

19 June 2007

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Our Ref: APP/P0119/A/06/2019118

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**

**APPEAL BY BOVIS HOMES LTD AND BAE SYSTEMS – LAND AT NORTH FIELD, FILTON AIRFIELD, PATCHWAY, BRISTOL, BS99 7AR. APPLICATION REF: PT03/3142/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Martin Pike BA MA MRTPI, who held a public inquiry on 21-24 and 28-30 November, and 1, 5-8 and 12-15 December 2006, into your client's appeal for a mixed use development comprising 2,200 dwellings, 66,000 sq m employment (classes B1, B2, B8), link road, 1,500 sq m retail (classes A1, A2, A3) and support infrastructure/uses including primary school, community building, extended Patchway centre, open space, hotel/pub and changes to Highwood Road in accordance with application Ref: PT03/3142/O, dated 3 October 2003. The inquiry was closed in writing on 28 February 2007.
2. On 12 July 2006 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of decision**

3. The Inspector, whose report is enclosed with this letter, made two recommendations: that the appeal be allowed if the application and S106 obligations can be satisfactorily revised; if not, that the appeal be dismissed.

For the reasons given below, the Secretary of State agrees with the Inspector's conclusion with regard to the deficiencies of both the application and the planning obligations but disagrees with his recommendation in IR10.132 that a 'minded to approve' decision is an appropriate means of dealing with these matters. In view of this she agrees with his recommendation to dismiss the appeal. All references to paragraph numbers, unless otherwise stated, are to the Inspector's report.

### **Procedural matters**

4. Since the close of the inquiry the Secretary of State has received correspondence relating to this case. Correspondence was received from:
  - Richard Payne (dated 1 April 2007)
  - Stewart & Anne Guy (dated 1 April 2007)
  - K A Hannam (dated 2 April 2007)
  - Marianne Barker of Ashurst (dated 3 April)

The letter from Marianne Barker, along with supporting documentation, informed the Secretary of State that Mr Shorland, who originally claimed to have rights over the appeal site (IR8.6), had since withdrawn this claim. The Secretary of State has considered this appeal on this basis. After carefully considering these letters, the Secretary of State concludes that they do not raise new issues which suggest she should determine these appeals other than in the terms set out below, or that she should refer back to parties in the interests of natural justice. Copies of these letters can be obtained by written request to the address above.

5. In reaching her decision the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the ES complies with the above regulations, and that sufficient information has been provided for her to assess the environmental impact of the application.
6. Before and during the inquiry the application was amended and corrected in the ways set out in IR 1.2-1.5. Like the Inspector, the Secretary of State considers that it is appropriate to determine the appeal on the basis of the October 2006 revision to the Design and Access Statement (DAS) (using the corrected December 2006 version), and has considered the appeal against the version of the application described in IR1.2-1.5.

### **Policy considerations**

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the Regional Planning Guidance for the South West, published in 2001 (RSS), the Joint Replacement Structure Plan (SP) for the four unitary authorities of the former county of Avon, adopted in 2002 and the South

Gloucestershire Local Plan (LP), adopted in January 2006. The Secretary of State agrees with the Inspector that the development plan policies most relevant to this appeal are set out in IR3.2-3.12.

8. The Secretary of State notes that the Draft Regional Spatial Strategy for the South West 2006-2016 was published in June 2006 and is currently undergoing its Examination in Public. However, as this is subject to modification, she has afforded it little weight.
9. Material considerations include Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development*; Planning Policy Statement 3 (PPS3): *Housing*, and its associated guidance *Delivering Affordable Housing*; Planning Policy Guidance Note 13: *Transport*; Circular 01/2006: *Guidance on Changes to the Development Control System* and Circular 05/2005: *Planning Obligations*.

