

ALBION PLANNING CONSULTANTS LIMITED

**IN THE MATTER OF
A FURTHER PLANNING APPLICATION
ON
LAND AT BURSTON HOUSE
RECTORY ROAD
BURSTON**

**SUBMITTED BY
CARE PERSPECTIVES LIMITED – PLANNING APPLICATION
REFERENCE 2005/0065/F**

**RELATING TO THE PROPOSED DEMOLITION OF THE BUILDINGS
AND THE ERECTION OF A SINGLE STOREY RECEPTION BUILDING,
NEW WARD BUILDING, DORMER WINDOWS TO DOCTORS FLAT,
STANDBY GENERATOR, ALTERATIONS TO CAR PARK AND NEW
LANDSCAPING AND FENCING**

**AND IN THE MATTER OF THE PLANNING APPEAL BEFORE THE
PLANNING INSPECTORATE REFERENCED UNDER APPEAL
APP/2630/A/05/1182536**

**STATEMENT OF CASE
SUBMITTED ON BEHALF OF THIRD PARTY OBJECTORS WHO
OPPOSE THE PROPOSALS SET OUT IN THE PLANNING APPEAL
AND IN THE ORIGINAL PLANNING APPLICATION**

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1. The third party objectors comprise a number of local residents who live in the village of Burston in close proximity to the appeal site. The third party objectors object to the proposals set out in the planning application on a number of grounds which include a number of grounds which were not incorporated into the final decision notice to refuse the planning application issued by South Norfolk District Council. It therefore follows that in order to ensure that all material planning considerations are considered the third party objectors have instructed our firm to bring to the attention of the Planning Inspector conducting the hearing into the planning appeal a large number of issues relating to the site which include not only the reasons adopted by the local planning authority for refusing the planning application but also a number of reasons put forward by local residents which were not incorporated into the final reasons for refusal.

2. It should be noted that when a planning appeal is considered it is necessary for the First Secretary of State and/or his duly appointed Planning Inspector to consider all material planning considerations when formulating a decision. Accordingly, it is entirely proper and appropriate for third party objectors to now bring to the attention of the Planning Inspector a number of issues which were not incorporated into the Notice of Refusal issued by the local Planning Authority. This Statement of Case is designed to present a much more comprehensive review of the relevant material planning considerations relating to this appeal and it is respectfully asked that the Inspector give consideration to all of the issues set out in the following paragraphs.

3. In the first instance it should be noted that the proposal set out by the appellant in this case is a substantial development proposal which will have a significant detrimental impact upon the small village known as Burston. The village of Burston is categorised as a settlement having a “village boundary”. The Councils Planning Officer in a letter dated 9th April 2003 acknowledged that those villages with “village boundaries” are settlements which constitute “smaller villages which have a restricted range of facilities and services and a very limited capacity to absorb growth, but where small scale developments for local needs could still be acceptable”. Given this description of the nature of the type of settlement within which the small village of Burston falls it is therefore surprising that the village is being called upon to absorb a form of development which falls outside the development boundary of the village and which is not designed to cater for local needs. In essence the proposal for the development is inconsistent with the terms of the statutory development plan and clearly constitutes substantial major development in a small village which is clearly unsustainable.

4. The village of Burston is very small and simply does not have the services and facilities to support the proposed development scheme. It therefore follows that the proposals set out in the planning appeal and the original planning application do not constitute sustainable development. It was significant that the Council Officers report presented to the councils Planning Committee on 10th May 2005 did not examine in detail the relevant National Planning Policy Guidance Notes on the issues of sustainable development. This is a surprising omission because it was clearly pointed out to the local planning authority by both the South Norfolk PCT and NCC: Adult Social Services that the proposed development was objectionable in

