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CHARTERED TOWN PLANNERS
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Rebuttal Proof of Evidence (Planning)

of Carl Stott BA (Hons) MA TP (UC) MRTPI

Appeal against the refusal of Outline Planning Permission for a residential development with associated infrastructure for up to 30no. dwellings, including detail of associated point of access. All other matters (landscaping, scale, layout and appearance) reserved.

Land off Leconfield Road, Nanpantan, Loughborough.

On Behalf of Bowbridge Homes (Nanpantan) Ltd.

PINS ref: APP/X2410/W/22/3304644 LPA ref: P/20/2199/2

Client:

Bowbridge Homes (Nanpantan) Ltd.

Project:

Land off Leconfield Road, Nanpantan

Report Title:

Rebuttal Proof of Evidence (Planning)

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Date:

14th March 2023

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APPENDIX 1: Landowner’s Legal Opinion on DMMO Application

SECTION 1: INTRODUCTION

- 1.1 This Rebuttal Proof of Evidence (Planning) follows my review of Mr Salt's Planning Evidence for Charnwood Borough Council ["the Council" or "the LPA"], as I believe it would be helpful to highlight two matters, as set out below:
 - a) Clarification of the sequence of events relating to the submission of updated plans and documents during the LPA's consideration of the Application for outline planning permission between December 2020 and March 2022.
 - b) Update on the Appellant's Legal Opinion on the Definitive Map Modification Order ["DMMO"] application.
- 1.2 These two matters are considered, in turn, in the following sections of this Rebuttal Proof of Evidence (Planning).

SECTION 2: BACKGROUND TO UPDATED PLANS & DOCUMENTS

- 2.1 This Section sets out the sequence of events associated with the preparation and submission of updated plans, drawings and associated documentation during the LPA's consideration of the Application.
- 2.2 Following the validation of the Application for outline planning permission on 23rd December 2020, a comprehensive package of updated information was submitted to the LPA on 26th August 2021 – a copy of the covering email being included as CD.8.8 in this Appeal. The information included, inter alia, an updated Parameter Plan (n1249_010B) [CD.2.5] and an updated Illustrative Layout Plan (n1249_007F) [CD.2.4].
- 2.3 An updated Tree Survey prepared by CBE Consulting was also submitted as part of that package of updated information – this referenced P2164/0521/02 Final v3 17.08.2021, which superseded the Tree Survey referenced P2164/1020/02 Final 23.11.2020 that accompanied the Application at the time of its original submission. The original Tree Survey, dated 23.11.2020 is referenced as CD.2.15 for the purposes of this Appeal, whilst the updated version, dated 17.08.2021, is referenced as CD.2.15a.
- 2.4 It became apparent to the Appellant whilst reviewing draft conditions on 8th February 2022 prior to the Application being considered by the Council's Plans Committee that the LPA had not taken account of the updated Tree Survey [CD.2.15a], as the draft Condition 3 (effectively a 'plans compliance' condition) at that time referred instead to the version that accompanied the Application at the time of its original submission [CD.2.15]. The LPA advised in an email of 9th February 2022 that it had no record of having received the updated Tree Survey and I expect this may have been related to the handover of the Application from its second to third LPA case-officer. Despite having been submitted during the Application process therefore, the Tree Survey listed in Condition 3 of the Plans Committee Report [CD.3.1] is that as originally accompanied the Application rather than that which was subsequently submitted.
- 2.5 The aforementioned draft Condition 3 also incorrectly listed the Parameter Plan as n1249_010A, as accompanied the Application when originally submitted [CD.1.6] rather than the version subsequently submitted during the Application process, namely n1249_010B [CD.2.5].
- 2.6 It also became apparent to the Appellant at this time that other drawings and documents that had been updated and submitted so as to align with the aforementioned updated Parameter Plan [CD.2.5] and Illustrative Masterplan [CD.2.4] might also have been missed by the LPA, namely:
 - a. An updated On-site Highway General Arrangement Drawing, referenced ADC1905-DR-100 Rev P5, which superseded earlier the Rev P4 version;

