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Warwick District Council
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Dear Sirs

Objection to the Revised Development Strategy issued June 2013

Our Client: Leamington & County Golf Club

We are instructed by the Leamington & County Golf Club ("**Golf Club**") and are duly authorised by them to submit a formal objection to the Revised Development Strategy intended to inform the new Local Plan.

The main focus of this objection relates specifically to the land at Fieldgate Lane/Golf Lane which is identified by the Revised Development Strategy under site reference 11 and equates to an area of 4.01 hectares.

Our clients' primary objections are in relation to environmental issues caused by the development of the land at Fieldgate Lane/Golf Lane and the associated impacts upon the Golf Club. Our clients' secondary concerns are that the use of this site for housing has not been fully considered

Assessment of Site

The land at Fieldgate Lane/Golf Lane lies on the periphery of Whitnash, adjacent to the Golf Club. Under the new local plan, this site has been indicatively selected as a preferred area for development.

In terms of the District Council's assessment of this site, the following applies;

- This **site falls within an Area of Restraint under the current local plan**. Under policy '*DAP2 Protecting the Areas of Restraint*', the following is stated:

"It is important to protect the areas of restraint from development proposals that could alter the predominantly open character of these designations [emphasis added]. Their value and importance lies in their contribution to the structure and character

of the urban area, providing open areas in and around towns and preserving open wedges that separate particular elements of the urban form. The areas of restraint, although not additional areas of Green Belt, also serve to prevent surrounding villages merging into towns preventing urban sprawl.”

It would seem premature and ill-considered for these sites to progress immediately from 'areas of restraint' to 'areas of preferred development' under the new local plan. Although outside the scope of this objection, we are aware of a planning application has been made for 94 units. This will be dealt with separately, but for the purposes of this objection we would perceive that planning application to be premature. In the context of this objection the Local Planning Authority should **not** be influenced by the proposed development when assessing the responses to this statutory consultation in deciding whether to allocate Fieldgate Lane in the local plan. As highlighted in the current local plan, the District Council should be protecting this site from unsuitable development, not assigning it for the same.

- There is a need for further deliberation to be given to the **justification for the use of this site**, which at present, does not appear fully considered.

At present the justifications for the development of this site are as follows:

- There is no existing Brownfield capacity to meet the land supply demand; Greenfield sites must therefore be allocated for development.
- The landowner for this site has expressed a willingness to release the land
- The site is described as sustainable due to its proximity to the current services and facilities in the adjacent urban areas
- This site is not allocated as green belt land

Whilst all of these points may be valid, they do not fully explain the need to develop this particular site. From the information stated, it would appear that the focus on the allocation of this site has been pre-decided based on the landowner's preference to sell the land for development. The remaining points would all apply equally to most sites on the southern urban fringe of Leamington Spa. We would therefore suggest that consultation to date has focussed on the justification for the use of such sites, as opposed to the evaluation of potential sites generally. In our clients' opinion, this is an inherently flawed approach. The local planning authority is therefore put to proof to properly justify allocation of site 11 in favour of other sites.

- The **number of units proposed for this site is inconsistent with the requisite neighbourhood edge densities**. In order to protect adjacent open land and wildlife, it is a necessity that any planned development includes a significant provision of public open space to form a barrier between the development and the open countryside. If the totality of this site was developed then at best the density would be 25dph. Given the requisite open space, which is effectively

undevelopable land, the actual density for this development site will most likely be in excess of 35dph. This is in no way consistent with the District's Council's policy on housing density.

- The **physical restraints** (in particular vehicular access) identified by the District Council is such that the site should not be considered as preferred for development. The potential impact on the worsening highway safety at junction of Golf Lane and Whitnash Road and the potential impact of the junction of Heathcote Road and Tachbrook Road should not be considered acceptable. The existing infrastructure is currently exhausted and there is very limited capacity for expansion. This point is further expanded below.
- The **impact of the proposed development site on the Golf Club** has not been evaluated in any depth. This point is further expanded below.

Impact on Golf Club

Given the nature of our client's business, there is a risk of stray golf balls flying into the proposed development site. If housing development is proposed on the land at Fieldgate Lane/Golf Lane, there is a propensity for stray golf balls to cause considerable damage and annoyance to those new residents, their property and the impact on them enjoying the gardens for children and social activities within their own curtilages. The quality of life may therefore be impaired. Historically there have been a number of incidents whereby property has been damaged by stray golf balls and the further development of Fieldgate Lane would only worsen the situation.