principle because the proposal lead to the development of institutionalised services away from patients local communities. Clearly, the fact that the proposal in itself contravenes another aspect of Central Government policy which recommends that institutionalised services be provided within the local community rather than far a field is an important issue. It is considered that the proximity of public or privet institutionalised services to the patients and the local community is an important issue and constitutes a clear material planning consideration because it relates to factors relating to the proper use of land. It is contended that the Councils planning officer erred in law in failing to recognise that the objection put forward by the South Norfolk PCT and NCC Adult Social Services unit constituted a clear and relevant material planning objection to the proposal put forward. In this respect reference should be made to the leading case on the question of materiality in land uses in the case of *Stringer –v- Minister of Housing and Local Government*. In other words it is contended that an additional reason for refusal in this case which we respectfully suggest should be adopted in the decision to dismiss the appeal will be based on the fact that the site proposed for this development is located too far away from the source of the need namely the location of the patients and their local community. In practical terms it is quite clear that the proposed location of patients and additional patients at Burston House will be extremely inconvenient for the relatives of patiants and also for patients themselves. The site will generate the need for much longer car borne journeys for both patients and their relatives. Given the rural location in a remote part of the open countryside it is also clear that most journeys must be car borne and could not be provided by public transport. Not only is this inconvenient for the patient and for the relatives who wish to visit them but it is also inconvenient for

suppliers and the providers of services including also the staff who are required to attend the premises to ensure that the facility continues to function. The location of the premises will generate frequent and long car borne journeys by staff over a wide area. This point is not only indicative on inherent inefficiency in the location of the site but is also an indication that the proposal is inherently unsustainable.

5. Whilst it is submitted that the above objection is a stand along objection which is sufficient in its own right to support the refusal of the proposal nevertheless it is also considered that having regard to the general principals relating to sustainable development it is quite clear that the proposal now put forward in the current appeal is clearly inconsistent with the principals of sustainable development. It should be noted in Planning Policy Guidance Note number 1 on the General Policy And Principals Relating To Planning it is clearly stated that sustainable development is an important and significant feature of the planning system. Under the terms of paragraph 4 it states that sustainable development seeks to deliver the objective of achieving now and in the future, economic development to secure higher living standards whilst protecting and enhancing the environment. This strategy which forms a core part of the United Kingdom Central Government Policy relating to Town and Country Planning clearly requires the following:-

- i. Concentrating development for uses which generate a large number of trips in places will served by public transport rather than in out of town locations.

- ii. Preferring the development of land within urban areas and particularly on previously developed site.
 - iii. Ensuring the development is placed in locations which do not generate the need for additional car borne journeys.
6. The general principals relating to sustainable development are reflected in planning policy guidance note number 13 which refers to the Highway implications of any proposed new development. Under the terms of the policy statement it is recognised that:-
- i. It is necessary to promote more sustainable transport choices for both people and business.
 - ii. That it is necessary to promote accessibility to jobs, shopping and leisure facilities and services by public transport, walking and cycling.
 - iii. To reduce the need to travel especially by car.
7. Given the policies the Central Government has expressed in Planning Policy Guidance Note number 13 it is quite clear that the appeal site is in an unsustainable location and contravenes national planning policy guidance. This in itself is a separate and very important material planning consideration which must be taken into account by the Planning Inspector when considering this appeal. It is submitted that the fact that the appeal proposal is unsustainable having regard to the criteria set out above is in itself a sufficient ground for dismissing the planning appeal.

8. It should be noted that the appeal proposal relates to proposed development which falls clearly outside the development boundary of the village. It is clearly an appeal proposal which therefore contravenes the terms in the statutory development plan. It is therefore clear that the appeal proposal must be refused having regard to the terms of the legal presumption in favour of ensuring that all planning decisions are made in accordance with the terms of the statutory development plan. Reference should be made to Section 54A of the Town and Country Planning Act which states as follows:-

Section 54A Where, in making any determination of the Planning Acts, regard is to be had to the development plan, the determination should be made in accordance with the plan unless material considerations indicate otherwise.

9. In planning policy guidance note number 1 on general policy and principals (revised 1997) it is stressed that the Government is committed to a plan lead system of development control and it is stated at paragraph 40 of the said planning policy guidance note that:-

Where an adopted or approved development plan contains relevant policies, Section 54A requires that an application for planning permission on appeal shall be determined in accordance with the plan, unless material considerations indicate otherwise. Conversely, applications which are not in accordance with the relevant policies in the plan should not be allowed unless material considerations justify granting a planning permission. Those deciding such planning applications or appeals should

always take into account whether the proposed development would cause demonstrable harm to an interest of acknowledged importance. In all cases where the development plan is relevant, it will be necessary to decide whether the proposal is in accordance with the plan and then to take into account other material considerations.

