

# AMENDMENT SHEET

Planning Committee  
15 August 2019

## AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

Item No. 8 – Appeal at Land at Queen Street, Colchester

Members are advised that the committee report incorrectly uses the word 'withdraw' in relation to reason 1 of the refusal notice. The purpose of the committee report is to seek Members' endorsement not to contest the decision to refuse the application on the grounds of insufficient community consultation. This is based on the advice of the Pegasus Group, a national planning, urban design and heritage consultancy, who have been appointed to represent the Council at the scheduled Public Inquiry. The endorsement of the recommendation not to contest this reason for refusal does not prevent a third party from seeking to defend this reason for refusal.

An email has been received in respect of this report item, which states:

*Until Thursday 15th the Planning committee will be uncertain as to withdraw Objection 1 (Lack of consultation).*

*Should they do so, I would remind you that the Planning Inspectorate Good Practice Advice Note 09 (albeit from 2011) states:*

***"For all appeals, in the interests of fairness and ensuring that decisions are made locally where possible, it is important that what is considered by the Secretary of State is essentially what was considered by the local planning authority."***

*Clearly, that is not the case here, so the withdrawal of objection must, therefore, be seen as inadmissible.*

Please also see letter attached from John Lawson Partnership

**Planning Committee Members**

Democratic Services  
Colchester Borough Council  
Rowan House  
33 Sheepen Rd  
Colchester  
Essex  
CO3 3WG



14<sup>th</sup> August 2019

Dear Sir or Madam,

**Planning Committee Meeting 15<sup>th</sup> August 2019: Item 8 – Appeal at Land at Queen Street, Colchester (Appeal ref: 3231964 and Planning ref: 182120)**

1.1 We write to you concerning Agenda Item 8, which requests your agreement to withdraw Reason 1 to decision reference 182120: the proposed redevelopment of the old Bus Station site to provide 336 units of student accommodation, hotel, artist studios and commercial uses.

1.2 Reason 1 to decision reference 182120 reads as follows:

*"Paragraph 128 of the NPPF advocates early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes. The NPPF goes on to state that applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. The level of consultation undertaken prior to the submission of the application is considered to fall below the guidance set out in the NPPF and, in particular, the pre application consultation did not engage directly with Ward Councillors and/or local community groups."*

1.3 The content of our letter as set out below provides relevant additional information, which we wish to bring to your attention in respect of this issue. In summary, we request that you consider the direct and indirect implications of agreeing to withdraw this reason for refusal carefully prior to making your decision. In our professional view we consider that evidence exists, and a number of reasonable submissions can be made, in support of this reason for refusal. We therefore, urge you not to agree with the Officers' recommendation, which seeks to eliminate lack of consultation as a reason for refusal of this planning permission.

**Background**

1.4 Lawson Planning Partnership (LPP) is a Chartered Town Planning consultancy appointed on behalf of OMC Investments Ltd (OMCI). OMCI owns, manages and operates a property portfolio which includes the Grade II\* listed Grey Friars Hotel and its associated Grade II listed complex of buildings, the Grade I listed East Hill House (76 High Street) and its associated curtilage listed coach house buildings and land at Lewis Gardens; all situated in close proximity to the development site.

Managing Director:  
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Director  
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Technical Director:  
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- 1.5 OMCI is a significant investor in the immediate locality and has a strong common interest with the Local Planning Authority (LPA) in seeing the appeal site properly planned and regenerated. Members may recall that this application attracted approximately 700 objections prior to being considered by the Committee in February this year and is still the subject of a great deal of wider public concern.
- 1.6 Having listened to the views put forwards by the local community and elected Councillors at this meeting, Members decided that the applicant had not undertaken sufficient early discussion with the local community about the style and design of their proposals. In addition, they decided that the applicant had not evolved their designs to take account of these concerns. In particular, the applicant had failed to engage directly with Ward Councillors and/or community groups.
- 1.7 During the lead up to this Committee meeting, LPP worked closely with the community groups concerned, which included the Civic Society and several Residents Associations, as well as figureheads of the local community such as Dorian Kelly, Sir Bob Russell and Alan Short. Due to our involvement in this process, we have acquired a detailed understanding of the particular facts of this case, most notably in regard to the extent of community engagement.
- 1.8 On 8<sup>th</sup> August 2019, the Inspectorate granted OMCI Rule 6 Status at the forthcoming planning inquiry. As part of this process, and so far as there is common ground between parties, OMCI (via LPP) will act as a coordinator for third parties', assisting and advising them in relation to this case.
- 1.9 By definition, Rule 6 status allows us an opportunity to present a case at the forthcoming public inquiry which may be different from that of the LPA. However, we also recognise that, where there is common ground between parties, this should be emphasised, which is likely to assist the Inspector's determination of the planning appeal. For this reason, we are seeking to work closely with the LPA and community groups to ensure the planning case represents a consensus as far as possible.

