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By email only
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6 March 2013

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Dear John

DRINKWATER FARM, MALDON ROAD, BRADWELL-ON-SEA, ESSEX

Further to our meeting on 14 February 2013, we have pleasure in providing a planning appraisal for Drinkwater Farm.

Summary

There is an extant permission for 12 new houses and workshops on the site but we understand that the houses are too large for the local market and few institutions will lend on live/work units. You are therefore seeking permission for a wholly residential scheme (use class C3), of detached houses at a higher density than currently approved.

This appraisal includes the following:

- A brief description of the site and surroundings;
- A summary of the relevant planning history; and
- A staged strategy for achieving a wholly residential, higher density scheme on the site.

Overall, we think that there is a good chance of achieving your objective for this the site. This is primarily due to the extant permission which is a strong fall-back position, the current oversupply of employment land in the district, the council's lack of five year housing land supply and the government's current emphasis on house building.

Site and Surroundings

The rectangular site measures approx. 4.45 hectares and has a frontage to Maldon Road. It is approximately 1.5 miles to the south west of Bradwell-on-sea, outside the settlement boundary. The site was previously used as a

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maggot factory and fish bait farm but production ceased in the 1990s and the buildings have since been demolished.

The site is outside the Bradwell-on-sea settlement boundary and is designated as a Special Landscape Area (SLA) in the council's adopted planning policy. Part of it is also allocated for mixed housing and B1 business use. All of these designations are likely to be carried forward in the council's emerging Local Development Plan.

Planning History

Planning permission for six live/work units was granted in 2004 (FUL/MAL/03/00247). That permission was never implemented.

Appeal scheme

In 2007, the council refused planning permission for '12 new houses and workshops' (FUL/MAL/07/00842). The reasons for refusal are included in **Appendix 1**. The ranch-style semi-detached houses were sited around courtyards. Each unit comprised a residential floor area of 251sqm, a workshop floor area of 40sqm and a garage of 33sqm. The 'workshop' element was approximately 16% of the residential area. The scheme in effect doubled the number of units compared to the 2004 permission, and retained the same ratio of business floor space per dwelling.

At appeal, the Inspector identified two main issues:

1. the location of new development and effect on the character and appearance of the area; and
2. whether the location was unsustainable.

An important material consideration for the Inspector was that, at the time, the site benefitted from an extant consent for six live/work units (granted in 2004). The Inspector would have preferred a greater proportion of business use in the appeal scheme but he acknowledged that 12 units would result in more B1 floorspace and a more efficient use of land than the six units.

The appeal was allowed and planning permission granted in June 2008, subject to conditions. The appeal decision is included in **Appendix 2**. Three of the conditions (6, 7 and 8) related to the use of the workshop element and are discussed elsewhere in this appraisal. There was no Section 106 legal agreement.

Has the appeal scheme been implemented?

The appeal permission was subject to a three year time limit condition, requiring the development to be commenced by 22 June 2011. Research has been carried out to ascertain whether the appeal scheme was in fact implemented and therefore extant.

The one pre-commencement condition (requiring approval of materials) was discharged by the council several months beforehand, on 25 February 2011 (refer to Condition 2 decision notice in **Appendix 3**).

The correspondence that we have seen between the developer and highway authority (Essex County Council) indicates that works were commenced on site before 22 June 2011. A list of correspondence is included in **Appendix 4**.

The works comprised a bell mouth junction at the front of the site onto Maldon Road. Although we have not yet visited the site, we are confident that the appeal scheme has been lawfully implemented and is therefore extant. However, we suggest that formal confirmation is also sought from Maldon District Council.

Section 73 application to remove conditions (2011)

The JTS Partnership (on behalf of Barion Homes) applied to remove the restrictive live/work conditions (6, 7 and 8) in July 2011 (FUL/MAL/11/00634). However, the council refused the application and this is discussed in more detail below.

Strategy

Given that the council appears to have considered the previous Section 73 application in an irrational manner, the scope for further muddled thinking (when also having to consider an increase in density), suggests to us a two staged approach:

- Firstly submit a new Section 73 application to remove the restrictive live/work conditions 6, 7 and 8; and
- Secondly, submit a new application which proposes more units on the site.