The preferred option for the land at Fieldgate Lane/Golf Lane may have an undesired effect on the commercial operation of the golf course through the very real possibility of creating a statutory or private nuisance of straying golf balls from our client's site. There is therefore a genuine concern by our client that if residential development is allowed on the land at Fieldgate Lane/Golf Lane it will attract complaints to District Council's Environmental Health and may possibly also lead to private nuisance actions per se against the golf course. Such undesirable consequence will impact on the golf club's commercial operation.

At present Golf Lane and dwellings backing on to the Golf Club, are protected by dense tree coverage implemented to mitigate incidence of damage. Whilst occasional golf balls still pass through onto Golf Lane, this mitigation is largely successful. That said, on occasions of failure of the 'tree screens', golf ball damage to local property has come at significant cost to the Golf Club.

Due to the current layout of the course and the absence of a 'tree screen' adjacent to the proposed development site, incidents of damage would be far more prevalent. This poses a significant and understandable concern to our client as the associated costs would be considerable.

It is settled law that an environmental prosecution or abatement action can still be pursued, for example by the District Council against an established outfit such as the Golf Club, which precedes any development.

The following recent Court of Appeal case highlight the possibilities that may be open to third parties and council's in respect of statutory and private nuisance actions;

Jackson LJ gave the leading judgment in **Coventry (trading as RDC Promotions) v Lawrence and Shields [2012] EWCA Civ 26**, summarised the case law on nuisance and planning permission.

He said the grant of planning permission "may change the character of the locality" and it was a "question of fact in every case" whether the grant and implementation of planning permission had that effect.

If the character had changed, the question of whether activities constituted a nuisance "must be decided against the background of its changed character" and a consequence may be that "otherwise offensive activities in that locality cease to constitute a nuisance".

The area surrounding Fieldgate Lane/Golf Lane is a golf course, the character of which is synonymous with outdoor sports and leisure. There is therefore a genuine concern by our client that any residential development on this site will trigger complaints to the District Council under the Environmental Protection Act 1990.

Other cases that support this premise, and which we intend to rely on in support of our objections, are as follows;

- ***Wheeler v Saunders Ltd [1995] 2 ALL ER 697***
- ***Gillingham Borough Council v Medway (Chatham) Dock Co Ltd [1993] QB 343***
- ***Attorney-General v PYA Quarries Ltd***

Highways

The Revised Development Strategy consultation document states;

"It is important that the additional traffic generated as a result of new development is mitigated".

The road network in the immediate vicinity and beyond the land at Fieldgate Lane/Golf Lane is not sufficient to withstand the additional traffic proposed. Under the current proposal, mitigation and speed reductions are suggested as a viable solution to the transport issues. Upon review of the 2013 Phase 3 Strategic Transport Assessment and the Phase 2 Assessment, it would appear that such proposals are essentially flawed. Therefore very little can be done to improve local highway infrastructure that is crucial to ensure that impact from any proposed development can be negated sufficiently.

Both assessments make no reference to the issues of constricted capacity as a result of on street parking in the vicinity to the development. We are reliably informed by our client that on street parking is prevalent in these areas. This will seriously impede access to the proposed development and should be considered in further detail.

It is a matter of fact as to the current capacity of the local road network surrounding the land at Fieldgate Lane/Golf Lane. The District Council accepts these roads are struggling to cope with the current capacity and in particular the Tachbrook Road/Harbury Lane Junction already has heavy traffic loads which result in long delays. The District Council is acutely aware of this and any further development will compound the current situation. As set out above, the District Council has failed to address how it will overcome the impact on the existing infrastructure given that there is real and credible concern on the inability to deliver sustainable development in Fieldgate Lane

Further, and in the alternative, it is our view that the level of contributions that would be needed in order to make the suggested highway infrastructure improvements feasible (if this can be shown to be possible-which we strongly dispute) may in any event not be viable. The uncertainty surrounding the economy and the ability to promote viable development is becoming increasingly difficult.

The National Planning Policy Framework at paragraph 29 states;

“Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”.

The current transport infrastructure the land at Fieldgate Lane/Golf Lane clearly cannot cope without sustainable solutions to accommodate additional need to travel (it is our view there is limited scope for this). The District Council has not addressed how to deal with additional demand that will be generated by the preferred option to allocate the land at Fieldgate Lane/Golf Lane, given that there is currently an identifiable traffic and road safety problem.

