THRINGS

For the attention of Marcus Goldsworthy,
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Vale of Glamorgan Council
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Also via email:
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26 March 2015

Your Reference:
Our Reference: AM/lcl/H7549-1

Direct Line: 0117 9309575
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Dear Sirs

Our Client: Mr Peter Hayman of Lettons House, Lettons Way, Dinas Powys, Vale of Glamorgan CF64 4BY ("the Property")

Application Reference: 2014/01033/FUL ("the 2014 Application")

We confirm that we represent the above-named and that we have had sight of your email addressed to our client's planning consultant, Laurence Forse, dated 1 December 2014 in which you propose a mechanism in order to allow the condition (which is the subject of the 2014 Application) to be removed.

We are instructed to make the following representations and have numbered the paragraphs for ease of future reference:

1. We note your suggestion that rather than the Council seeking a percentage contribution of any uplift in the sale of the Property a contribution based on the provision of a four bed affordable house is to be paid. Moreover, you recommend that a reasonable contribution that will satisfy the section 106 legislative and policy test in lieu of the Property being secured as affordable housing would be £145,065. The basis for this figure is then set out in your email (but not repeated here) and appears to derive from the formula set out in the Council's Planning Obligations Supplementary Planning Guidance ("SPG") which accompanies the Vale of Glamorgan adopted Unitary Development Plan 1996 - 2011.

2. We note, however, at paragraph 1 of Appendix 1 of the SPG that it states:

> *"all substantial new residential developments, including conversions and mixed use schemes are expected to make provision on site for Affordable Housing"* (our emphasis).

3. Paragraph 5 of the SPG then goes on to state:

> *"In some exceptional cases, it may not be feasible or appropriate to provide affordable housing on site. Where the Council is agreeable an appropriate financial contribution will be sought in lieu of on site provision. Where a financial contribution is appropriate, the contribution will be calculated according to the formula set out overleaf."*

4. Plainly, the spirit and proper interpretation of the SPG is that the payment of an appropriate financial contribution in lieu of on site provision (in respect of affordable housing) only applies to substantial new residential developments which is outwith the scope of the 2014 Application. That is to say, the Property which is the subject of the 2014 Application was built on or around October 1982 following the approval of a reserve matters application (reference 1982/01750/RES) and cannot, on any view, be described as a substantial new development.

5. Incidentally, the aforementioned formula makes no provision for the additional 10% in respect of fees for the imposition, planning and other costs to which you refer in your email of 1 December 2014.

6. Further, it is submitted that the affordable housing contribution that you seek has to meet the identified need set out at page 59 Para 8.2 of the Vale of Glamorgan Local Housing Market Assessment Update (2010) (LHMA) and we would therefore be grateful if you could please provide us with your evidence base to demonstrate that this is the case.

7. You will, of course, be aware that under Section 38 (6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) provides that:

> *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise".*

8. Moreover, section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that:

> *"In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations".*

9. As we understand it, the Development Plan comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011 ("UDP"). We understand that the Vale of Glamorgan Local Development Plan 2011-2026 ("LDP") is at a very early stage and is unlikely to be adopted before September 2016. It will, therefore, carry limited weight. In any event, it is silent on the removal of enterprise conditions. Furthermore, TAN6 and Planning Policy Wales Edition 7 July 2014 ("PPW7"), are also silent on applications for the removal of enterprise conditions.

10. In this scenario, PPW7 states at paragraph 2.7.1 that:

> *"Where Development Plan policies are outdated or superseded, the Local Planning Authority should give them decreasing weight in favour of other material considerations, such as National Planning Policy, in the determination of individual applications. This will ensure that decisions are based on policies which have been written with the objective of contributing to the achievement of sustainable development.*

11. Furthermore, paragraph 2.7.2 of PPW7 states that:

> *"It is for the decision-maker, in the first instance, to determine through review of the development plan whether policies in an adopted development plan are out of date or have been superseded by other material considerations for the purposes of making a decision on an individual planning application. This should be done in light of the presumption in favour of sustainable development".*

12. We, therefore, turn to Policy HOUS6 - Agriculture Occupancy Conditions, which states that:

> *"Applications for the Removal of Agricultural Occupancy Conditions will be considered on the basis of realistic assessments on the continuing need for their retention".*