- b. An updated Transport Statement, referenced ADC1905-RP-A Rev P5 10.08.2021, which superseded the earlier Rev P4 18.11.2020 version; and
 - c. An updated Flood Risk Assessment & Drainage Strategy Report, referenced ADC1905-RP-B Rev P5 12.08.2021, which superseded the earlier Rev P4 18.11.2020 version.
- 2.7 This was subsequently confirmed by the LPA, which, advised that it had no record of having received these updated documents despite them being submitted shortly after the comprehensive package of updated information as referenced above in Paragraph 2.2 and I, again, expect this may have been related to the handover of the Application from its second to third LPA case-officer.
- 2.8 Of the updated documents listed above in Paragraphs 2.6 (a), (b) and (c), only (a) – the On-site Highway General Arrangement Drawing – was listed in the draft conditions in the Plans Committee Report [CD.3.1] as a ‘compliance’ document, though with reference to its earlier Rev P4 version rather than the updated Rev P5 version. The draft conditions in the Plans Committee Report [CD.3.1] did not include any reference to the Transport Statement or Flood Risk Assessment & Drainage Strategy Report.
- 2.9 The updates included in the Rev P5 versions of the documents listed above in Paragraph 2.6 (a), (b) and (c) were minor in nature and related to the alterations to the Illustrative Layout Plan [CD.2.4], which were principally concerned with providing a greater soft buffer to the adjacent listed building. In this respect, the proposed access and spine road shown in the Rev P5 version of the On-site Highway General Arrangement Drawing does not differ from that of the earlier P4 version; the conclusions of the Rev P5 version of the Transport Statement do not differ from those of the Rev P4 version; and the conclusions of the Rev P5 version of the Flood Risk Assessment & Drainage Strategy Report do not differ from those of the P4 version, albeit its appended Micro Drainage calculations were updated accordingly.
- 2.10 When advised of the minimal extent of the updates to these documents, the LPA’s case officer was reluctant to reconsult on them prior to the Plans Committee but suggested they were instead re-submitted as a point of record for the information of officers – this being undertaken on 23rd February 2022 along with a covering email, which is included as CD.8.35 in this Appeal.
- 2.11 The three documents were submitted by the Appellant as part of the initial Appeal Questionnaire but, for completeness, it is proposed that the updated On-site Highway General Arrangement Drawing, Transport Statement and Flood Risk Assessment & Drainage Strategy Report as referenced above in Paragraph 2.6 (a), (b) and (c) are included as Core Documents in the context of the aforementioned covering email referenced CD.8.35, namely as CD.8.35a, CD.8.35b and CD.8.35c respectively.

SECTION 3: UPDATE ON THE LANDOWNER'S LEGAL OPINION ON THE DMMO APPLICATION

- 3.1 Paragraph 3.1.1 of the Nanpantan Ward Residents' Group's Statement of February 2023 refers to an application having been made to 'apply for a Public Right of Way to be established' on the Appeal Site.
- 3.2 The Statement of Common Ground [CD.4.1.1] confirms at Paragraph 7.15 that the Appeal Site is in private ownership with no public access and with Paragraph 7.23 concluding that, notwithstanding this, ongoing consideration for a new Public Right of Way within it is not considered to be restrictive to the determination of the Appeal.
- 3.3 Paragraphs 2.6, 5.26 and 5.27 of my Proof of Evidence (Planning) [CD.4.2.4] refer to the application for a DMMO – itself referenced as CD.5.1.25 in this Appeal - which has been submitted to Leicestershire County Council ["LCC"] by third parties in this respect. My Proof of Evidence confirms that the landowner (the Helen Jean Cope Charity) will be objecting to the DMMO application through the appropriate channels.
- 3.4 In this latter respect, a Legal Opinion has now been prepared by Ruth Stockley of Kings Chambers, dated 13th March 2023, for submission to LCC in response to its preliminary consultation, which runs until 14th March 2023. A copy of this Legal Opinion is included in Appendix 1 of this Rebuttal Proof of Evidence (Planning) and finds that there is not credible evidence to demonstrate a reasonable allegation that the specific line of the claimed route has both been subject to uninterrupted public use for 20 years, or for any period to demonstrate dedication at common law, and that such use has been as of right throughout any such period. The Legal Opinion also finds that, on the contrary, it appears the Application is yet a further attempt to seek to have some form of footpath recorded over the field, no doubt motivated by the Appeal Proposals.
- 3.5 The Legal Opinion concludes that the appropriate course of action would be for LCC to determine not to make the DMMO sought.

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