#### **First Reason for Refusal – Lack of Community Engagement**

- 1.10 Item 8 reports that Planning Consultancy, Pegasus Group, have been appointed to act on behalf of the Council to defend this appeal. You will be aware that Pegasus have issued an advice letter, dated 25<sup>th</sup> July 2019, which recommends that the first reason for refusal is withdrawn. In your papers Officers make the case for withdrawal of this reason on the following grounds:
  - The consultation undertaken cannot be demonstrated to be contrary to paragraph 128 of the National Planning Policy Framework (NPPF);
  - Pegasus Group are of the view that, unless a witness can be found who is able to defend the reason on cogent planning grounds, this reason should be withdrawn;
  - Pegasus Group's view is likely to be shared by other professional planning consultants;
  - It must therefore be accepted that this reason should be withdrawn as it is fundamentally 'unreasonable': failure to do so could expose the Council to an award of costs.
- 1.11 We wish to make you aware of additional facts which may assist your understanding of the points listed above.

❖ *National Planning Policy*

- 1.12 Decision reference 182120's first reason for refusal makes reference to Paragraph 128 of the NPPF. This reads as follows (our highlighting in bold);

*"Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot."*

- 1.13 In addition, Paragraph 129 of the NPPF also remains a material consideration. This elaborates on the above Paragraph 128 advice as follows (our highlighting in bold):

*"Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for Life<sup>47</sup>. These are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels."*

- 1.14 Paragraph 128 of the NPPF therefore, confirms that developers should work closely with, and take account of, the views of the local community: failure to do this is a material planning consideration.
- 1.15 Where it can be demonstrated that sufficient engagement did not occur early enough in the design process, was not sufficiently proactive or effective, or did not evolve designs to take account of the community's views, there is a case for refusal; provided it can be linked to other concerns, such as the case for poor design.
- 1.16 When assessing the acceptability of such applications, the outcome of consultation processes, such as any recommendations made by design review panels, should also be taken into account.
- 1.17 For the purposes of your decision regarding Item 8, it is not necessary to prove conclusively that the applicant's level of engagement was contrary to the NPPF, it is only necessary to be satisfied you have sufficient evidence to make a reasonable case in this respect, in order to form such a conclusion in this regard.

❖ *The Case for Lack of Community Engagement*

- 1.18 In having awarded OMCI the status of Rule 6 Party to this inquiry, the Planning Inspectorate has acknowledged that OMCI (via LPP) are well placed to assist and supervise third parties who can make the case on this point. LPP also plans to act as an advocate for their views, notably in relation to the LPA's first grounds for refusal concerning lack of public engagement, in so far as there is common ground between parties.

- 1.19 A critical element of the case concerning lack of community engagement is the applicant's failure to engage in dialogue with key community groups, such as the Civic Society, Priory Area Residents' Association, Riverside Residents' Association, Rosebery & Smythies Residents' Association, Dutch Quarter Residents' Association and the Colchester Central Branch Labour Party.
- 1.20 A number of representatives have already confirmed they will speak at this Inquiry. Witness statements and email correspondence is expected to form proofs of evidence supporting this point. We intend to show that these groups repeatedly requested meetings with the applicant to discuss this scheme, but that no such meetings were granted or forthcoming. This is not the early, proactive and effective engagement required by the NPPF and we believe these groups were inhibited from contributing to the early design evolution of this proposal as a result.
- 1.21 The applicant's Statement of Community Involvement (August 2018) contains a list of Councillors and Influential members of the local community to which it will likely argue have been consulted effectively. Many of these individuals remain opposed the development and have stated they do not feel their views were taken into account during the design process.
- 1.22 At least five individuals on the list are already confirmed to speak at the inquiry. We are currently in the process of assembling our case, and we hope to secure several more. We intend to demonstrate that the views of those affected by these proposals were not taken into account during the design process, and thus reason this engagement was not effective, contrary to paragraph 12B of the NPPF.
- 1.23 The applicant's Statement of Community Involvement also reports that several fundamental design issues were raised by the community at pre-application stage. We are able to demonstrate that the same issues recurred again at the application stage, and again after the scheme had been subject to revision. On this basis, we intend to reason that these recurring issues were symptomatic of ineffective engagement by the applicant at the initial design stages, and during the course of the application process, and thus remain contrary to paragraph 128 (and 130) of the NPPF.
- 1.24 Within their Statement of Case to this appeal, the applicants argue that the community's concerns "*were based on a misunderstanding of the proposed development*". We believe the community's concerns are based on well-founded logical arguments. We are able to provide evidence that the applicant has responded similarly to the community's concerns over the course of the design process.
- 1.25 In mounting a wider case in opposition on of this proposal, we will also rely upon advice given by The Design Council, who reviewed the applicant's scheme at the pre-application stage. The Council raised similar design issues to that which repeatedly emerged through the limited community consultation which took place. Once again, it can be reasoned that these issues were not addressed and thus recommendations from the Design Review Panel were not taken into account sufficiently by the applicant during the early design evolution of this proposal.
- 1.26 We regard it to be implicit that, by advocating community engagement during the design process, the NPPF expects this to be *meaningful* engagement: *listening* to the community rather than simply *telling* them is not sufficient. In this case, we intend to demonstrate that the developer's engagement was not meaningful as the community's fundamental design concerns were not acknowledged. As such, contrary to paragraph 130 of the NPPF, opportunities have been missed to evolve the scheme to a level where it will improve the character of this area and the way it functions.

