

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 25 MAY 2011

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

6. PROPOSED MIXED USE REDEVELOPMENT AT FORMER  
HERTFORD POLICE STATION, WARE ROAD, HERTFORD:  
PLANNING APPEAL

WARD AFFECTED: Hertford – Kingsmead

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**Purpose/Summary of Report**

- To enable the committee to review its position in relation to the refusal of the above proposal which is now subject to appeal.

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| <b><u>RECOMMENDATION FOR DECISION:</u></b> that |   |
| <b>(A)</b>                                      | the Council does not continue to contest the issue of the sequential test for the proposed hotel at appeal and confirms to the Planning Inspectorate that it will be offering no evidence in relation to this matter. |
| <b>(B)</b>                                      | Accordingly the appellant is invited to re-submit the planning application for consideration.   |

1.0 Background

1.1 Some Members may recall that the planning application for the development proposed by GML Architects for the demolition of existing police station buildings and construction of new mixed use development comprising 90 residential flats, 36 houses, 80 bed hotel, 60 bed nursing home, 2 retail units and nursery, together with underground and off street parking for 258 cars and 107 cycle spaces, was reported to the 15 December 2010 meeting of this Committee. The Committee report relating to the application is attached as Essential Reference Paper B. At that meeting Members resolved that permission should be refused. The reason for refusal was as follows:

*The applicant has failed to prove that there are no sequentially more suitable sites in Hertford or Ware likely to be capable of meeting the same requirements, in respect of the hotel use, as the application is intended to meet. The proposal does not therefore meet the tests of national planning policy in PPS4 and is contrary to Policy STC6 of the adopted East Herts Local Plan Second Review April 2007.*

- 1.2 In recommending refusal, Officers identified 3 sites within Hertford and Ware which were considered to be sequentially preferable to the application site. An appeal has now been submitted to the Planning Inspectorate in relation to this decision. The appeal was received on 7 April 2011. The appeal is to be dealt with by a hearing. No date for the hearing is currently established.
- 2.0 Reason for refusal – Sequential test of the proposed hotel
- 2.1 Following receipt of the appellants ground of appeal, Officers have approached external independent experts with experience in relation to sequential test matters for further advice in relation to the appeal. Having reviewed the PPS4: Sequential and Impact Analysis Report submitted with the application, together with the appeal documentation and the Council's Committee Report, they have commented that they consider that the appellant can make a strong case against the Council's refusal in regards to the suitability and viability with 2 of the sites. In respect of the remaining site, although the case for the Council may be stronger, they consider that it will be challenging to defend, as the argument will be a detailed technical and commercial one.
- 2.2 They comment that, notwithstanding the concerns with regard to the strength of case on behalf of the appellant, in order to appropriately defend the appeal, considerable work would need to be undertaken in respect of architectural input with knowledge of budget hotels, together with detailed cost consultancy to demonstrate that what is envisaged is feasible and also capable of being viable. It is anticipated that such an exercise would incur substantial costs. Additionally, it would offer no guarantee of success, as the outcome may be that it substantiates the position of the appellant.
- 2.3 On reassessment of the proposal the likelihood of success for the Council at appeal is limited. To establish with greater certainty whether there is a substantive case, involves the engagement of

specialist assistance at appropriate and substantial cost. The timescale for the exchange of Statement is 19<sup>th</sup> May 2011, although the Council have requested an extension to this deadline beyond the date of the Committee. Even if such an extension is agreed, and Members concur with the recommendations in this report, appellant may argue that the Council have already acted unreasonably and seek costs from the Council.

- 2.4 If the Council decide to defend the appeal, the technical and commercial evidence subsequently only serves to support the appellant's case, and the Council reassesses its position at a later stage, then it may well be claimed that the Council has been further unreasonable.
- 2.5 Therefore, the recommendation is that the Council does not continue to contest the reason for refusal. If Members choose this approach, Officers would invite the appellant to resubmit a formal planning application for fresh determination as this issue was the only reason for refusal. It will be necessary to inform the Planning Inspectorate that the Council will be advancing no further case in relation to the appeal and there would remain a further risk of cost claims. The risk of this is reduced if the Council reassesses its position as soon as possible, and gives notice of its intentions at this early stage.
- 2.6 Members should note that third parties have not been consulted on this Report; however comments and objections to the proposal are outlined at 5.0 in Reference Paper B. If a new application were to be submitted then third parties would be formally consulted and given the opportunity to comment at that stage.

### 3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within Essential Reference Paper 'A'.

#### Background Papers:

Planning application: 3/09/1728/FP.

Contact Member: Portfolio holder for Development Control Matters

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## ESSENTIAL REFERENCE PAPER 'A'

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| <p>Contribution to the Council's Corporate Priorities/ Objectives</p> | <p><b>Fit for purpose, services fit for you</b><br/> <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i></p> <p><b>Shaping now, shaping the future</b><br/> <i>Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.</i></p> <p><b>Leading the way, working together</b><br/> <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>  |
| <p>Consultation:</p>  | <p>There has been no further consultation prior to the preparation of this report. The information submitted as a result of the application has been reassessed.</p>  |
| <p>Legal:</p>   | <p>None identified</p>  |
| <p>Financial:</p>   | <p>All cost implications relate to revenue costs. There are no ongoing cost implications in relation to this application beyond the life of the appeal.</p> <p>If a decision is made to defend the appeal, further information will be required to support the Councils position and substantial costs will be incurred as a result. It is difficult to predict what these may be as they would relate to the scale and type of information sought but independent advice suggests the costs incurred could be substantial.</p> <p>The second financial implication relates to the potential for a judgement to be reached that the Council has acted in an unreasonable way. Costs claims on this basis usually relate to the time involved in the appellant formulating and making their case at the appeal. Professional costs can be high (often over £100 per hour). The Council may also be required to meet a proportion of the appellant's legal costs.</p> |
| <p>Human Resource:</p>  | <p>None identified</p>  |
| <p>Risk Management:</p>   | <p>The risks to the Council form the main basis for this report.</p>  |