

DELEGATED

AGENDA NO

PLANNING COMMITTEE

DATE 17 DECEMBER 2008

**REPORT OF CORPORATE DIRECTOR,
DEVELOPMENT AND NEIGHBOURHOOD
SERVICES**

08/2580/FUL

J T Dove Limited, Bridge Road, Stockton-on-Tees

Student housing development including related collegiate accommodation and external works.

Expiry Date: 25 November 2008

SUMMARY

This report relates to the full planning application for the erection of 226 bedroom purpose built student accommodation including related collegiate accommodation and external works on the J T Dove site, Bridge Road, Stockton on Tees.

This application was previously considered by Planning Committee and was refused planning permission in November 2008 on the following grounds: -

- 1) In the opinion of the local planning authority the design of the proposed development would be incongruous and would not provide a high quality of built environment and is thereby contrary to saved policies GP1 (i) and (viii), HO3 (iv) and HO11 (i), of the Adopted Stockton on Tees Local Plan and Planning Policy Statement 1.*
- 2) In the opinion of the local planning authority the applicant has failed to satisfactorily demonstrate by means of a Flood risk Assessment and Sequential Test that there is no alternative site at no risk or lower risk of flooding and that there will be no increased risk of flooding to the development or elsewhere as a result, and is thereby contrary to the saved policy EN 32a of the Adopted Stockton on Tees Local Plan and Planning Policy Statement 25.*
- 3) In the opinion of the local planning authority the development would detract from the setting of a listed building by virtue of the unsympathetic design, scale and massing and is thereby contrary to saved policy EN 28 of the Adopted Stockton on Tees Local Plan.*

Subsequent to this decision, the Environment Agency has responded in writing to further information provided by the applicant stating, "Subject to the acceptance of the Sequential and Exception Tests' findings by the Local Planning Authority, should this information be submitted with a new application, we would not object on Sequential and Exception Test grounds".

The applicant has indicated their intention to appeal against the refusal of planning permission and following the Environment Agency's response has requested in writing that the Council formally withdraw reason for refusal 2 and confirm that the Council will not be challenging this reason for refusal at appeal.

It is considered that the Sequential Test has been satisfied and that all elements of the Exception Test have been passed and it is therefore recommended that the Local Planning Authority should not produce evidence in support of reason for refusal 2 should an appeal be lodged. As the decision notice has been issued then the reason for refusal cannot be withdrawn.

RECOMMENDATION

That the Local Planning Authority does not offer evidence in support of reason for refusal 2 should an appeal be lodged, and the applicant be informed accordingly.

BACKGROUND

1. The applicant has requested that further to the withdrawal of the Environment Agency's original objection that they receive confirmation that the Council no longer wishes to defend the following reason for refusal at appeal.

2) In the opinion of the local planning authority the applicant has failed to satisfactorily demonstrate by means of a Flood risk Assessment and Sequential Test that there is no alternative site at no risk or lower risk of flooding and that there will be no increased risk of flooding to the development or elsewhere as a result, and is thereby contrary to the saved policy EN 32a of the Adopted Stockton on Tees Local Plan and Planning Policy Statement 25.
2. The applicant states that their appeal may include an application for costs against the Council for unreasonable behaviour in accordance with the guidance contained in the Department of the Environment Circular 8/93 (Award of costs incurred in planning and other (including Compulsory Purchase Order) Proceedings). Particular reference is made to Annexe 3 of this Guidance entitled 'Unreasonable Behaviour relating to the Substance of the Case, Including Action Prior to the Submission of Appeal'.
3. Paragraph 7 of Annexe 3 states: "A Planning Authority should not prevent, inhibit or delay development which would reasonably be permitted, in the light of the development plan, so far as it is material to the application and any other material consideration". Paragraph 8 states: "In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations. If they cannot do so costs may be awarded against them".

PLANNING POLICY

4. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plans are: - *the Tees Valley Structure Plan (TVSP) and the Stockton on Tees Local Plan (STLP)*.

The following planning policies are considered to be relevant to the consideration of this element of the application and the request to discontinue reliance upon reason for refusal 2:

Policy EN32a

Proposals for new development will not be permitted within Flood Zones 2 or 3 as shown on the Proposals Map, or other areas identified as at risk of flooding, unless the applicant can demonstrate by means of a Flood Risk Assessment and sequential tests that: -

- i) there is no alternative site at no risk or at lower risk of flooding; and
- ii) there will be no increased risk of flooding to the development; and
- iii) there will be no increase in risk of flooding elsewhere as a result of the development.

