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Your ref: 2023/1281
Our ref: NUT001/0001/pa
16 May 2025

Dear Sirs

APPLICATION REFERENCE 2023/1281
NUTFIELD GREEN PARK, THE FORMER LAPORTE WORKS, NUTFIELD ROAD, NUTFIELD, SURREY
OUR CLIENT: NUTFIELD PARK DEVELOPMENTS LIMITED

1. **Introduction**

1.1 We are instructed by Nutfield Park Developments Limited ('**NPDL**') in relation to planning legal matters in connection with the outline planning application ('**Application'**) for a residential led development ('**Proposed Development'**) of the Former Laporte Works Site, Nutfield Road, Nutfield ('**Site**'). HGH Consulting ('**HGH**') are NPDL's appointed planning consultants.

1.2 The description of development for the Proposed Development of the Site is:

"Outline planning permission for the development of the site for new homes (Use Class C3) and Integrated Retirement Community (Use Classes C2, E(e) F2) creation of new access, landscaping and associated works to facilitate the development, in phases which are severable (Outline with all matters reserved, except for Access)"

1.3 The Application was validated by Tandridge District Council ('**TDC**') in October 2023 and allocated reference number 2023/1281. The Application currently remains undetermined.

1.4 We write with respect to the letter sent by TDC to HGH dated 1st May ('**TDC Letter'**) and subsequent email of 15th May, the contents of both of which NPDL were extremely surprised and disappointed to note.

1.5 For the reasons set out below, we write to formally request that TDC immediately take steps:

(a) to re-consider its misconceived decision in the TDC Letter.

(b) to accept the Planning Statement Addendum ('**PSA**') and related material submitted by NPDL on 8th April and immediately place the same on the planning register.

(c) to proceed to determine the Application at the earliest available opportunity (at the 3rd July planning committee) considering the Proposed Development as updated and, as is required, against the current planning policy framework including, for present purposes, the December 2024 NPPF changes to the Green Belt provisions and specifically the introduction of the 'grey belt' definition and Golden Rules which are mandatory material considerations in this matter.

(d) To agree with NPDL an appropriate extension of time to 4th July to facilitate an early determination by the next available planning committee on 3rd July (accounting for the need for consultation on the PSA and related material submitted by NPDL).

1.6 We also hereby put TDC on notice that should TDC refuse to reconsider its erroneous decision in the TDC Letter and it is therefore necessary to proceed with a call in or an appeal (as appropriate) in relation to the Application that NPDL would be applying for a full award of costs against TDC on the basis of its substantive unreasonable behaviour, among other things, resulting from its failure to determine the Proposed Development as updated and as against the relevant applicable national planning policy framework in the NPPF.

2. Consideration

2.1 The TDC Letter refuses to accept the submission of the PSA and related material submitted by NPDL on 8th April. The purported rationale for refusing to accept the PSA material is that TDC considers that it constitutes changes to the application which cumulatively are so significant as to materially alter the Proposed Development to such an extent that a new planning application is required to be submitted applying the test in paragraph 14-061-20140306 of the Planning Practice Guidance ('**PPG**').

2.2 On this issue, this paragraph of the PPG states as follows:

Can an applicant amend an application after it has been submitted?

It is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal. It is equally possible after the consultation period for the local planning authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. (emphasis added)

Paragraph: 061 Reference ID: 14-061-20140306

Revision date: 06 03 2014

2.3 It will be seen from the above paragraph in the PPG that the touchstone for the application of the PPG test is whether the changes proposed by the Application are so significant as to materially alter the proposal such that a new application should be submitted. It is concerned, in essence, about effective public participation and consultation and circumstances where the nature and extent of schemes significantly change post submission pre-determination.

2.4 The Planning Courts have set out the relevant principles that are to be used by TDC (and other local planning authorities) when lawfully and rationally making this decision, the test for which is now set out in the PPG.

