

<b>APPLICATION NO:</b> 14/01125/FUL	<b>OFFICER:</b> Mr Craig Hemphill
<b>DATE REGISTERED:</b> 24th June 2014	<b>DATE OF EXPIRY:</b> 23rd September 2014
<b>WARD:</b> Battledown	<b>PARISH:</b> None
<b>APPLICANT:</b>	
<b>AGENT:</b>	Mr Guy Wakefield
<b>LOCATION:</b>	Tim Fry Land Rovers, King Alfred Way, Cheltenham
<b>PROPOSAL:</b>	Redevelopment of land at King Alfred Way involving the demolition of the existing buildings and the erection of 86 dwellings, access, landscaping and other associated works

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1. Members may recall that this application was included in the April Planning Committee agenda, however, it was deferred prior to the Committee meeting to allow further information to be submitted. The application site is made up of mainly B2 and sui generis uses, with the sui generis uses exhibiting characteristics of B2 and B8.

### 2. PUBLIC COMMENTS

- 2.1. Following the deferment, 16 letters have been submitted providing comments in support of the application. The comments are summarised as follows, that there is a need for new housing, especially affordable housing; that it is better to build on a brownfield site rather than green fields; development would revamp a rundown site; the existing site is not fit for purpose; and that the site is more suitable for housing. The letters have been added to the Officer Report.

### 3. ADDITIONAL INFORMATION

- 3.1. The applicant has provided a draft s106 unilateral undertaking. The applicant is aware, as set out in the officer report, that there would be a loss of employment land should the application be permitted, with no alternative suitable sites being identified for a new employment development to offset the loss. The unilateral undertaking offered by the applicant suggests that if the residential redevelopment of part of the King Alfred Way site is allowed, the permission would not be implemented until such time as a suitable alternative new employment site is secured. The applicant has also made reference to an appeal decision from 2008 in a neighbouring Authority. This appeal proposed the redevelopment of a sports field for housing with the Inspector commented that although there was no land identified for the re provision of the sports field, at the time of the appeal, a condition could be attached to ensure the housing development did not start until a suitable new sports pitch was provided. The Inspector allowed the appeal.
- 3.2. In considering this approach, Officers are not of the view that it overcomes the EM2 concerns set out in the officer report. There is still no suitable alternative site identified and therefore there is no certainty that such a site will become available.
- 3.3. The specifics and background behind the appeal decision are not known though it is evident from the decision that new sports pitches application was in progress and there

was expected to be a replacement new sport pitch provision that would be available within a reasonable timeframe – though in the event we are informed that it was not forthcoming and the permission granted on appeal subsequently lapsed. Officers are therefore reluctant to accept that the appeal decision has any bearing in the considerations of this application.

The two scenarios differ, the appeal decision relates to the re-provision of a sports pitch which in theory may be a reasonable prospect due to the cost associated and identification land for this purpose, which may be concluded in a timely period and within the timescale applied to planning permissions.

For this application the identification of a new employment site, rather than sites already allocated for employment use so as to prevent an overall lose to employment provision in the borough, would be a more complex process which will require finding a suitable site, factoring in the cost associated with the purchase of the land, the submission of a planning application and construction costs along with the time it will take to progress this within the timescale of a planning permission.

These costs and timings are not yet know to the applicant, which again raises further questions on viability, covered in paragraph 6.6.2 of the officer report. This approach leads to the legal undertaking being very vague and there is no evidence to demonstrate that the undertaking could deliver or provide any certainty to the re-provision of employment land suggested. Such an undertaking would therefore not justify issuing a permission on this site on that basis. The application in conjunction with the suggested unilateral undertaking as proposed is therefore considered not to comply with objectives of policy EM2 of the Local Plan.

- 3.4. In considering weight to be attached to Policy EM2 in light of the National Planning Policy Framework Members may have read the recently dismissed appeal (27 July 2015) at 62 Alma Road. This was a scheme for the redevelopment of a garage site to provide a residential scheme which was refused by Members on the grounds of EM2 loss of employment land. In that decision, the Inspector stated that EM2 is a saved policy which is broadly consistent with the more recent policy guidance set out in the NPPF and remains part of the adopted Development Plan and therefore that there is no reason to regard it as out of date and that planning law requires that development proposals must be determined in accordance with development plan, unless material considerations indicate otherwise.

