, TA4, TA5, ENV1, ENV2, ER1

Development Policies Adopted December 2010

DP1, DP2, DP3, DP8, DP9, DP10, DP14, DP17, DP19, DP20, DP21, DP22, DP24, DP25,

Site Allocations Proposals Map

Supplementary Planning Guidance/Documents

- Community Facilities
- Vehicle Parking Standards
- Sustainable Construction
- External Materials in New Developments

National Planning Policy Framework

Notes to Accompany Decision Notices

Appeals to the Secretary of State

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development or to grant consent subject to conditions, then they may appeal. Appeals are made to the Secretary of State for the Department of Transport, Local Government and the Regions in accordance with section 78 of the Town and Planning Act 1990, or sections 20 and 21 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as appropriate.

If the applicant wants to appeal, then they must do so within **TWELVE WEEKS** of the date of the decision notice for all Householder applications lodged after 6 April 2009, **SIX MONTHS** for all other applications except Advertisements which remain at eight weeks. The appeal must be submitted on a form which can be obtained from The Planning Inspectorate, Customer Support Unit, at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN, telephone 0117 372 6372.

The Secretary of State can allow a longer period for giving notice of an appeal, but he/she will not normally be prepared to use this power unless there are special circumstances that excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development, or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Advertisements - Standard Conditions (which apply in addition to those that appear on the decision notice)

- 1) Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Local Planning Authority.
- 2) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.
- 3) Where an advertisement is required under regulations to be removed, the removal shall be carried out to the reasonable satisfaction of the Local Planning Authority.
- 4) No advertisement is to be displayed without the permission of the owner of the site, or any other person with an interest in the site entitled to grant permission.
- 5) No advertisement shall be sited or displayed so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any highway, railway, waterway or aerodrome, (civil or military).

Listed Building Consent

Attention is drawn to section 78 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The effect of which is that demolition may not be undertaken, (despite the terms of the consent granted by or on behalf of the Planning Authority), until notice of the proposal has been given to English Heritage at PO Box 569, Swindon SN2 2YP, telephone 01793 414600. English Heritage must subsequently have either been given reasonable access to the building for at least one month following the grant of consent, or have stated that they have completed their record of the building or that they do not wish to record it, before demolition commences.

Building Regulations

This notice does not include any approval which may be necessary in accordance with Building Regulations. Advice on the need for Building Regulations approval can be obtained by calling our Building Control team on 01206 282436.

Access for the Disabled (Applying to specific types of development)

In respect of educational buildings, attention is drawn to the requirements of sections 7 and 8 of the Chronically Sick and Disabled Persons Act 1970*. These require that appropriate provision shall be made for access to the building for the disabled, and that signs shall be displayed outside the building indicating that provision is made, and within the building indicating the location of the provision, together with appropriate routes. Guidance is provided in Design Note 18 'Access for the Physically Disabled Education Buildings' published on behalf of the Secretary of State.

In respect of buildings for employment use or to which the public will be admitted, attention is drawn to the requirements of sections 4, 7 and 8a of the Chronically Sick and Disabled Persons Act 1970*. These require the buildings to be made accessible to disabled people wherever practicable. Guidance is provided in the British Standards Institution Code of Practice BS.5588 1987 'Access for the Disabled to Buildings'.

* Superseded by Chronically Sick and Disabled Persons (Amended) Act 1976; Disabled Persons Act 1981; Building (Disabled Persons) Regulations 1987 and relevant provisions within the Town and Country Planning Act 1990.

Rights of Way

The applicant is reminded that the grant of planning permission does not entitle them to obstruct a right of way. If it is necessary to stop up or divert a footpath or bridleway in order to enable the development to be carried out, they should, on the receipt of planning permission, apply without delay to the Local Planning Authority for an order under section 257 of the Town and Country Planning Act 1990. In the case of any other right of way, application should be made to the Secretary of State for an order under section 247 of the Act. In either case development shall not be started until a decision has been taken on the application.

Purchase Notice

If either the Local Planning Authority or the Secretary of State refuses permission to develop land, or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonable beneficial use in its existing state, nor can they render the land capable of a reasonably beneficial use by the carrying out of any development which has been, or would be, permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Planning Act 1990, or section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as appropriate.

You are advised to seek professional advice before embarking on the serving of a purchase notice.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused, or granted subject to conditions, by the Secretary of State on appeal or on reference of the application to him.