The key issues that need to be assessed and justified in the applications are:

- the loss of employment land in the district;
- the principle of wholly residential development on the site; and
- higher density housing in a countryside location.

Remove restrictive live/work conditions

The adopted Maldon District Replacement Local Plan 2005 requires any redevelopment of the site to incorporate an element of employment use (approximately 1.8ha of the site is allocated for mixed housing and B1 business use under policy E2). The appeal scheme provided approximately 480 sqm of B1 floorspace and this was controlled by conditions imposed by the Inspector in 2008.

The JTS Partnership (on behalf of Barion Homes) applied to remove the three live/work conditions in July 2011 (FUL/MAL/11/00634):

- Condition 6 - required the business floorspace of each live/work unit to be ready for occupation before the residential floorspace, and also the business use had to commence before the residential use;
- Condition 7 - restricted the business floorspace to Class B1 (e.g. offices, R&D or light industry); and
- Condition 8 - restricted occupation of the residential floorspace to a person employed in the business floorspace of that unit (or dependents etc).

However the council amended the description of development from that set out on the application forms to:

Removal of conditions 6, 7 and 8 from application FUL/MAL/11/00634 to allow for the approved 12 new houses with workshops to be occupied without any business/employment use.

It seems that officers mistakenly viewed the application as an attempt to remove the employment use altogether (as surmised by JTS Partnership in their note of a meeting with officers on 1 December 2011). The council refused the application on 12 September 2011 for the following reason:

The removal of conditions 6, 7 and 8 from application FUL/MAL/07/00842 is deemed to be unacceptable as it would result in permanently occupied dwellings outside and remote from a development boundary in an unsustainable location without justification for their siting in this rural area. The development would therefore be contrary to policies S2, H1, T1 and E6 in the adopted Maldon District Replacement Local Plan, and also to national advice contained within PPG3 and PPG13.

A copy of the Section 73 decision notice is included in **Appendix 5**.

In our opinion, the evidence submitted in support of the application was rather weak and the council's decision making process was confused. It is too late to appeal that refusal but we suggest that a fresh Section 73 application is submitted to remove these three conditions.

The council will assess the application against policies that protect employment land and other material considerations. It is likely that the council's emerging Local Development Plan will also seek to keep the employment designation on part of this site. Therefore, the submission will need to address the following:

- Evidence of being advertised "For Sale" by estate agents operating in the locality, and in local newspapers and commercial property journals circulated throughout the district and county, for a period of at least three months at a price to reflect its current lawful use. Confirmation of a lack of interest will

also be required;

- Evidence that few financial institutions will lend on live/work units;
- Appraisals to demonstrate that the appeal scheme is not viable compared to a wholly residential scheme of the same floor area;
- Evidence from the council's Employment Land Review (ELR) (March 2009) that identifies an oversupply of employment land in the district up to 2021;
- Reference to guidance in the National Planning Policy Framework (NPPF) that states that policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The NPPF goes on to state that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities; and
- Evidence confirming the council's lack of five year housing land supply (discussed in more detail in the housing section below).

Overview

Providing the above marketing and viability information is available, we are confident that we can work with your marketing agents and local estate agents to submit a robust policy argument to the council to overcome the previous reason for refusal on loss of employment grounds.

Submit application for housing

Once the live/work conditions have hopefully been removed, we suggest that an outline planning application is submitted seeking permission for the principle of a higher density wholly residential development on the site. At this stage, we anticipate that access only would be applied for (part of which has already been approved and built out). Details of scale, layout, appearance and landscaping would form the 'reserved matters' that would follow once outline planning permission has hopefully been granted. However, bearing in mind the planning history of the site and its Special Landscape Area designation, it is likely that we would need to indicate the proposed density at the outline stage and provide some illustrative plans and images showing the scale and layout. Input from a landscape architect to justify any visual impact would also help.