In that appeal decision it was noted that there is a quantitative and qualitative shortage of viable employment land within the Borough and in this context the proposed provision of housing would come at the expense of a reduction in employment land, and so not a factor that weighed in favour of granting planning permission.

- 3.5. Further, given that the appeal decision produced by the applicant was from 2008 it is also useful to overview the more recent guidance for conditions and obligations which are set out in the National Planning Policy Framework and the National Planning Practice Guidance. Both these documents set out specific tests and guidance on the appropriate use of conditions and obligations.
- 3.6. Paragraph 203 of the National Planning Policy Framework states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition” Paragraph 206 of the National Planning Policy Framework states “Planning conditions should only be imposed where they are: 1. necessary; 2. relevant to planning and; 3. to the development to be permitted; 4. enforceable; 5. precise and; 6.

reasonable in all other respects.” The policy requirement is referred to in guidance as the six tests.

- 3.7. Planning obligations (S106) assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework at paragraph 204.
- 3.8. The approach being suggested by the applicant is akin to a *Grampian* condition – i.e. once prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken. The national Planning Practice Guidance states that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
- 3.9. In considering these requirements and the unilateral undertaking approach proposed as set out in paragraphs 3.1 to 3.3 above, due the vagueness and lack of any certainty Officers are of the view that the condition/obligation approach would not comply with the tests in at least it is not precise or reasonable to secure compliance with policy EM2 or the NPPF.

#### 4. CONCLUSION

- 4.1. The comments provided by the public in support of the application are understood, however the planning balance set out in the officer report is still considered to stand. The unilateral undertaking/conditioning approach does not provide justifications or other material considerations which would alter the recommendation provided in the officer report.

#### 5. REFUSAL REASONS

1. The proposed development would result in the loss of part of an active employment site which provides a valuable service to the community. The site is afforded protection by local plan policy EM2 which seeks to safeguard employment land with no evidence of justifications being provided for the release of part of the employment site.

In addition the loss of part of the site to other uses would have a detrimental impact on the range of types and sizes of sites for business uses in the area and the continuing operation of existing business sites. The loss of such a substantial proportion of the employment site and the loss of visibility and awareness of the retained units by prospective customers would clearly be detrimental to the continuing operation of these businesses.

The submitted draft unilateral undertaking which seeks to restrict any permission for the redevelopment of this site for residential until such time as a suitable site is identified to provide the re-provision of the employment is not considered acceptable.

The proposal is therefore contrary to Policy EM2 of the Cheltenham Borough Local Plan and paragraphs 19 and 70 of the NPPF which states that “significant weight is placed on the need to support economic growth through the planning system” and that planning policies and decisions should “guard against the unnecessary loss of

valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs".

2. Policy CP8 of the Cheltenham Borough Local Plan states that development will be permitted only where adequate provision has been made for the infrastructure necessary for the development to proceed and for other public services and facilities, the need for which arises directly from the development. The development proposed will lead to:
  - i. An increase in the surrounding highway networks and the development should therefore mitigate its impact in terms of providing commuted payments towards the provision of walking, cycling and the use of public transport for journeys to and from the application site. (Local Plan Policy TP1, Supplementary Planning Guidance - Planning Obligations: Transport, and Section 4 of the NPPF)
  - ii. An increase in demand for playspace provision in the Borough and therefore the development should mitigate its impact in terms of adequate provision for on-site or off-site outdoor playing space. Notwithstanding the above, the LPA would expect to see the playspace on site in a development of this scale, as shown on the indicative master plan. (Supplementary Planning Guidance - Playspace in Residential Development, Local Plan Policy RC6, and Section 8 of the NPPF)
  - iii. A need to provide for the future management (and maintenance) of the common land within the development and therefore the development should make provision to mitigate its impact by providing for the provision a land management plan covering such common areas of land. (Supplementary Planning Guidance - Landscaping in New Development)
  - iv. A need to provide for an element of affordable housing (Local Plan Policy HS4)
  - v. An increase in demand for education and library facilities in the Borough and therefore the development should mitigate its impact in terms of providing on-site or off-site provision or commuted payments towards the provision of new or improved primary and secondary school facilities and new or improved library facilities within the Borough. (Section 8 of the NPPF)

No agreement has been completed to secure payment of the necessary commuted sums, itemised above, along with the provision of affordable housing and a land management plan. The proposal therefore fails to meet the expectations of Local Plan Policy CP8, Supplementary Planning Guidance and the NPPF as referred to above.