10. The provisions contained in section 54A have been construed by the Courts in a series of leading judgements including the cases of:-

- a. R –v- Secretary of State for the Environment Transport and the Regions ex parte Smith (1999) JPL page 371.
- b. London Borough of Hounslow –v- Secretary of State for the Environment, Transport and the Regions (1999) JPL page 364.
- c. City of Edinburgh Council –v- Secretary of State for Scotland (1997) 1WLR page 1447
- d. Houghton –v- Secretary of State for the Environment (1996) 1PLR page 6
- e. R (Cummins) –v- Camden London Borough Council (2001) EWHC page 1116.
- f. R –v- Leominster District Council ex parte Apothecary (1997) 3PLR page 91
- g. Jones –v- Secretary of State for the Environment (1997) EGCS page 9

h. North Dorset District Council –v- Secretary of State for the Environment (1993) JPL page 54

11. Given the interpretation placed upon the provisions set out in section 54A of the Town and Country Planning Act 1990 by the High Court and Court of Appeal in the cases referred to above it is clear that the decision on the current appeal must be made in accordance with the terms of the policies set out in the statutory development plan. The relevant policies in this case include policy ENV8 which prohibits development in the open countryside. Under the terms of policy ENV8 it is stated that permission for development in the open countryside, outside the development limits and village boundaries of existing settlements would only be granted if it is requisite for agricultural forestry or justified in order to sustain economic and social activity in rural communities or is for the suitable adaptation and reuse of an existing rural buildings. Clearly, the current appeal proposal does not fall within any of the exceptions set out in policy ENV8. Given that the appeal site is located in the open countryside it is therefore clear that under the terms of the statutory development plan the appeal proposal should be refused on this ground alone.

12. Curiously, the appeal proposal appears to be put forward on the basis that it constitutes the expansion of an existing business activity and accordingly reference is made to Policy EMP6. This policy does indeed allow alterations and extensions to existing business premises but must nevertheless be judged in the context of the more important policy statements set out in policy ENV8 which prohibits development in the open countryside. However, even if one examines policy EMP6 in isolation (which is not the appropriate way

to examine it) nevertheless one finds that the appeal proposal still fails to satisfy even the terms of Policy EMP6. In policy EMP6 it states that alterations and extensions to existing business premises will only be permitted provided they satisfy the following criteria:-

- a. The size and design of the proposals will be in keeping with the existing building and its surroundings.
- b. The existing landscaping of the site would not be seriously compromised and that full and effective landscaping for the proposed alteration or extension will be incorporated.
- c. All necessary parking, servicing, access and circulation can be accommodated on site both for the existing building and the proposed extension.

13. It is considered that the appeal proposals clearly fail to satisfy the criteria mentioned above. Accordingly, the appeal proposal contravenes the policy set out in policy EMP6. In particular, it should be noted that the proposal involves extensions which are very substantial in terms of increased floor area and built form. The scale and nature of the proposals would harm both the character of the area and the living conditions of neighbours. It should be noted that the appeal proposals still constitute a significant development which will have a detrimental impact upon the character of the area owing to the overall scale and bulk of the development. For example the new reception building will be very prominent and will have an adverse visual impact. The whole concept of the development clearly indicates an institutional character which is entirely inconsistent with the character of the area. Furthermore, the

development will lead to an increase in patient numbers from 31 to 41 which is in itself a substantial intensification of the current use of the appeal site. It therefore follows that the development will significantly harm the character and appearance of the area and the residential amenities of adjacent residential occupiers.