In addition to the visual material, the submission will need to include justification in policy terms and other 'material considerations':

- Justification that the proposed density is design-led and optimises the use of the site, whilst still respecting the character and appearance of the countryside, the designated Special Landscape Area and neighbours' amenity - The site is outside the adopted Bradwell settlement boundary and

also outside the proposed extended boundary that is being promoted in the emerging Local Development Plan. It is worth noting that the 12 house scheme (on a 4.45ha site) has a very low density of only 3.37 dph and the Inspector was satisfied that it would have an acceptable impact. For comparison purposes, even applying half of the council's current lower end density target of 30dph would yield over 50 houses, although this would be very optimistic for this site. We are carrying out further research on the typical densities that are being permitted in countryside locations. Once we have more justification, we will be able to liaise with your architects so that layouts are sketched up and you can run viability appraisals;

- Justification that the proposed level of affordable housing (or none) is the most that can be provided on the site and still render the scheme viable - The adopted policy requires up to 30% of dwellings on this site to be affordable and the threshold is 12 or more dwellings (or residential sites of 0.4ha or more). Looking forward, the council's preferred approach in their emerging Local Development Plan lowers the threshold to five or more dwellings (or a site area of at least 0.5 ha), and the level of contribution required on this site would be 25%. A further round of consultation is expected on the Local Development Plan in early summer 2013 and we it may be worth submitting formal representations to safeguard your position, in tandem with any application;
- Evidence that the additional traffic generated by more housing would be acceptable - The site is not particularly accessible to local facilities or services, or by public transport. At the appeal, the Inspector adopted a realistic approach and accepted that in rural areas there is more reliance on cars. He noted that the additional traffic generated by the 12 unit scheme would not be significant (compared to the six unit scheme) and concluded that the location was not so unsustainable as to justify refusal. We will need to rely on this;
- Evidence that there is a shortage of housing land in the district - For example, the Housing Land Supply Statement (September 2011) sets out the council's rolling five year housing requirement of 563 units between 2011 and 2017 and concludes that there is a deficit of 249 units;
- Justification as to why the council's Strategic Housing Land Availability Assessment (SHLAA) review, which is due this summer, should include the site - It was surprising that the site was discounted in the July 2012 SHLAA, bearing in mind it has an extant permission for 12 unit. It may also be prudent to submit formal representations on your behalf to promote the site through the SHLAA and the Local Development Plan this summer, in tandem with any planning application;
- Reference to the government's drive to increase house building - The NPPF requires all local planning authorities to provide five years' worth of housing against their housing requirements, with an additional buffer. Maldon District Council cannot currently demonstrate this; and

- Evidence that the appeal scheme houses are too large for the local market.

Overview

Overall, this site presents an opportunity to contribute further to the housing supply in the district over the next few years. We are confident that we can work with your architects, landscape architects, transport consultants and agents to submit a high quality desing-led application for a higher density residential scheme.

Progress alternative uses on site

It is important to exhaust all options to achieve open residential C3 development on this site, before having to look at alternative strategies that may be more acceptable in policy terms. For example, these could include concentrating all of the previously approved 'work' element in one place on the site, providing a community use instead of the business element, or providing 100% agricultural and essential workers' accommodation.

Review the Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is being rolled out across England and Wales. It is a tax on the gross internal floorspace of new development and is payable to local authorities upon commencement of development. The council's draft CIL charging schedule consultation is not expected until mid-2014 and adoption beyond that. Bearing in mind these timescales, hopefully you will not be liable to CIL. However, it will be important to keep abreast of progress and submit representations where appropriate because this non-negotiable payment will have financial implications for this site.

Engage with the council and community

Effective consultation with the council officers and councillors, the Parish Council, local amenity groups and neighbours will be key to the success of each stage of the planning strategy for this site. Firstly we suggest submitting a pre-application advice enquiry to the council, to introduce ourselves as a new team and explain our strategy to submit a fresh Section 73 application to remove the conditions. A face to face meeting would be useful and the council charges in the region of £720.00 (including VAT) for a meeting at their offices, followed up by written advice. If considered to be a 'Strategic Proposal', the fees would be £1,200.00 (including VAT), plus a negotiable fee for further advice and meetings.

A further pre-application enquiry, prior to submitting an outline application, would also be useful. A list of reports and drawings required for the pre-application advice enquiry is included in **Appendix 6**.

We hope that this appraisal is helpful and sets out a useful strategy to achieve a higher density wholly residential scheme on the site. We look forward to advising you further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C Wilberforce', written in a cursive style.

