

LAND AT 32 TO 38, STATION ROAD, CAMBRIDGE.

ADVICE

1. I am asked to advise Cambridge City Council (“the Council”) in respect of the likelihood of successfully defending its refusal of planning permission and of conservation area consent for proposed development at 32 to 38, Station Road, Cambridge.
2. The background to the matters on which I am asked to advise will be well known to all with an interest in this advice. I will not therefore set out those matters of factual background in detail.
3. On 25 July 2012 the Council refused applications for planning permission (ref. 12/0502/FUL) and for conservation area consent (ref: 12/0496/CAC) for development at 32 to 38, Station Road, Cambridge.
4. Four reasons for refusal are set out on the notice of refusal of planning permission. Those are as follows:
 - “1. The proposed building by virtue of its overall scale and massing would have an overly dominant impact on the Station Road frontage to the detriment of the streetscene and the Conservation Area contrary to policies 3/4., 3/7, 3/12 and 4/11 of the Cambridge Local Plan 2006.
 2. The development fails to make adequate provision for car parking which would be likely to result in overspill parking into nearby residential areas, which would have a detrimental impact on the amenity of residents in those areas. The development is therefore contrary to policy 8/10 of the Cambridge Local Plan 2006.
 3. The public benefit arising from the development fails to provide sufficient justification for the demolition of Buildings of Local Interest, which are recognised as heritage assets. The development is therefore

contrary to policy 4/12 of the Cambridge Local Plan 2006 and to guidance provided by the National Planning Policy Framework.

4. The proposed development does not make appropriate provision for transport mitigation measures/infrastructure provision, mitigation of potential overspill parking, the funding and agreement of a Travel Plan Co-Ordinator, public art, relocation of a community facility, restriction on occupation of offices and monitoring in accordance with Cambridge Local Plan 2006 policies 3/7, 5/11, 7/2, 8/2, 8/3, 9/9 and 10/1 ... and as detailed in the Planning Obligations Strategy 2010, the Public Art Supplementary Planning Document 2010 and the Southern Corridor Area Transport Plan 2002.”
5. Conservation area consent was refused for two reasons, namely:
 - “1. The proposed development is contrary to policies 4/11 and 4/12 of the Cambridge Local Plan 2006 and paragraph 136 of the National Planning Policy Framework 2012, in that in the absence of an approved redevelopment scheme that has a contract for redevelopment and which preserves or enhances the character or appearance of the Conservation Area by faithfully reflecting its context or providing a contrast with it, the demolition of the buildings would result in loss of a heritage asset in the form of Buildings of Local Interest which contribute positively to the character and appearance of the Conservation Area.
 2. The public benefit arising from the development fails to provide sufficient justification for the demolition of Buildings of Local Interest which are recognised as heritage assets. The development is therefore contrary to policy 4/12 of the Cambridge Local Plan 2006 and to guidance provided by the National Planning Policy Framework.”
6. On 6 March 2013, the Council refused planning permission and conservation area consent for a revised scheme at 32 to 38, Station Road for substantially the same reasons as were given for the refusal of applications 12/0502/FUL and 12/0496/CAC.
7. The Applicants have now appealed against all four refusals of consent. The appeals are to be heard at a public inquiry to be held later this year.

8. At that appeal the Council is required to produce evidence to substantiate each reason for refusal at the forthcoming appeal. Within Circular -3/2009, the Government advises that:

“Planning authorities will be expected to produce evidence at the appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations including any relevant judicial authority. If they cannot do so, they risk a costs award against them for any unsubstantiated reason for refusal. This continues to be the ground on which costs are most commonly applied for and awarded against a planning authority. (para.B16).
9. Within the same Circular, the following guidance is given:

“Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.” (para..B20).
10. Against the background of this guidance, I turn to the reasons for refusal, addressing first the reasons given for refusal of planning permission.
11. Reason for refusal one attached to each notice of refusal of planning permission concerns the impact of scale and massing of the proposed development and its effect on the Station Road frontage and the Central Conservation Area. These are subjective matters and in a matter without the recent planning history of 32-38, Station Road (“the appeal site”) the Council is entitled to reach a judgment on these matters and to refuse planning permission in the event that the judgment is adverse. However, the recent planning history of the site is critical in the present context.
12. The CB1 masterplan was approved by the Council in 2010. The appeal site lies within the CB1 masterplan area and equates broadly to the site of proposed building I2 within that masterplan. In the usual way, the CB1 masterplan sets out certain parameters within which

development within the masterplan area is required to conform. Development on the appeal site and beyond which conforms to those parameters was found by the Council in 2010 to be acceptable. The Council cannot now legitimately contend that that which was approved in 2010 is not now acceptable in planning terms. Moreover, the Appellant remains entitled to bring forward an application for approval of reserved matters in respect of block I2 as approved through the masterplan and will, undoubtedly, do so before the hearing of its appeal. The masterplan and the approved parameters therefore provide a fall back position and indeed the base line of acceptability in particular as to height, scale and mass of development on site I2. It is only if what is now proposed exceeds the parameters approved through the masterplan for site I2 to an extent that is material and which gives rise to demonstrable planning harm that reason for refusal one is legitimate.

13. It is readily apparent from the masterplan that in terms of height, the proposed buildings for which permission has been refused does not exceed the height limit set out within the CB masterplan parameters; the proposed no.50, Station Road will be of a height which is less than the approved for site I1 within the CB1 masterplan.
14. In terms of scale and massing, the eastern elevation of the proposed building within the appeal scheme extends between 11 metres and 16 metres beyond the eastern elevation of block I2 within the CB1 masterplan. This equates to a Station Road elevation which is 20% wider than block I2 as shown on the CB1 masterplan and an increase of some 30% at the rear. The crucial issue however is the extent to which this increase in scale and corresponding increase in massing is such as to give rise to harm given that the scale and massing of block I1 approved on within the CB1 masterplan was plainly thought to be acceptable. In reaching a view on the effect of this increase the detailed design of the scheme must be considered and in particular

the level of articulation proposed within the overall scheme for block I2.