13. Although this policy relates to removal of Agricultural Occupancy Condition (as opposed to an Enterprise Condition) we submit that you ought to attach most to this policy when determining the 2014 Application given the current position of the LDP. In addition, National Policy is a material consideration and, we submit, support for the 2014 Application is found at paragraph 4.1.3.5 of plan 6 which states that:

> *"Where applications for the removal of Agricultural Occupancy Conditions are received, the LPA should consider replacing them with Enterprise Conditions and that this would often be justified to ensure that dwelling is kept available to meet the housing needs of rural workers and local people in need of Affordable Housing".*

14. To this end, we submit, that the housing needs of rural workers and local people eligible for consideration for affordable housing cannot be met by the Property as demonstrated by the robust and effective marketing exercise (as per paragraph 8.27 of the Practice Guidelines dated December 2011) submitted with the 2014 Application and, more specifically, the email from the Housing Association of 6 June 2014 confirming that their client was not interested in taking the scheme forward.

15. It follows, therefore, that in our view the 2014 Application accords with the Development Plan and that there are no material considerations to indicate otherwise and that therefore, the enterprise condition is otiose and ought to be removed without the need for a planning obligation.

16. In any event, you will be aware that Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the 2010 Regulations) places limitations on the use of planning obligations and, in particular, Regulation 122 (2) provides that a planning obligation may only constitute a reason for granting planning permission for the development if it is:

> *"(a) necessary to make the development acceptable in planning terms;*
>
> *(b) directly related to the development; and*
>
> *(c) fairly and reasonably related in scale and kind to the development"*

17. We submit that as there does not appear to be any strict policy basis underpinning the Council's proposal to impose a financial contribution by way of a planning obligation that it is simply not necessary to make the development acceptable in planning terms, not directly related to the development and is not fairly and reasonably related in scale and kind to the development.

18. It follows that the proposed planning obligation does not satisfy the test set out in Regulation 122 and is therefore unlawful.

19. We also respectfully refer you to the Appeal Decision of Mr Jim Metcalfe dated 1 December 2014 (APP/N2739/A/14/2224013) (copy attached) concerning an appeal against a refusal by Selby District Council in respect of an application to remove a condition restricting the use of a granny annexe as accommodation ancillary to the main dwelling or as holiday accommodation and prohibiting its occupation as an independent dwelling unit.

20. In that Appeal Decision, you will note that the Selby Core Strategy ("SCS") included policies on affordable housing provision based upon a housing market assessment for the area. In particular, Core Strategy Policy SP9 provided that developments with less than 10 dwellings required a commuted sum be sought to provide affordable housing within the district. Moreover, the Council had adopted an "Affordable Housing SPD" (SPD) as setting the basis for the calculation of the commuted sum. The assessment made it clear that the requirement for a contribution applied to refurbishment and conversions where additional units are added to the housing stock (as was the case in the Appeal Decision) and that table 2 of the SPD further provided that a nominal contribution of £5,000 would be needed where the housing scheme involves one dwelling.

21. Although the Inspector then went on to consider the ministerial statement made on 20 November 2014 by the Minister of Housing and Planning at the Department for Communities and the subsequent amendment to the National Planning Practice Guidance - which does not apply in Wales - he concluded that permitting the unfettered occupation of the self-contained converted garage in that case without requiring a contribution to Affordable Housing provision across the district would not have a significantly adverse effect on supply/provision on Affordable Housing in the area. The appeal was allowed and there was no requirement to pay the £5,000.

22. By analogy, we submit that granting the 2014 Application without requiring a financial contribution to Affordable Housing provision will not have a significantly adverse effect on the supply/provision of Affordable Housing across the district and we invite you to approve the 2014 Application in these terms.

23. Incidentally, whilst writing are you able to please confirm whether you have requested similar planning obligations for other applications in respect of the removal Enterprise Conditions and, if so, whether you could please provide us with copies of the Officer Reports in respect of the same.

Please do not hesitate to contact the writer, Alex Madden, on the above number should you have any queries.

We look forward to hearing from you.

Yours faithfully

Thrings LLP