Caroline Wilberforce

Enc: Appendices 1 – 6 (as listed in letter)
cc: Simon Foster, Urban Matrix

Appendix 1

Reasons for refusal of application 07/00842, as set out in the Council's Decision Notice dated 26 November 2007:

1 The proposed development is considered to be unacceptable as it proposes uses upon land that are contrary to the land use allocation within the Development Plan. In addition, the proposed business floor space is considered to be an under utilisation of the developable area/plot size and therefore is considered not likely to make a positive contribution to the rural economy or job base within this part of the district which in turn may put pressure on the release of further land elsewhere on the district. The proposal would be contrary to policy E2 of the Maldon District Replacement Local Plan.

2 The site lies within an area where rural planning policies of restraint apply, as set out in policy S2 of the Maldon District Replacement Local Plan. This policy seeks to provide strict control over new buildings in rural areas beyond defined settlements. New development should be strictly controlled to that essential for agriculture, forestry or other rural uses specified in that policy. The proposed development of the site for purposes unspecified in policy S2 is contrary to the development plan. Furthermore, the development of this rural site for housing, remote from community services and essential support services/facilities and inaccessible by a range of means of transport, would represent an unsustainable form of development contrary to Maldon District Replacement Local Plan policies S2 and T1.

3 The proposed development, by reason of the siting, layout, form, size, appearance of the buildings, associated activities and domestic paraphernalia, would have a harmful and adverse effect on the character and appearance of this open, undeveloped rural site, to the detriment of the visual amenity of this countryside location, contrary to policies S2, BE1, CC6 and CC7 of the Maldon District Replacement Local Plan.

RECEIVED
24 JUN 2008



The Planning Inspectorate

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Mrs Laura Moorse
Maldon District Council
Planning Services
Council Offices
Princes Road
Maldon
Essex
CM9 5DL

Your Ref: FUL/MAL/07/00842
Our Ref: APP/X1545/A/08/2064100/NWF
Date: 23 June 2008

Dear Mrs Moorse

Town and Country Planning Act 1990
Appeal by Barion Homes
Site at Maldon Road, Bradwell-on-sea, CM0 7HY

I enclose a copy of our Inspector's decision on the above appeal.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website - www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

If you have any queries relating to the decision please send them to:

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Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

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E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

Sarah Hardy

*You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*





Appeal Decision

Site visit made on 14 May 2008

by **Simon Rawle** BA (Hons) Dip TP MRTPI
Solicitor

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
23 June 2008

Appeal Ref: APP/X1545/A/08/2064100

Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex CM0 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Barion Homes against the decision of Maldon District Council.
- The application Ref FUL/MAL/07/00842, dated 3 August 2007, was refused by notice dated 26 November 2007.
- The development proposed is 12 new houses with workshops.

Decision

1. I allow the appeal, and grant planning permission for 12 new houses with workshops at Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex CM0 7HY in accordance with the terms of the application, Ref FUL/MAL/07/00842, dated 3 August 2007, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No building shall be occupied until clear to ground level visibility splays of 2.4 metres x 160 metres to the west and 2.4 metres x 120 metres to the east have been provided either side of the new vehicular access. The visibility splay shall be retained in this form thereafter.
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), unless expressly authorised by this permission no development pursuant to the provisions of Class E and F of Part 1 and Class A of Part 2 of Schedule 2 shall take place.
 - 5) The development shall be carried out in accordance with the approved landscaping scheme shown on the approved plans, unless otherwise agreed in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation

of any of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 6) The business floorspace of each live/work unit shall be finished ready for occupation before the residential floorspace for each unit is occupied and the residential use shall not precede commencement of the business use
- 7) The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 8) The occupation of the residential floorspace of the live/work unit shall be limited to a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, or a widow or widower of such a person, or any resident dependants.

Main issues

2. I consider that the main issues in this case are:
 - Whether the proposed development accords with planning policies governing the location of new development and the effect of the proposal on the character and appearance of the area; and
 - Whether the proposal would result in the provision of development in an unsustainable location.

