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To: "catherine.linford@cambridge.gov.uk" <catherine.linford@cambridge.gov.uk>
CC: Sara Saunders <Sara.Saunders@cambridge.gov.uk>
Date: 30/03/2012 11:17
Subject: St Colette's

Catherine,

Thank you for sending me the late expressions of interest from the three parties.

I would be grateful if you would share this e-mail with your Policy colleagues so that they are aware of our position.

We agreed a marketing strategy for the site with Policy and Peter Carter/Tony Collins some time ago. We then marketed in accordance with that agreed strategy and it was concluded jointly (i.e. ourselves and your colleagues) that we had satisfied the requirements of Policy 5/11 and that there was no realistic, sustainable funded interest in the property. It was also agreed at the time that there was an inevitable price requirement of the freeholder, Jesus College, who could not be expected to make the site available at any price or rent.

We think it more than a tad coincidental that these expressions have reached you the week before the application goes before Committee with your recommendation of approval.

Commenting however on each of the e-mails you have had: -

Sancton Wood - they were contacted, sent particulars and did not view or come forward with a financial offer of any sort.

CCSS - Their interest and offer was rejected because they are a sixth form college who do not draw the majority of their pupils from the local area - they have a high incidence of overseas pupils and it was therefore agreed with your colleagues that they should be rejected as not compatible with your own policy.

Russian Orthodox Church - they made an offer which was at such a low level that the freeholder would simply not entertain it. As above, it was confirmed that there was no imperative on the freeholder to accept any offer and indeed the consequence of this would be that the site would simply remain vacant.

As just discussed I am copying this to Sara Saunders and will come back further on the abandonment point.

Regards
Colin

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From: Colin Brown <CWB@januarys.co.uk>
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CC: "Victoria Watts (Victoria.Watts@cambridge.gov.uk)" <Victoria.Watts@cambr...>
Date: 02/04/2012 14:26
Subject: Tenison Road, Cambridge (Former St Colette's site)
Attachments: St Collettes Advice - 2.4.2012.doc

Catherine,

We now have the legal advice to share with you in relation to the abandonment point, in light of Victoria's comment that although the case was "arguable" she was not persuaded that the cessation of the educational use and the demolition of all buildings on site amounted to abandonment.

This has come from Deborah Sharples, the Head of Planning and a Partner at Hewitsons, and it attached for your information and consideration.

Deborah's view is that the use has indeed been abandoned for reasons she explains.

In light of this, I would repeat our assertion that Policy 5/11 is not now relevant to the determination of this application, although we believe we have complied with the policy and this was agreed by your Officer colleagues at the time we marketed the site.

I look forward to hearing from you.

Regards
Colin

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**ADVICE
FORMER ST COLETTE'S SCHOOL SITE
TENISON ROAD**

1. This advice concerns the former site of St Colette's School, Tenison Road and the question of whether or not the use of the site as a school has been abandoned.
2. The issue arises because permission has been sought for the development of the site for residential purposes and the question has been raised whether policy 5/11 of the Cambridge Local Plan has been complied with or not. Ms Watts of Cambridge City's legal department advised in an e-mail of 12th March, addressed to Catherine Linford, that whilst it is arguable that the former use of the site as a school has been abandoned, she did not agree that, on balance, the use had been abandoned.
3. The background is that St Colette's school ceased to operate on the Tenison Road site in 2009. The site was vacated early that year. An application was quickly made to demolish all the buildings on site and permission was granted for the demolition of in 2010. The buildings were demolished in 2011. The site was described in the application as "the former St Colette's School", with the purpose for the development being stated as "to facilitate new development....." It is clear from the application form submitted that the new development proposed at the time was "the erection ofhouses.....following demolition of all existing buildings on site". The erection of houses would be completely inconsistent with the use of the site as a school.
4. There are four matters to be considered when assessing whether a use has been abandoned as set out in the case of the *Trustees of Castel-y-Manach Estates 1985 JPL 40* and subsequently confirmed in many other cases. These matters are:
 - a. The physical condition of the property
 - b. The period of non use
 - c. Whether there had been any other use
 - d. Evidence regarding the owners intentions.