15. As I have advised, it is only if the increase in scale and mass over and above that approved for block I2 through the CB1 masterplan is shown to be unacceptable that there is a legitimate reason for refusal. Moreover, the Council is under an obligation to produce evidence to substantiate reason for refusal one and to demonstrate that there were reasonable grounds for refusing planning permission contrary to the advice expressed by professional officers and other consultees. Given the form and design of development now proposed and the level of articulation which has been introduced and in the absence of any substantiation of the objection by independent architects of urban design consultants, there is in my view a material risk that the numerical increase in the footprint of the proposed building will not be held to be a reasonable basis for refusal of planning for the development now proposed.
16. Reason for refusal two concerns car parking provision. It is plain that the level of proposed car parking does not exceed applicable standards. Moreover, and importantly, it does not exceed the level of provision which was considered acceptable through the CB1 masterplan. Issues of the potential for overspill car parking are capable of being addressed through a planning obligation, as indeed was the case when the CB1 masterplan was approved in 2010. Given the planning history and the approval of the CB1 masterplan, in my view reason for refusal two cannot realistically be sustained at appeal. Car parking provision is a technical matter and is not recognised generally as engaging a subjective judgment. As such, the Council is in my view at very considerable risk of being held to be unreasonable in rejecting the proposed development on this basis and there is a considerable likelihood of costs being awarded against the Council in respect of this reason for refusal.

17. Reason for refusal three, as I construe it, in substance relates to reason for refusals one and two in that, since the form of redevelopment is considered to be unacceptable in terms of massing and scale and makes provision for inadequate car parking, that scheme does not deliver a level of public benefit that justifies loss of the locally listed terrace in accordance with policy 4/12 of the adopted local plan. As such, if reason for refusal one and two fall away so too does reason for refusal three. Equally, if reason for refusal two fall away but reason for refusal one is sustained, reason for refusal three will remain extant. Since demolition of the locally listed terrace was approved through the CB1 masterplan there can be no objection in principle to demolition in the context of an appropriate and acceptable redevelopment scheme. I have as set out above my views in respect of the defensibility of reason for refusal one and two and the risk attached to pursuing that reasons. Those same concerns, and risks, must therefore also apply to reason three.
18. Moreover, since the reasons for refusal of conservation area consent in substance reflect reason for refusal three attached to the notices of refusal of planning permission, the advice which I have given in the preceding paragraph apply to the reasons for refusal of conservation area consent.
19. Reason for refusal four reflects the fact that, as is not unusual, no planning obligation had been submitted at the point of determination of planning permission. In the conventional way, this would fall to be addressed not by refusing planning permission but by resolving to grant permission subject to completion of a satisfactory planning obligation. The appellant is bound to address this matter before the hearing of its appeal and does not of itself amount to a likely basis on which the refusal of planning permission will be upheld.

20. In conclusion therefore the planning history of the site and the CB1 masterplan in particular is a highly material consideration in respect of the current proposals. The CB1 masterplan approved in 2010 and the form of development which has been found to be acceptable by the Council through its approval of that masterplan provides a baseline of acceptability against which the current proposals fall to be considered. It is only if the current proposals depart from the scheme for site I2 approved through the masterplan to an extent that is material and which through that increase generates planning harm that refusal of planning permission is reasonable and legitimate.
21. In my view, in light of the approved masterplan, reason for refusal two is unsustainable. It is in my view highly likely that this reason for refusal will be found to be unreasonable and the Council thereby is exposed to a substantial risk as to an adverse award of costs in respect of that reason.
22. With regard to reason for refusal one and consequentially reason for refusal three together with the reasons for refusal of conservation area consent, it is only if the Council is able to substantiate that the increase in scale and massing of the proposed development over and above that approved through the CB1 masterplan is material and that this increase gives rise to harm that the refusal of planning permission and corresponding refusal of conservation area consent will be found to be legitimate and reasonable. As matters stand and on the information available to me, I have some doubt whether this can be achieved evidentially particularly in the absence of strong evidence from an independent consultant in support of the objection. In the circumstances and on the information which is presently available to me, if the Council proceeds to defend reason for refusal one and the consequential reason for refusal three and the refusal of the conservation area consent, there is some risk of an adverse award of costs in respect of those reasons for refusal also. The prospect of such

an award will be substantially greater in the event that the Council is unable to secure the full support of external consultants in the defense of these reasons for refusal.

23. In the circumstances, I suggest that the Council reconsider the course which these refusals has set and in particular whether it is committed to defending at the forthcoming appeal of all of the reasons for refusal. In the event that the Council resolves not to proceed with reason for refusal two, the Appellant's agreement that it will not seek costs in respect of that reason should be sought. In the event that the Council decides to change course and not to defend the appeal as a whole, an approach should be made to the Appellant to agree to holding the appeals in abeyance whilst fresh applications for planning permission are submitted to the Council. The agreement of the Appellant that it will not seek costs thus far incurred through the appeal process should also be sought.
24. I appreciate that my advice may be disappointing to members of the Council. I do not express lightly advice in the form which I have done in the paragraphs above. However, the course which the Council is pursuing presently carries risk and this is particularly so in in respect of reason for refusal two. I would therefore suggest that the Council considers with the utmost care, in the light of my advice, whether it wishes to continue on its current course and defend the appeal by reference to all of the reasons for refusal given the risks which, in my view, that course involves.

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