Reasons

3. The development plan includes the Maldon District Replacement Local Plan adopted in 2005. An important material planning consideration is that in 2004 the Council granted planning permission for a development for six live/work units. This scheme was granted permission despite Officers recommending refusal and it is clear from the evidence submitted that the Members were concerned that if planning permission was not granted the site would revert back to the previous use which was a maggot factory for bait.
4. The local plan allocates the appeal site for employment development with the appropriate use indicated as B1 mixed use housing. The emphasis of the proposed development is undoubtedly for housing with the vast majority of floorspace proposed as living accommodation with only a small proportion proposed for business use. As correctly pointed out by the Council, the business element associated with each unit would not be much larger than the proposed garage at each property.
5. Whilst I would prefer to see a mix with a greater proportion of business use, I cannot ignore the extant planning permission. This would provide six units where each unit would have a similar proportion of residential accommodation and business use as proposed here. Given the increase in units the appeal proposal would result in more B1 floorspace. In addition, in the approved

scheme whilst four of the units would be sited in a similar manner as proposed the other two units, located to the rear of the site would be set within substantial grounds of about 1.1 hectares each. Needless to say this would be an inefficient use of the land.

6. I have formed the view that in the event that I were to dismiss the appeal it is likely that the approved scheme would be implemented and it is therefore a material consideration of some weight. Whilst this proposal would add further housing floorspace, it would also add further B1 floorspace and would represent a more efficient use of the land. Given the designation of the appeal site for B1 mixed use housing, the fact that the Council have already accepted that a similar mix of floorspace would be appropriate for a six unit scheme and due to the existence of the fall back position which has a layout that covers the same area as the appeal proposal (albeit with larger garden areas), on balance I consider that the proposed use is acceptable.
7. As pointed out by the Council, Local Plan Policies S2 and CC6 seek to protect the countryside for its own sake and to protect the natural beauty of the District's landscape. This approach is consistent with the advice contained in Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS 7). This document emphasises the importance of the countryside and outlines that new house building in the countryside away from established settlements or from areas allocated for housing in development plans should be strictly controlled. PPS 7 seeks to protect the countryside for the sake of its intrinsic character and beauty. Moreover, the appeal site is located within the Blackwater-Colne Estuary Special Landscape Area (SLA). Within such an area Local Plan Policy CC7 seeks to ensure that development would conserve or restore the character of the area.
8. The appeal site is surrounded by open countryside and although it used to accommodate a maggot factory, this has been demolished. The character of the appeal site and its surroundings derives to a significant extent from its undeveloped appearance set within an attractive rural landscape. However, the appeal site has been allocated for a mix of B1 and housing. In addition, if implemented the extant planning permission would develop the entire appeal site and therefore it cannot be considered to form part of the open countryside.
9. Whilst the proposal would add some additional buildings this would be in the centre of the appeal site within an area previously proposed to be garden areas. As a result, taking account of the fall back position and the local plan designation I consider that the proposal would not have an unacceptable adverse impact on the character and appearance of the area. Nor would it have an unacceptable impact on the SLA.
10. I therefore conclude that the proposed development accords with planning policies which govern the location of new development and it would not have an adverse impact on the character and appearance of the area. Accordingly, the proposed development would accord with the relevant development plan policies and with the national planning advice contained within PPS 7.
11. I turn now to consider whether the proposal would result in the provision of development in an unsustainable location. Although, there are bus services which pass the appeal site, I accept that it is not particularly accessible to local

facilities or services. I have taken account of Local Plan Policy T1 as well as national planning advice which seek to promote sustainable development. However, *Planning Policy Guidance Note 13 - Transport (PPG 13)*, recognises that it is important to promote adequate employment opportunities in rural areas and that a realistic approach should be adopted about the availability or likely availability of alternatives to access by car.