The case of *Hughes v Secretary of state for Transport and the Regions* made it clear that the actual intentions of the owners are relevant but not decisive and that it is the view taken by a reasonable man, with knowledge of all the relevant circumstances, that is the test.

5. Looking at those factors in the case of the Tenison Road site, I comment as follows:

5.1 Physical condition of the property

- 5.1.1 The buildings have been deliberately and totally demolished. The Owner arranged the demolition pursuant to the conservation area consent which was granted in 2010. It is clear that from the moment of demolition the site was put beyond use as a school site.
- 5.1.2 The fact of demolition is compelling evidence that the use of the site has been abandoned.
- 5.1.3 In the case of *William Tracey Limited v The Scottish Ministers 2005 S.L.T 191*. The property had to be demolished on the advice of the fire brigade following vandalism. The owner expressly stated that it had been his intention to resume the use following the demolition. The Reporter, nonetheless, found that the building had been completely demolished and that significant weight should be given to that factor. The reporter found that the use of the site as a nursing home relied on the presence of the former building and the demolition of it was strong evidence that it had been abandoned. He stated that significant weight must be attached, in that case to the condition of the building. The Court said that it could not fault the reporter's reasoning.
- 5.1.4 In the current case, in which the application for demolition was made soon after the site was vacated, was voluntary and was expressly stated as being with the intention of redeveloping the site for housing it must inevitably carry significant weight.
- 5.1.5 The importance of demolition is further demonstrated by the appeal decision at 1986 JPL 849 in which the appellant argued that a residential use continued in spite of the demolition of the building concerned. In that case a demolition order was served by the Council and the Secretary of State accepted that a good deal of demolition took place following the service of that order such that residential use was impracticable. The inspector determined that the use had been abandoned at the time when the demolition took place.

5.2 Period of Non Use

- 5.2.1 There has been a period of non use in this case from 2009 to date. There is no minimum period for which a site has to be disused before its previous use should be regarded as being abandoned. The circumstances of the disuse are relevant. In this case the disuse was accompanied by demolition which rendered the use impracticable and during the period of disuse applications were pursued to use the site for another purpose. The period of non use in these circumstances supports the argument that the use has been abandoned.

5.3 Whether there has been any other use

- 5.3.1 There has been no other use in this case, but that is not indicative of non abandonment, especially when taken in conjunction with the other circumstances already referred to. In the case of *William Tracey* referred to

above the Court considered that the lack of an intervening use was neutral factor. In my assessment it is a neutral factor in this case also.

5.4 Intention of the Owner

5.4.1 As has been stated above and observed by Ms Watts for the Council in her e-mail of 12th March, the test is an objective one in which the intention of the owner is not decisive. Evidence of it is, however, relevant and in this case it is clear that there was an intention to abandon the existing use. This was evidenced very clearly by the planning application for demolition in 2009 (09/1144/CAC). It is impossible to see how a reasonable man could form any view as to the intention of the owner other than that it intended to abandon the use as a school and redevelop the site.

5.4.2 A marketing exercise has been undertaken following the refusal of an application for new houses submitted in 2009 to address a reason for refusal. This was done for the purposes of testing, notwithstanding the abandonment of the school use of the site, whether there was market for the site for an educational purpose. The marketing of the site in these circumstances does not override the compelling evidence of abandonment.

6. Summary and Objective Test

As set out by Ms Watts in her e-mail of 12th March, that the test is objective. There is no real doubt in this case that a reasonable man, seeing the terms of the application for demolition, seeing the demolition take place and subsequently seeing the condition of the site and the applications made to develop the site for housing, would think that the use as a school had been abandoned.

In my opinion the use has been abandoned.

Deborah Sharples
Head of Planning and Environment
Hewitsons LLP
2nd April 2012