Where permission is granted for development in flood risk areas, or for development that would increase the risk of flooding, appropriate flood alleviation or mitigation measures, to be funded by the developer, must be undertaken.

Planning Policy Statement 25: Development and Flood Risk seeks to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new development is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and where possible, reducing flood risk overall.

MATERIAL CONSIDERATIONS

4. Planning Policy Statement 25: Development and Flood Risk, was published in 2006 and introduced a revised control and assessment regime for the consideration of planning applications in areas at risk from flooding.

There are essentially three elements in the appraisal process:

- A Flood Risk Assessment – this is a technical appraisal of the proposed development to assess whether it will add to or reduce flood risk
 - A Sequential Test – this considers the extent to which there are reasonably available sites in areas with a lower probability of flooding that would be appropriate to the type of development or land use proposed. Within each flood zone development should be directed to sites at the lowest probability of flooding.
 - An Exception Test – this applies in circumstances where the sequential test identifies that the development cannot be located in a zone with a lower probability of flooding. The test provides a method of managing flood risk whilst still allowing development to take place.
5. The Flood Zones are the starting point for the sequential approach. Flood Zone 1 being all the land falling outside Zones 2 (Medium Probability) and Zone 3 (High probability and functional floodplain). These flood zones refer to the probability of sea and river flooding only, ignoring the presence of existing defences.
 6. The application site is located wholly in Flood Zone 3a and subject to fluvial flooding.
 7. Student accommodation is classified as 'More Vulnerable' in the Flood Risk Vulnerability classification and is deemed appropriate in Flood Zone 2, and appropriate in Flood Zone 3a subject to the application of the sequential and exception tests being passed.
 8. This application was considered at the Planning Committee of the 5th November 2008. At this time the committee report included comments received from the Environment Agency as follows: -

“We continue to uphold our previous objection because no evidence has been provided that the Sequential Test has been adequately demonstrated. Our objection will remain until the Sequential Test has been undertaken to sufficiently demonstrate that there are no reasonably available alternative sites in areas with a lower probability of flooding (i.e. Flood Zone 1 and 2) that would be appropriate for the type of development proposed.

The application site lies in Flood Zone 3, an area with an annual 1 in 100 year probability of fluvial flooding. PPS25 requires local planning authorities to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'. In this instance the Sequential Test submitted is not acceptable on the following grounds:

Defining the search area

We acknowledge that the search area is based upon a catchment area of 1km from the site boundary; however, there is no justification for the chosen search area. We consider that further evidence to support the chosen catchment, based on local planning policy designations and taking into account alternative accessible sites within the area at a lower risk of flooding (i.e. Flood Zone 1 and 2), should be provided to justify the need for student accommodation within Flood Zone 3. This may alter the number of sites that are required to be assessed within the Sequential Test.

Constraints to delivery

In line with PPS25: Development and Flood Risk, the Sequential Test is required to detail any constraints to deliver the identified alternatively reasonably available sites and also include recommendations on how these constraints may be overcome. The submitted Sequential Test has identified alternative sites with a lower probability of flooding (i.e. Flood Zone 2) and those that have a moderate chance of passing the Exception Test, however, potential constraints and opportunities for development have not been considered to justify that the application site provides a more suitable development site for the proposals.

A number of sites were identified as having insufficient capacity to accommodate the proposals. Justification should be provided to demonstrate that it is necessary to locate the proposal, or if there is scope to disaggregate the mixed uses of the development across several alternative sites which do not compromise environmental constraints within the area.

If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us as advised in PPS25 paragraph 26.

If you are minded to approve this application contrary to our objection, the Secretary of State should be notified, in line with the Town and Country Planning (Flooding) (England) Direction 2007.

Should the above issue be resolved, we would then withdraw our objection subject to conditions covering finished floor levels, flood warning and evacuation, drainage, piling, and contaminated land being imposed upon any permission granted.