12. As outlined above, taking all matters into account the proposed live/work units would be an acceptable use on the appeal site. The proposal would make more efficient use of a site designated for B1 mixed use housing in comparison to an extant planning permission. On that basis and by adopting a realistic approach it is reasonable to expect that within a rural area there would be more reliance on private cars for transport. Given that this proposal would only add an additional six work/live units I do not consider that significant additional traffic would be generated. I therefore conclude that the proposal would not result in the provision of development in such an unsustainable location as to justify dismissing the appeal.
13. I have taken account of all other matters raised including a previous appeal decision which has been brought to my attention by the Council. Whist consistency in decision making is important each proposal must be determined on its own merits and I have done so here. Moreover, having read the other decision it is clear that there are significant and material differences. Most importantly, in that case the site was considered to be within the open countryside where policies of constraint applied. Here, the site is designated for B1 mixed use housing. As a result the planning context is entirely different and this lessens the weight of the previous decision as a material planning consideration.
14. I have considered the conditions suggested by the parties having regard to the advice in Circular 11/95 – The Use of Conditions in Planning Permissions.
15. To protect the character and appearance of the area it is necessary to ensure that the proposed buildings are constructed using appropriate materials and I shall impose a condition in this regard. Given the setting of the appeal site, there are exceptional circumstances in this case to restrict permitted development rights in relation to outbuildings, hardsurfaced areas and means of enclosure. It is necessary to ensure that the appeal site is appropriately landscaped and I shall impose a condition in this regard. In the interests of highway safety it is necessary to impose a condition in relation to the access arrangements.
16. Furthermore, it is necessary and reasonable to ensure that the B1 element is provided and that proper controls are included to ensure it is retained for that use in the future. In relation to Condition 7, the appellant has suggested some additional wording at the end. However, the current wording is clear and unambiguous. It is always possible for an application to be submitted in the future if a change of use is required. Such an application would be considered on its own merits at that time. The appellant has also raised concerns about the wording of Condition 8 and has suggested a significant change to the wording. However, I cannot accept the proposed change. The intention of the condition is clear and unambiguous. It is necessary to have a tie between the

work and live elements and the condition is broadly similar to the staff accommodation model condition 46 in Circular 11/95. To my mind this gives greater flexibility than the condition suggested by the appellant as it allows for continued occupation after retirement or for the widow or widower in the event that the person who runs the business dies. It also contains the usual provisions for dependants. As a result, I have not amended the wording of the condition.

17. In the interests of precision and enforceability, I have adapted the suggested conditions having regard to the advice in Circular 11/95.
18. For the reasons given above I conclude that the appeal should be allowed.

S.M Rawle

INSPECTOR



The Planning Inspectorate

v7.2

An Executive Agency in the Department for Communities
& Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear,

straightforward language, avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.



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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

Website www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.



The Planning Inspectorate

v5.3

An Executive Agency in the Department for Communities
& Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 947 6655; Website: www.courts-justice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.



Contacting us

High Court Section
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk



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MALDON DISTRICT COUNCIL

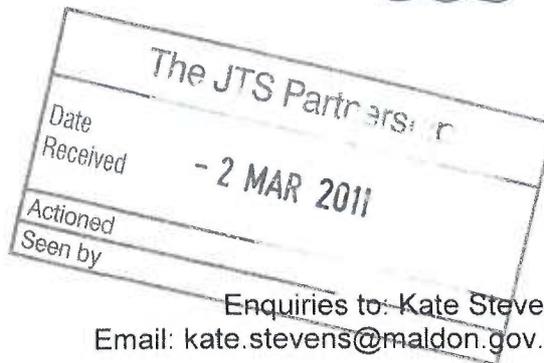


Princes Road
Maldon
Essex CM9 5DL

Our ref FUL/MAL/07/00842
Your ref

25/02/11

Mr S Marten
The JTS Partnership LLP
Number One
The Drive
Great Warley
Brentwood
Essex.
CM13 3DJ



Enquiries to: Kate Stevens
Email: kate.stevens@maldon.gov.uk

Dear Mr Marten,

APPLICATION NO: FUL/MAL/07/00842

PROPOSAL: Details of external buildings materials details and materials schedule

LOCATION: Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex.

CONDITION 2

Condition 2

The external materials and details identified within the application upon 7493/mh/21.02.11 are considered appropriate for the location and development and can now be approved. This is on the understanding, as confirmed by your email dated 22 Feb 2011, that the slate is natural slate.

Works should be carried out in accordance with the details as submitted.

If you have further queries, please do not hesitate to contact me.