### **Main Issues**

10. The Secretary of State notes in IR10.1-10.2 that the appeal site is allocated in the development plan for a mixed use development of precisely the scale and nature proposed in the outline application and that the specific requirements for this site are set out in LP Policy M1. She therefore considers that the proposal is acceptable in principle in that it provides housing and employment uses, together with a range of community facilities and infrastructure. Although she accepts that these are considerable benefits of the proposal, she is not satisfied, for the reasons given in paragraphs 21-22 below, that their delivery will be secured, and she does not agree with the Inspector that all of the main requirements of LP policy M1 are met (IR10.2). The Secretary of State agrees with the Inspector that the main issues in this appeal are those set out in IR10.3 (a) – (c).

### **High Quality Design**

11. The Secretary of State notes in IR10.4 that, whilst the requirement of section 42 of the Planning and Compulsory Purchase Act 2004 for the majority of planning applications to be accompanied by a Design and Access Statement (DAS) only came into force on 10 August 2006 (some months after the appeal was lodged), both parties acknowledge that it is a material consideration in this case.
12. The Secretary of State agrees with the Inspector in IR10.35 that the DAS has a logical and thorough structure; the sections dealing with context, constraints and character analysis are generally of high quality and, where necessary, are supplemented by supporting statements, and the overall vision and basic design principles are drawn from the contextual analysis and represent a solid foundation for the creation of high quality development, while the land use and urban design strategies are fundamentally sound. The Secretary of State also agrees with the Inspector in IR10.23 that a high quality landscape should result from the proposals.

13. Notwithstanding the acceptable elements of the DAS identified above, the Secretary of State agrees with the Inspector, for the reasons given in IR10.6-10.22 and 10.35-10.36 that the DAS fails to demonstrate with the necessary clarity and consistency how the strategies would inform the detailed design and ensure a high quality development, especially with regard to layout, scale and appearance. The Secretary of State agrees with the Inspector's conclusion in IR10.122-10.123 that the illustrative designs lack the clarity and coherence necessary to ensure a high quality development; the layout seems over-complex and, in parts, has poor legibility; the masterplan gives insufficient detail about the approximate location and scale of the buildings; and the sketches of architectural style are indistinct and not always consistent with the Design Code. The Secretary of State also agrees with the Inspector, for the reasons given in IR10.25-10.28, that access via the San Andreas link is strongly preferable to the access route that was presented to the inquiry.
14. The Secretary of State therefore agrees with the Inspector that the proposal would not ensure a high quality design which respects and enhances the local character and distinctiveness, and is contrary to LP policy D1, and the guidance in Circular 01/2006 and PPS1 (IR10.123).

#### *Approval Process*

15. The Secretary of State notes in IR10.29 that, during the appeal, the possibility was explored that instead of dismissing the appeal, planning conditions might enable an objection to the proposal on design grounds to be overcome. As set out elsewhere in this letter, the Secretary of State considers that there are other grounds for dismissing the appeal as well as design, and therefore the use of planning conditions to remedy any design issues as an alternative to dismissal does not arise. Nonetheless, she agrees with the Inspector's assessment of the suggested process at IR10.29, and considers that the alternative approach he sets out at IR10.30-10.32 would be preferable in any future application.

#### Affordable Housing Mix

16. The Secretary of State considers that all four options for affordable housing put forward by the appellant would satisfy the headline development plan target of 33.3%. She further agrees, for the reasons given at IR10.63-10.65, that the overall balance of size and type of dwelling within the affordable housing offer is appropriate, and that the proposal makes adequate provision for those in need of mobility and wheelchair housing.
17. However, she agrees with the Inspector, for the reasons given at IR10.39-10.62, and 10.73-10.82, that there is considerable doubt that the proposed affordable housing would adequately address local needs (IR10.124). For the reasons given at IR10.83-10.91, she agrees with the Inspector that none of the factors which might be capable of justifying a lesser provision than the 77:23% split in favour of long-term social rented housing recommended in the Herington Housing Needs Survey (HHNS) are seen to apply (IR10.91). While there is provision to bring the proportion of long-term social rented housing to this level if grant funding is available, the Secretary of State agrees with the Inspector that, in the absence of a financial appraisal and negotiations with

the Housing Corporation, it cannot be assumed that there is a reasonable prospect of grant (IR10.46). She further agrees, for the reasons given in IR10.80-10.82, that it is appropriate to rely on the HHNS, and that it is appropriate for the local authority to seek to secure particular tenure quotas which meet local need.