9. As part of the original application a sequential test was undertaken by the applicant but only considered alternative sites within a 1km radius of the University with a justification that any sites of more than 1 km from the University would not be sustainable and would conflict with local and national planning guidance.
10. At the request of the Environment Agency the study area was extended to include all identified sites within 2km of the University and included all the remaining housing allocations under policy HO2 of the Stockton on Tees Local Plan (1997), as well as the alternative sites identified within the Draft Strategic Housing Land Availability assessment (SHLAA) for residential development within 2km of the application site. The details of the supplementary report are attached as Appendix 1.
11. It is considered that the applicant has demonstrated by the Sequential Test there are no sites currently 'reasonably available' to the applicant, more suitable for the scale of the proposed scheme or subject to a lower probability of flooding than the application site. For the above reasons the sequential test has been satisfied.

12. In accordance with Annex D of PPS25 an exception test is required as the development proposal falls within the classification of “more vulnerable”. For the exception test to be passed, three tests need to be satisfied.

TEST 1

It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk.

13. The site occupies a prominent location and forms part of a larger site known as Boathouse Lane. Given the important gateway location, the Council has identified the area for regeneration and development and prepared a planning and design brief to guide future development on the site and surrounding area, which was formally adopted as a Supplementary Planning Document (SPD) in June 2006.
14. Redevelopment of the site will assist in the regeneration of the area between Boathouse Lane and the River Tees and potentially transform the area from partially cleared former industrial zone to an area of modern residential and commercial development delivering economic, social and environmental benefit to central Stockton.
15. The proposal would not adversely affect the residential amenity of neighbouring properties and would not introduce a volume of traffic movements that would adversely affect highway safety or the capacity of the local highway network.
16. It is considered that the proposed development would result in the efficient use of previously developed land, in a highly sustainable location being within walking distance of Stockton Town Centre and well served by public transport. .

TEST 2

The development should be on developable previously developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously developed land.

17. The development is on appropriate previously developed land and is developable in that it is in a suitable location for student accommodation development and there is a reasonable prospect of it being developed, as the applicant owns the land.

TEST 3

A FRA must demonstrate that the site will be safe, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

18. The flood risk assessment submitted with the application has demonstrated that the site can be developed without significant or material flood risk and the Environment Agency is satisfied with the technical information provided and the mitigation measures proposed subject to conditions covering finished floor levels, flood warning and evacuation.

CONCLUSION

19. It is considered that the Sequential Test has been adequately demonstrated in accordance with Annex D of PPS25 and relevant Standing Advice from the Environment Agency. Compliance with the Exception Test has been demonstrated in accordance with advice in PPS25. The submitted FRA demonstrates that the development subject to appropriate controlling conditions is satisfactory in flood risk terms. The Environment Agency has withdrawn its objection as it is satisfied that their previous concerns have been met. The local planning authority no longer have any evidence to support refusal of the application on the ground of the risk of flooding or the failure to demonstrate such risk of flooding as this

information has now been submitted by the applicant and is acceptable to the Environment Agency and Planning Officers. It is therefore recommended that the Local Planning Authority does not offer evidence in support of reason for refusal 2 should an appeal be lodged, and the applicant informed accordingly.

Corporate Director of Development and Neighbourhood Services

Contact Officer Mr Gregory Archer

Telephone No 01642 526052

Email address gregory.archer@stockton.gov.uk

Financial Implications

Should the local planning authority continue to rely upon reason for refusal 2 and the applicant appeals against the refusal of the application the Planning Inspectorate, in determining the appeal, are likely to determine that there is no evidence to support that reason for refusal and if it was an unreasonable reason to refuse they can order the local planning authority to reimburse the costs incurred by the applicant in defending that ground for appeal. By advising the applicant prior to appeal, or in the early stages of an appeal, that the local planning authority will not be relying upon that ground the applicant will not be able to claim costs against the Council for that element of the appeal as they need not produce evidence themselves to counter the Local Planning Authority's decision on that basis.

Environmental Implications – As report

Community Safety Implications – As report

Background Papers –

Adopted Stockton on Tees Local Plan (June 1997)

Planning Application reference number: 08/2580/FUL J T Dove Limited, Bridge Road, Stockton-on-Tees Student housing development including related collegiate accommodation and external works.

Planning Policy Statement 25: Development and Flood Risk.

Adopted Supplementary Planning Document: Boathouse Lane

Human Rights Implications – The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report. Any issues relating to the risk of someone's home being within a flood plain have been considered within the report prior to making the recommendation to members and within the Local Plan Policies and National Guidance in setting the parameters for development within such flood risk areas.

Ward

Stockton Town Centre

Ward Councillors

Councillor D. W. Coleman, Councillor P. Kirton