❖ *Professional Opinions*

- 1.27 Due to its longstanding involvement, LPP has acquired a detailed understanding of the circumstances surrounding this case. We therefore understand why the Pegasus Group, who have only been recently appointed, may have reached a different view concerning the level and effectiveness of public engagement on this particularly complex case.
- 1.28 As appointed representatives to OMCI, LPP is confident it can marshal a case which reasons a lack of early, proactive and effective community engagement. Such arguments will also compound the central case that this scheme constitutes poor design and has not taken the opportunities available for improving the quality of this area and the way it functions.
- 1.29 However, we could be disadvantaged if we cannot benefit from the local planning authority's internal connections, particularly to assist lines of enquiry in relation to Planning Committee Members and Borough Councillors. We would therefore, like to have the opportunity to work closely with the LPA as we believe we have a shared interest in ensuring this appeal is dismissed.
- 1.30 It is not in the interests of either party to concede the first reason for refusal unless it is absolutely necessary to do so. With this in mind we approached the LPA to request a meeting with their Officers to discuss the details of this case and the evidence at our disposal. Unfortunately, this invitation was declined pending the outcome of the Planning Committee's decision regarding Item 8.

❖ *Unreasonable behaviour*

- 1.31 For an award of costs to be made the Inspector must agree that the opposing party has acted unreasonably, for example by raising issues which are not material, failing to construct a coherent argument or the making of baseless claims which the other party has expended monies to contest.
- 1.32 For the reasons noted in this letter, lack of community engagement is a material consideration and we are confident we can assemble sufficient evidence to justify conflict with NPPF policy in this regard.
- 1.33 It is also noted that a case does not have to be successful in order for it to have been considered 'reasonable'. In this instance the case turns on design; thus, has always been anticipated that arguments regarding lack of community engagement would contribute to this central issue rather than succeed in isolation.
- 1.34 Members will recall that over the course of the application process, members of the community repeatedly stated that they felt disenfranchised from the design process, which had not taken their views into account and which had fallen far short of the stated policy ambitions for an 'urban renaissance' in this area; something the Council had promised to deliver via adopted local plan policy.
- 1.35 Given the Council's position as land owner of this site, for reputational reasons it is imperative that the public feel the LPA has defended this case to the best of its ability. In doing so, the LPA should be expected to reach out to Councillors and community groups, actively facilitating the case made by their Planning Consultants, rather than closing down potential lines of enquiry.

**Conclusion**

- 1.36 At the Planning Committee meeting on 28<sup>th</sup> February 2019, having been subject to several hours of debate, members decided that the applicants had not undertaken sufficient community engagement to



accord with the recommendations of the NPPF. Officers at the time, also having heard this debate in detail, felt the case was reasonable in this regard.

- 1.37 Having examined the case in favour of the first reason for refusal, we still regard this position to be reasonable. We are in the process of assembling evidence to support the Rule 6 Party's case in this regard, but our case will not be assisted if the Council withdraws the first reason for refusal.
- 1.38 LPP therefore respectfully requests that Members do not agree to withdraw this reason for refusal on the basis of a single professional opinion. We instead request that Members direct the LPA to reach out to local community members and groups, working with us, to facilitate and source the information at its disposal.
- 1.39 We acknowledge that the Council must reach its own conclusions in relation to this case. However, we fail to see how it can do so when it has not fully examined the arguments at its disposal on this matter. Further discussion is clearly still necessary before Members can be confident there is no option but to withdraw this reason for refusal.
- 1.40 We intend to request to speak at the forthcoming committee meeting this week and hope that you will consider our points in this letter carefully before making your decision on this issue. In the meantime, if you have any questions or queries in respect to the points made above, please do not hesitate to contact us.

Yours faithfully,



**Kathryn Oelman**  
**Lawson Planning Partnership Ltd**

cc. OMCI Ltd  
Simon Cairns (Colchester Borough Council)