18. The Secretary of State agrees with the Inspector's assessment of the acceptability of the mechanisms for the delivery of the affordable housing as provided in the s.106 Undertaking and set out in IR10.68-10.70. She considers that the errors and inconsistencies raised at IR10.71 should be addressed in any subsequent application.
19. The Secretary of State is also concerned that clause 15 of the Undertaking would permit the developer to sell 75% of the private residential units in each phase of the development before being obliged to provide the affordable units. She considers that this creates an undesirable degree of uncertainty about the timing of the delivery of the affordable housing, and considers it would be preferable to secure this at an earlier stage of each phase. She further notes that the Undertaking contains a provision purporting to allow the covenantors to terminate the obligation prior to determination of the appeal (clause 5.4) which contributes to her considerable reservations about the validity of the undertaking as a whole.
20. For the reasons given in paragraph 19 above, she therefore considers that the Unilateral Undertaking as drafted is not acceptable, with regard to the provision of affordable housing and she is unable to give it any weight in reaching her decision on this matter. She concludes that the proposal is not in accordance with LP policy H6 or PPS3.

## Delivery of Infrastructure and Community Provision

### *Planning obligations*

21. The Secretary of State has carefully considered the S106 Agreement and the Unilateral Undertaking 'Public open space, M5 works, healthcare' (Inquiry Document INQ/66). She agrees with the Inspector's assessments at IR10.93-10.102, and, in her opinion, the matters raised should be addressed in any subsequent application. As set out in paragraph 4 above, it has now been confirmed that Mr Shorland has withdrawn his claim to have rights over the minerals on the site (IR10.104) and she agrees with the Inspector that there is no basis for considering that the documents are flawed because they have not been signed by all those having an interest in the land.
22. However, she notes that the Unilateral Undertaking purports to release the covenantor from compliance with some of the provisions of the earlier s.106 Agreement. Once a planning obligation has been given it may only be modified or discharged in accordance with the provisions of S106A of the Town and Country Planning Act 1990. As a Unilateral Undertaking cannot be used to supersede or amend a planning obligation, she considers it is of doubtful validity, and given her concerns about the covenantors' ability to

terminate the obligation prior to determination of the appeal she is not satisfied as to the overall soundness of the Unilateral Undertaking. For these reasons, the Secretary of State considers the Undertaking cannot be relied upon to deliver its purported benefits with regard to infrastructure and community provision, and she is unable to give it any weight in her consideration of these matters. The Secretary of State therefore considers that the proposal is not in accordance with LP policy M1 with regard to the delivery of infrastructure and community provision.

23. The Secretary of State notes the discussion on the suggested conditions with regard to infrastructure and community provision in IR10.105-10.110, and agrees with the Inspector's conclusions on these conditions.

### Other Matters

#### *Need for housing*

24. The Secretary of State agrees with the Inspector, for the reasons given in IR10.111-10.115 that there is a substantial and urgent need for housing. She gives this significant weight. The Secretary of State has had careful regard to PPS3 and the guidance therein that when a 5 year supply of deliverable sites cannot be identified, as appears to be the case in South Gloucestershire (IR10.114), planning authorities should consider favourably planning applications for housing, having regard to the policies in the PPS and the considerations in paragraph 69 of the PPS. The Secretary of State agrees with the Inspector in IR10.116 that two key considerations in this case are achieving high quality housing and ensuring a good mix of housing which reflects the accommodation requirements of specific groups. For the reasons given in paragraphs 11-14 and 16-20 above, the Secretary of State concludes that there is very significant doubt that the proposal as it stands would meet these requirements. She agrees with the Inspector's conclusion in IR10.29 that in this case, the significant shortcomings of the design process and the failure to appropriately target the affordable housing offer outweigh the PPS3 presumption in favour of the proposal.