2.5 Helpfully, the case of *British Telecommunications Plc v Gloucester City Council* [2001] EWHC Admin 1001, [2002] 2 P&CR 33 ('**BT PLC'**) sets out the relevant legal principles at paras 33-38 of the judgment which should be applied by TDC in this matter which are as follows:

> 33. ***"It is inevitable in the process of negotiating with officers and consulting with the public, that proposals will be made or ideas emerge which will lead to a modification of the original planning application. It is plainly in the public interest that proposed developments should be improved in this way****. If the law were too quick to compel applicants to go through all the formal stages of a fresh application, it would inevitably deter developers from being receptive to sensible proposals for change. In my view the following observations of Lord Keith in Inverclyde District Council v Lord Advocate and Others (1981) 43 P.&C.R.375 are relevant, albeit made in a different context:*
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> > *"This is not a field in which technical rules would be appropriate; the planning authority must simply deal with the application procedurally in a way just to the applicant in all the circumstances. There was no good reason why amendment of the application should not be permitted at any stage if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided on".*
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> 34. *I would add that* ***of course the interests of the public must also be fully protected when an amendment is under consideration. They were, however, fully protected in this case by the detailed consultation that took place in respect of the amendments****.*
>
> 35. *A highly practical approach to the question of amendments was adopted by Sir Douglas Frank Q.C., sitting as a deputy High Court Judge, in Britannia (Cheltenham) Ltd. v Secretary of State for the Environment and Tewkesbury Council…He is reported to have said this:*
>
> *"He further thought it was competent for the applicants and the planning authority to agree a variation of an application at any time up to the determination of the application. To take any other view would fly in the face of everyday practice and make the planning machine even more complicated than it was, for it was common practice for an application to be amended by agreement following negotiations between the applicant and the planning officer."*
>
> 36. *Applying those principles, the only question is whether the decision to permit the matter to be dealt with by an amendment was one that could properly be taken. In my judgment it plainly could. Mr. Scott addressed the matter and concluded that the change was not substantial in all the circumstances, including the fact that further consultation would take place. I have no doubt that that was a decision open to him.* ***There were some changes of significance, but not such as to compel the conclusion that a fresh application should be submitted. Indeed, in many, and perhaps most, cases I would not have thought that it is necessary for the planning authority, or the officer to whom the power to accept amendments is delegated, formally to ask whether or not a fresh application is required. The answer will so obviously be "no" that the issue does not arise. Even where it does arise, provided there is a proper opportunity given for adequate consultation, and that any other potentially relevant matters are taken into account, such as whether the amendment requires the modification of an environmental impact statement, it is difficult to see in most cases what prejudice is suffered by permitting the change to be effected by way of amendment****. No doubt there will be cases where the amendment is so far reaching that it is not sensible or appropriate simply to consult over the changes themselves. This will be the position, for*

example, where the original consultation exercise is, as a consequence of the amended proposals, of little or no value. The appropriate approach then is simply to start again.

37. *Exceptionally the distinction between an amended application and a fresh one will have wider significance even where there is full consultation over the amendments. It may be that legislation has been introduced which would catch a fresh application but not an amendment. (That would have been the position here if the amendments made in 2001 were substantial since a fresh application would then have fallen under the 1999 environmental regulations rather than the earlier 1988 regulations.) Even then, in my judgment* ***the question remains whether the change is so substantial that the application can only be considered fairly and appropriately, bearing in mind both the interest of the applicant and potentially interested members of the public, by requiring a fresh application to be lodged****. If the planning officer considers that it can be fairly and appropriately considered by an amendment, and that is not an unreasonable conclusion in the circumstances, the courts should not interfere.*

38. *In advancing this part of the argument, the Claimants relied upon certain decisions where the courts have refused to permit planning permission to be granted in relation to a development which was substantially different to the application sought. In Bernard Wheatcroft Limited v Secretary of State for the Environment (1982) 43 P&CR 233 the applicants applied to the local planning authority for planning permission for a housing development comprising of approximately 420 dwelling on 35 acres. The authority refused permission and there was an appeal to the Secretary of State. He set up an inquiry but prior to the opening of that inquiry, the Applicants indicated to the authority that they were proposing to put forward an alternative proposal at the inquiry for 250 dwellings on 25 acres should their original proposal be considered to be too large. The Inspector in his report concluded that that if the appeal were restricted in that way then consent should be granted, but such consent should not be given for the original proposal. The Secretary of State in his decision letter considered that it would not be appropriate to grant permission in respect of the lesser number of houses, given the original application. The Applicants applied under Section 245 of the Town and Country Planning Act 1971 for his decision to be quashed. Mr Justice Forbes allowed the application. He held, contrary to the view of the Secretary of State, that the question was not whether the proposed development was severable from that proposed in the original application. Rather it was whether the amendments changed the substance of the original planning application. At page 241 he enunciated the true test as follows*