14. It should be noted that the proposals are slightly different from the previous proposals which were roundly rejected by a previous Planning Inspector. Reference is made to the previous planning decision issued on 23rd July 2004 which is obviously very contemporaneous and current. The Inspector Ms Jean Jones MA Dip TP MRTPI rejected the previous proposal on the site which we submit was very similar to the current proposal which is now the subject of the current appeal. We would submit that it would be entirely inconsistent for this appeal to be allowed having regard to the fact that a recent appeal decision on very similar proposals was rejected only one year previously.

15. It should be noted that the appeal decision made by the previous Inspector Ms Jean Jones on 23rd July 2004 indicated that the main areas of concern to her at that stage were:-

- i. The impact of the extensions and new buildings on the character and appearance of the locality.
- ii. The affect on the living conditions of adjoining occupiers in terms of loss of light, loss of privacy, over dominance of outlook, light intrusion, noise and disturbance.

On both grounds the Inspector felt that the previous appeal proposal was unsatisfactory. In particular the following points should be noted:-

- i. She stated that the proposals would significantly alter the character and appearance of the appeal site, giving it an urban and institutional appearance that would be out of keeping with the existing low key buildings and rural surroundings. She indicated that whilst additional landscaping was proposed she considered that the landscaping would not overcome the harmful impact of the extension. She noted that Burston is a small village with strongly rural setting and the proposals would be seriously harmful to the character and appearance of the locality. She therefore considered that the appeal proposals were contrary to policy EMP6.

- ii. She also considered that the proposals would concentrate activity within a small area adjacent to neighbouring properties where the coming and goings of staff and patients would be apparent. She felt that there would be some inevitable disturbance at unsocial hours. She felt that the disturbance would occur inevitably and would be unacceptably intrusive and harmful to the living conditions of the adjoining occupiers. Accordingly, she felt that the proposal would conflict with policy IMP10 owing to the likely harm arising from noise and disturbance.

16. It is submitted that the current appeal proposal is still unacceptable and should still be rejected on the grounds adopted by the Inspector relating to the previous very similar appeal proposal. It is submitted that there is nothing in the current appeal proposals which overcomes the objections to the development mentioned in the previous Inspectors decision letter.

17. It is contended that the differences between the current appeal proposal and the previous appeal proposal are not sufficient to persuade one to make a different decision. It is contended that the same objections apply to the new proposals as applied to the previous proposals. In essence the objectionable elements relating to the previous proposals are replicated in the current proposals. In particular, emphasis should be placed on policy INP10 concerning the question of noise. The policy states:-

“Development, including the use of land, would not be permitted if, because of the noise it would create, the occupants for housing or other noise sensitive uses would be exposed to a significant noise disturbance. Housing and other noise sensitive development will not be permitted if the occupants would experience significant noise disturbance”.

18. It is clear that the appeal proposal would involve an additional extension which would generate a substantial increase in the number of patients and staff. It would inevitably generate increased levels of noise and disturbance in contravention of Policy INP10.

19. Reference should also be made to policy INP9 on residential amenity. This policy states that:-

“Planning Permission for new development will only be granted where the Council is satisfied that the development does not have a significantly adverse impact upon nearby residents through:-

- i. Overlooking of habitable rooms of nearby dwelling**
- ii. Overshadowing of habitable rooms of nearby dwellings**
- iii. Damaging the setting for existing buildings**
- iv. Otherwise damaging the privacy and amenities of nearby dwellings”.**

20. It is considered that the appeal proposals would not comply with the requirements set out in Policy INP9 and should also be refused on these grounds.

21. It should be noted that a number of proposals put forward on behalf of the appellant designed to mitigate the impact of the development on neighbouring properties create unrealistic expectations. It should be noted that the proposal that there be no staff or patient access to the landscaped area close to neighbouring residents is a restriction which is incapable of being enforced. It should be noted that one should never make decisions of this nature based upon the assumption that some restrictions may be observed particularly where such restrictions cannot be legally enforced under the terms of the provisions relating to planning conditions. In this respect reference should be made to circular 11/95 concerning the limitations upon the enforceability of planning conditions. It is submitted that this is not a case where planning conditions can overcome or ameliorate the inevitable adverse impact caused by the appeal proposal.