#### *Whether a 'minded to approve letter' would be an appropriate way forward*

25. The Secretary of State notes the Inspector's comments on the possibility of a 'minded to approve' letter in IR10.128, and his recommendation in IR10.132 that a 'minded to approve' decision is to be preferred. However, the Secretary of State considers that this is not an appropriate means of addressing the deficiencies in the scheme identified by the Inspector. In her opinion, it would be unlikely to produce a satisfactory solution given the extensive criticisms of the proposal which she has identified in paragraph 13 above. She further considers that there is a risk that revisions to the DAS to make it acceptable could result in consequential changes to the scheme which could not be dealt with by means of an exchange of correspondence. She agrees with the concerns expressed by the Inspector in IR10.128 with regard to the scope for resolving the issue of the affordable housing provision and she has already concluded, for the reasons set out in paragraphs 19 and 21-22 above, that the Unilateral Undertakings are fundamentally legally flawed. In addition, it would

not be possible to incorporate a revised access route via the San Andreas link as an amendment to this application (paragraph 13 above).

26. The Secretary of State therefore concludes that the risk of failure is indeed significant, and she agrees with the Inspector that in these circumstances it is preferable to dismiss the appeal (IR10.132). She notes that a duplicate application is currently before the Council, which may afford the scope for a relatively quick resolution of the outstanding issues. She further notes that the parties have asked for a clear 'steer' as to how the unsatisfactory aspects might be resolved, and that the Inspector has as a result provided a detailed analysis of the issues (IR10.121). The Secretary of State commends the commentary set out in the Inspectors report and within this letter to the parties.

### *S106 Agreement and Unilateral Undertakings*

27. The application is accompanied by three planning obligations. The Secretary of State agrees with the Inspector's conclusion in IR10.125 that the s106 Agreement is sound and considers that it is necessary and relevant to the proposed development and meets the needs of Circular 01/2006. The Secretary of State has already given her view regarding the two Unilateral Undertakings in paragraphs 18-20 and 21-22 above.

### **Overall Conclusion**

28. The Secretary of State recognises that there is a substantial and urgent need for housing in the area and that the appeal site is allocated for a development of precisely this size and nature in the Local Plan. The proposal is therefore acceptable in principle in that it accords with the site allocation in the development plan in terms of the uses proposed. However, for the reasons given above, the proposal fails to meet local and national policy regarding the provision of affordable housing, infrastructure and community provision, and it does not provide a high quality of design which respects and enhances the local character and distinctiveness. The Secretary of State therefore considers that the proposal is not in accordance with the development plan overall. She has taken into account the benefits of the proposal, including the delivery of urgently needed housing, but has concluded that these are not sufficient to outweigh the conflict with the development plan and the other planning objections she has identified above. She concludes therefore that the appeal should be dismissed and planning permission refused.

### **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State hereby dismisses the appeal and refuses permission for a mixed use development comprising 2,200 dwellings, 66,000 sq m employment (classes B1, B2, B8), link road, 1,500 sq m retail (Classes A1, A2, A3) and support infrastructure/uses including primary school, community building, extended Patchway centre, open space, hotel/pub, and changes to Highwood Road, in accordance with application ref: PT03/3142/O, dated 3 October 2003.

30. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

**Right to challenge the decision**

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

32. A copy of this letter has been sent to the South Gloucestershire Council and all parties who appeared at the inquiry and expressed an interest in receiving a copy of the decision.

Yours sincerely,

**Maria Stasiak**

Authorised by the Secretary of State to sign in that behalf