Inspector’s report Warwick District Local Plan 1996-2011 Inquiry – Inspector’s Report

In addition to the reasons set out above, the Inspector’s Report on the objections to the Warwick District Local Plan 1996-2011 agreed that this area is **not** suitable for development. Fieldgate Lane / Golf Lane is identified for development purposes as an area of restraint; this development would go some way and set a precedent for infilling between the two urban areas which would eventually merge. The Inspector agreed that the development off Golf Lane **“would be clearly seen from southern parts of Whitnash where the land contributes to the rural setting of the town”**. He goes on to say **“it would also, I feel, be intrusive in long range views from east of the railway line.”** The Inspector further agrees that the land has a role to play in the structure and character of this part of Whitnash and helps to prevent urban sprawl.

In his overview the Inspector specifically states that the **Land at Golf Lane sites should not be allocated for housing.** We do not see how the factual situation has changed since the Inspector made his findings. No evidence has been provided by the District Council to usurp the Inspector's findings. In context we remind the District Council that such allocation will need to be evidence based – particularly in light of the fact the District Council is going against planning inspectors' findings.

Great Crested Newts

We are instructed by our client that Great Crested Newts have been identified within the vicinity of the land at Fieldgate Lane/Golf Lane. There is therefore a significant chance of the presence of these protected species on the land at Fieldgate Lane/Golf Lane.

As you will no doubt be aware, the great crested newt is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2010 making it a European Protected Species. The District Council is therefore obliged by statute to have regard to the requirements of the Habitats Directive.

It is an offence to deliberately disturb a species protected under the Habitats Directive. Further, pursuant to Article 12(1) of the Habitats Directive the Council is under strict obligation to take requisite measures to establish a system of strict protection for the Grey Crested Newts including systems to prevent:

- all forms of deliberate capture or killing of specimens of these species in the wild;
- deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- deliberate destruction or taking of eggs from the wild; and
- deterioration or destruction of breeding sites or resting places.

If the Council is minded to approve development at Fieldgate Lane/Golf Lane then appropriate measures need to be taken to comply with all statutory obligations. We highlight the case of ***Morge (FC) (Appellant) v Hampshire County Council [2011] UKSC 2*** which found that a Planning Authority must be satisfied that conditions attached to a planning permission must provide the requisite protection. Should the council be concerned that development is likely to offend Article 12(1), by say causing the disturbance of a species, then it must also consider the likelihood of a licence being granted by Natural England to require a plan of action to mitigate any impact on these protected species.

Miscellaneous

The local services such as fire, police and the hospitals are all currently located north of the river and would find it difficult to access the site given the traffic impediment at present. We understand these services may be further stretched and even more difficult to access with further development of the area. We further understand the emergency services will make this point separately.

In addition the local facilities such as schools, libraries and open spaces and other infrastructure, will struggle with the impact of proposed development. The District Council has not identified how it proposed to mitigate any such impact. We put the District Council to proof.

The character of the area in Whitnash will be severely altered by the urban sprawl proposed. Currently the areas identified provide a green area between towns which is enjoyed by local residents. The proposed development site would destroy the open countryside of Whitnash and demonstrate overdevelopment in an unsustainable location in many respects, as identified above.

Summary

Leamington & County Golf Club is not objecting in principle to the need for additional housing, but is objecting to the area identified at Fieldgate Lane/Golf Lane. This development would have a hugely negative impact on the vicinity if developed for the reasons set out above

Further, it is also doubtful that the Revised Development Strategy will pass any test of soundness. The District Council appear to have ignored the Inspectors report to the Warwick Local Plan 1996-2011 which upholds the fact that Fieldgate Lane/Golf Lane should be protected as an areas of restraint and that no housing development should take place. The Inspectors opinion was such that these sites are unsuitable and unsustainable for housing. The Inspector's Report will constitute a material planning consideration in the formulation of the new Local Plan and there is no factual, practical or legal reason why the District Council should **not** attach significant weight to the Report. Given there does not appear to be any real change in terms of the facts relating to this site, it therefore places the District council in position whereby it cannot lawfully ignore the Inspector's findings, unless the District Council is able to justify its proposal to allocate to which we put the District Council to proof given that we are not aware of any evidence base which the District Council seeks to rely on..

The District Council itself has accepted there is a serious issue with the likely impact on the existing infrastructure and if the District Council is not willing to underwrite the desired infrastructure then, there is absolutely no guarantee that the appropriate infrastructure will be delivered, thereby calling into question the ability to deliver and the sustainability.

The District Council is therefore invited to reconsider suitable alternative sites and justify through evidence its proposed allocation of Fieldgate/Golf Lane.

Yours faithfully


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