

Planning Services

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Date: 4th June 2008

Appln. Refs: 07/01034/EFUL

David Jones
Government Office for the South West
2 Rivergate
Temple Quay
Bristol
BS1 6ED

Dear Mr Jones,

Referral of Planning Application 07/01034/EFUL in the light of outstanding objections from the Environment Agency on Flood Risk Grounds

Town and Country Planning (Flooding) (England) Direction 2007

Address to which the proposals relate: **Riverside Business Park, Westmoreland, Bath**
Description of proposals: **Bath Quays South Development - Construction of school building of 10,888 sq m to house the Dyson School of Design Innovation, including construction of new pedestrian bridge across River Avon, and associated access, servicing and landscape areas incorporating on-site bus facilities, all following partial demolition of existing buildings.**

I am writing following discussions with you in the light of our referral of the above application to your office. In your email of 28th February, you drew my attention to the requirement in the 2007 Direction for the LPA to provide a Statement in connection with the negotiations between the parties in connection with the objections raised by the Environment Agency, and in connection with the Council's decision to support the application notwithstanding those objections.

Attached to this letter is that Statement. It is my view on behalf of the LPA that the attached Statement meets the requirements of the 2007 Direction and should be read together with the various documents already supplied to your office.

I am also taking this opportunity of copying to you a Chronology of the case which has been prepared by the Applicant's Agents and supplied to the LPA expressly for inclusion with this letter to GOSW. The LPA is reasonably satisfied that this sets out the various contacts between the major parties in this case, but the responsibility for the Chronology rests entirely with its authors.

Please could you now advise how the case will proceed? As I have already informed you, the Applicant has made it clear that there is a tight timetable for this project if it is to go ahead this year, and our Members are also keen that any delay should be kept to a minimum.

Yours faithfully

Geoff Webber
Senior Professional – Major Developments

STATEMENT OF THE LPA AS REQUIRED BY

Article 4 of the Town and Country Planning (Flooding) (England) Direction 2007

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- The application for the Dyson School of Design Innovation relates to land shown in the emerging Strategic Flood Risk Assessment for Bath and North East Somerset as falling within Flood Zone 3. PPS25 indicates that an Educational Use such as that proposed falls within the “More Vulnerable” Flood Risk Vulnerability Classification, and that such uses should only be approved in such circumstances where the Sequential Test and a subsequent Exception Test have been passed.
- It is the overall responsibility of the Applicant to ensure that their development proposals meet the requirements of PPS25, whilst the LPA and the Environment Agency are required to ensure that the necessary Tests are properly undertaken. Ultimately, the LPA is responsible for the determination of planning applications, but PPS25 and associated Regulations provide for the Environment Agency to in effect trigger a referral to the Secretary of State in any case where the LPA is minded to grant permission, but where Flood Risk objections from the Environment Agency have not been withdrawn.
- In the current case, the Applicant has employed specialist Consultant Engineers to advise upon the Flood issues associated with the application site, and copies of their submissions in this regard have already been forwarded to the Government Office. The Applicant’s Consultants have concluded that the proposed development is “flood neutral”, but their assumptions and calculations have not been accepted by the Environment Agency, who are of the opinion that the proposed development will lead to additional (but unspecified) flood risk on other sites in the area. Furthermore, the Environment Agency has confirmed in its formal objections letter (copy already supplied to the Government Office) that it is of the opinion that the Sequential Test has not been successful in demonstrating that the application site is the only reasonable available suitable site. The Environment Agency points out that PPS25 makes it clear that the Exception Test should not even be considered until an appropriate Sequential Test has been passed.

- The Applicant's Sequential Test (and Exceptions Test) documents have already been forwarded to the Government Office, and these documents are referred to in the Officer Reports to this Council's Development Control Committee (also already provided to GOSW). The Officer Report to Committee makes it clear that this Council's Planning Officers agree with the views of the Environment Agency, and accordingly the application was recommended for Refusal (*inter alia*) on the grounds that the proposed development had not passed the required PPS25 tests.
- The Officer Report makes clear the manner in which the PPS25 issues were drawn to the attention of the Committee. The extract from the Committee Minutes already supplied to GOSW sets out the basis upon which the Committee decided to support the project. The Minute sets out the Resolution that was moved, seconded, and subsequently approved by the Committee and makes it clear that the Committee did not reject the advice and recommendations from the Environment Agency on the basis that those professional views were wrong. Rather, the Committee took the view that the merits that the members perceived in the Dyson scheme are such that they outweigh the flood risk issues.
- There is no more detailed record of the Committee's debate – it is this Council's long-established approach to record only the basic elements of the decision on each application. However, two Officers from the Environment Agency attended the Committee at the request of this Council's Planning Service, and answered questions from the Committee Members before the Committee voted on the Resolution. Most of the questions were purely factual, but Councillor Kew (the Committee Chair) asked the two Environment Agency representatives whether the flood-related objections could be overcome. The answer was to the effect that there is almost always an engineering solution to such problems, and whilst the Environment Agency Officers did not (and were not asked to) indicate whether such a solution in this case would be entirely within the application site or would involve additional land not under the Applicant's control, it was evident that the Committee Members interpreted the response as opening the door for permission to be granted. The Minuted vote in favour of the scheme followed shortly afterwards.
- In summary, the Committee had before it in the Officer Report a clear indication of the views of the Environment Agency, and of this Council's own Officers, that the application should be Refused permission on flood-risk grounds. Even with the benefit of hindsight, there is no obvious way in which that disagreement between the Applicant's Agents and the LPA and Environment Agency Officers could have been addressed. Either the Applicant would have had to withdraw the proposals and found an alternative site that avoided the PPS25 issues, or the Environment Agency and LPA Officers would have had to have decided to reverse their firmly given advice that the scheme was not acceptable.

- It was then for the Committee to make a decision on the basis of all material considerations, and the decision that the Members made was taken following a substantial debate, and with full knowledge of all the objections. It is within the LPA's legitimate discretion to decide to support the project – as the Committee did – on the basis that the perceived educational and community benefits of the proposals outweigh the technical objections.
- In all the circumstances, there is no additional information that can be made available in order to facilitate the Secretary of State's assessment of the referred application. What must be made clear is that the Environment Agency's decision not to participate in meetings was only in relation to the **post-committee** period, by which time the LPA's formal decision had been made. The Environment Agency's decision was in connection with meetings called by the LPA Officers in order to ensure that the application (at the point of referral) had been "fine-tuned" in order to allow the LPA Officers to draft Conditions and to ensure that the means of addressing a number of relatively minor issues identified by Members had been agreed with the Applicant. The Environment Agency indicated in emailed correspondence (copies already supplied to the Government Office) that it had sought advice direct from GOSW and had also taken legal advice, which led to the conclusion that the Environment Agency's Officers are not prepared to attend meetings to discuss details of a scheme which the Agency considers to be unacceptable in principle. This is a matter which the LPA is unable to take further, and the discussions between the LPA's Officers and the Applicant's Agents were amicable and fruitful, albeit that the absence of the Environment Agency meant that it was impossible to make progress on one detailed item (i.e. the potential for reduced removal of Listed fabric along the Lower Bristol Road frontage – as explained in the correspondence already supplied to the Government Office) and also impossible to agree upon appropriate Conditions relating to flood-control issues.
- The LPA is satisfied that in this unusual case this Statement reasonably addresses the requirements of the 2007 Direction.

Geoff Webber
Senior Professional – Major Developments
Bath and North East Somerset Council

4th June 2008