> ***"Is the effect of the planning permission to allow development that is in substance not that which was applied for?…..The main, but not the only criterion on which that judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development****""* (emphasis added)

2.6 Applying the above principles set out in the PPG and the BT PLC authority to the present case , it is plain that:

(a) It is entirely within the discretionary judgment of TDC to accept the refinements to the Proposed Development which are, on no account, so substantial as to require a fresh application and, in truth, constitute updates to reflect the current policy position and improvements to the proposals to take account of key stakeholders comments raised during the lengthy determination process which are clearly in the public interest as is explicitly recognised at paragraph 33 of the judgment in the BT PLC case cited above as being such modifications as do not require a new application.

(b) The refinements and updates to the Proposed Development are clearly such improvements further reinforcing and bolstering the case for the proposals comprising (in summary):

(i) An increase in the quantum of the affordable housing offer from 36% to 50% to meet the Golden Rules in paragraph 156 of the NPPF;

(ii) The delivery of 166 homes and 41 later living units (207 units in total) + 70 bed care home which would individually and collectively make a substantial contribution to meeting unmet housing and care needs in TDC (which now have a less than 1 year housing land supply)

(iii) A package of highways measures agreed with Surrey County Council ('**SCC**') including a £4 million contribution to the provision of e-bus services (as part of the Surrey Connect network)

(c) Such improvements to the proposals, as are summarised above, were negotiated and agreed in the usual way by NPDL in response to the post submission pre determination comments from statutory and non statutory consultees.

(d) Indeed, no changes have been made by NPDL to the principal elements of the Proposed Development arising from the refinements and updates to the proposals. This includes no changes to either the number and type of uses and provision of the health / well-being centre and, as such, all submitted documentation, the illustrative masterplan, and parameter plans etc as originally submitted remain relevant and applicable and unchanged.

(e) Given that the refinements to the Proposed Development in the PSA and related material would be placed on the planning register and capable therefore of public scrutiny and consultation pre determination and at committee itself, it is difficult to see what if any prejudice is or could possibly be suffered by third parties/others in permitting the proposed refinements to be effected by way of amendment to the Application.

(f) Whereas, if a fresh application were to be required, as is currently requested by TDC in the TDC Letter, then this would necessarily cause further very significant delays in the determination of the proposals for the Site which would not be in the public interest in circumstances when the proposals have remain undetermined now for 19 months which is clearly contrary to the Government's 'planning guarantee' set out in paragraph 21b-002-20140306 of the PPG which provides (without exceptions) that "*no application should spend more than a year with decision-makers*"

2.7 Accordingly, and as such, NPDL hereby formally request, for the reasons set out above, that steps are immediately taken by TDC to reconsider its misconceived decision communicated in the TDC Letter and to go ahead and (i) accept the PSA and related material submission; (ii) immediately place the same on the planning register to enable public participation and consultation as intended when issued by HGH (on behalf of NPDL) on 8 April 2025 and (iii) then to take the Application to the earliest available planning committee to determine (which we understand would be 3rd July accounting for the consultation on the PSA and related material).

2.8 NPDL remain willing and able to continue to work closely with TDC to take all and any necessary steps to hit the 3rd July committee date and in this regard would propose that the current extension of time be consequentially extended to 4th July to facilitate and enable the July committee date to be hit.

2.9 Should NPDL not take the Application to a July planning committee then NPDL hereby put TDC on notice that they will have no choice but to consider a call in or an appeal (as appropriate) which will necessarily incur very significant time, expense and resources both on the part of NPDL in bringing the appeal and on the part of TDC in responding to the appeal/ call-in.

2.10 In the event that a call in/ appeal is reluctantly required, NPDL hereby reserve the right to draw the contents of this correspondence to the attention of the Planning Inspector/Secretary of State (as the case may be) as to the question of whether a full costs award should be made against TDC on the grounds of substantive unreasonable behaviour.

2.11 NPDL sincerely hope, however, that such a call or an appeal will not be required and that immediate steps will now be taken by TDC (for the reasons set out in this letter) to accept the PSA and related material and to bring the Application to a July planning committee without further delay.

2.12 We look forward to hearing from you further in response to this letter as soon as possible and in any event by close on Friday 23rd May.

Yours faithfully

Town Legal LLP

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