Yours sincerely

Debi Bunkell
Development Control Team Leader



Appendix 4

Correspondence regarding implementing bell-mouth junction on Maldon Road:

- Letter from The JTS Partnership LLP to Essex County Council dated 17 February 2011 (including enclosure – Proposed site plan showing visibility splays 7493/01)
- Letter from Walker Associates to Essex County Council dated 17 March 2011 (including enclosures – Highway Junction Works C6025/CE1 and Pavement & Drainage Construction Details C6025/CE2)
- Letter from Essex County Council to Walker Associates dated 21 March 2011 (including enclosures regarding testing materials, and site inspection procedures)
- Letter from EJ Taylor & Sons to KRD Management dated 4 April 2011
- Email from Ken Bass to Barion Homes dated 5 April 2011 (and attachment – revised quotation)
- Letter from Essex County Council to Barion Homes dated 11 April 2011
- Email from Ken Bass to Barion Homes dated 4 May 2011
- Email from Ken Bass to Barion Homes dated 17 June 2011
- Letter from The JTS Partnership to Maldon District Council dated 22 June 2011 (including enclosures – Letter from Essex County Council to Barion Homes dated 11 April 2011, Letter from Richard Dewick (Trans) to Barion Homes dated 21 June 2011, Soil Test Certificate, Highway Junction Works C6025/CE1, Pavement & Drainage Construction Details C6025/CE2, Letter from Barion Homes to Essex County Council dated 8 April 2011)
- Letter from The JTS Partnership to Maldon District Council dated 26 July 2011

13 SEP 2011

MALDON DISTRICT COUNCIL

Princes Road, Maldon, Essex CM9 5DL

Telephone: MALDON (01621) 854477

FAX: (01621) 852575

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION REFERENCE

FUL/MAL/11/00634

PROPOSAL

Removal of conditions 6, 7 and 8 from application FUL/MAL/07/00842 to allow for the approved 12 new houses with workshops to be occupied without any business/employment use.

LOCATION

Drinkwater Farm Maldon Road Bradwell-On-Sea Essex
(UPRN - 200000917246)

NAME OF APPLICANT:

Barion Homes

NAME AND ADDRESS OF AGENT:

Mr Sean Marten, The JTS Partnership
LLP
Number One
The Drive
Great Warley
Brentwood
Essex
CM13 3DJ

DECISION DATE 12 September 2011

In pursuance of the powers exercised by them as Local Planning Authority this Council having considered your application to carry out the above development in accordance with the submitted drawing(s) referenced JTS/7341/01, do hereby give notice of their decision to:

REFUSE PERMISSION

for the said development for the reasons appended to this Notice.



JENNIFER CANDLER
HEAD OF PLANNING SERVICES



IMPORTANT: PLEASE REFER TO THE NOTES ATTACHED TO THIS DOCUMENT

FUL/MAL/11/00634

Removal of conditions 6, 7 and 8 from application FUL/MAL/07/00842 to allow for the approved 12 new houses with workshops to be occupied without any business/employment use.

Drinkwater Farm Maldon Road Bradwell-On-Sea Essex

REASON FOR REFUSAL

The removal of conditions 6, 7 and 8 from application FUL/MAL/07/00842 is deemed unacceptable as it would result in permanently occupied dwellings outside and remote from a development boundary in an unsustainable location without justification for their siting in this rural area. The development would therefore be contrary to policies S2, H1, T1 and E6 of the adopted Maldon District Replacement Local Plan, and also to national advice contained within PPS3 and PPG13.



NOTES:

Your Right of Appeal

If you disagree with the decision of the Local Planning Authority to refuse permission for the proposed development you can appeal to the Secretary of State. If you want to appeal, you must do so within six months of the date of this notice, using a form that you can get from:

The Planning Inspectorate, Appeals Registry, Room 3/15A, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

The Secretary of State can allow a longer period for giving notice of an appeal, but this will only be done where there are special circumstances that excuse the delay in giving notice beyond the six month period.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development, having regard to the relevant statutory provisions and any relevant directions. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notice

If following this decision of the Local Planning Authority to refuse permission to develop land, or any decision of the Secretary of State, the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that the Council purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Appendix 6

Maldon District Council - Pre-application advice enquiry

List of reports and drawings required:

- Site Location Plan (1:2500) with site outlined in red
- Existing Site Layout Plan showing the site or building as exists, including existing uses/floor areas
- Proposed Site Layout Plan showing how buildings/uses would be located and how access would be obtained
- Sketch drawing and photographs of the site as existing
- Elevations and/or sketch plans of the development being proposed
- Draft Design and Access Statement
- Details of consultants already undertaken (i.e. neighbours, the Highways Authority)