22. The appeal proposal would also contravene Policy BEN2. It is clear that any building of an institutional nature would not be in keeping with the rural landscape and the rural setting of the village. It is clear that the purpose of the development will have an inevitable impact upon its scale and mass. It is therefore clear that the proposed institutional development would be detrimental to the character and appearance of the locality and therefore contravene Policy BEN2.

23. It is also considered that the proposed development will if permitted constitute an unacceptable precedent. If the appeal were to be allowed then it would generate the justification for further unacceptable institutional built development in the neighbourhood and elsewhere. It should be noted that precedent is a material planning consideration which needs to be taken into account in circumstances of this nature. Clearly, the Courts have previously held that planning permission may as a matter of law be refused on the grounds of the possible precedent impact of the decision. Reference should be made to the case of *Collis Radio Limited –v- Secretary of State for the Environment* (1975) 29PCR page 390 and also to the case of *Anglia Building Society –v- Secretary of State for the Environment* (1984) JPL page 175. It therefore follows that precedent by itself would be a sufficient reason for justifying the dismissal of the current appeal.

24. It should also be noted that the proposal currently being considered under the current planning appeal involves a form of development which could be located elsewhere. It is understood that the appellant company owns alternative sites and one is entitled to

question why the current site is being targeted for development when in fact the proposal could be considered for location on alternative sites. It should be noted that the availability of alternative sites is capable of being a material planning consideration. Clearly, the current proposed development will have some adverse environmental impacts and in such cases it therefore follows that the appellant is under an obligation to consider whether the proposed development could be sited on alternative sites where the same adverse environmental impacts would not be created. In this respect one should refer to the leading cases of Rhodes –v- Minister of Housing and Local Government (1963) 1AER page 300 and Prest –v- Secretary of State for Wales (1983) JPL page 112. Reference should also be made to the judgement of Mr Justice Simon Brown in the leading case of Trust House Forte Hotels Limited –v- Secretary of State for the Environment (1986) 53PCR page 293. If one applies the principals laid down in that judgement and as interpreted in subsequent cases one would be entitled to require the appellant in this case to clearly put forward specific evidence of reasons why alternative sites where not acceptable. At the present time there is no analysis of the availability or acceptability of alternative site. On this basis and in the absence of any detailed evidence one is entitled to assume that no investigation has been undertaken relating to alternative sites and accordingly this is a further ground upon which the current appeal could therefore be dismissed.

25. It is quite clear that the proposed development will have a significant impact upon the amenities of adjacent residential occupiers not only in relation to noise and disturbance, but also in relation to the physical impact arising from the bulk of the extension proposed. It is

simply unacceptable in such an area for such a development to be permitted. In order to assist in considering this proposal in its context one must have regard to the site context and its location in an area that is designated as open countryside. In our view the design proposals in this case are unacceptable because they will form an incongruous feature in what is otherwise a most attractive small village.

26. Furthermore, we would also emphasize our concerns over the adverse impact that would be caused by the proposed development within the surrounding landscape. We consider that the development will by virtue of its siting be located on a prominent part of the open countryside which will be visible from a number of vantage points. It is considered that the site is located in mildly undulating countryside and that any proposed development on the site will have an adverse impact upon the landscape. It should be noted that under the terms of the statutory development plan the policy framework seeks to protect the landscape in the open countryside from development of this nature. Accordingly, the proposed development should be rejected in order to preserve the local landscape. An examination of zones of visual influence indicates that the application site is in a very important location within the local landscape. It is important that considerable weight is attached to the need to preserve the local landscape.

27. The appeal site is a very prominent site in topographical terms. The site can be viewed from a large number of existing vantage points to which the public have access. It can also be observed quite clearly from a local public footpath which crosses rising land and which directly overlooks the appeal site. Clearly, any further development

on the appeal site will be easily observable from the public footpath or have an adverse impact upon visual amenities when viewed from the said public footpath.

28. The proposal to erect an extension would generate the further need for further extensive flood lighting on the site which will have a further unacceptable impact upon the local landscape and particularly at night.

29. In order to assist the consideration of this matter we enclose herewith a series of photographs. The first six photographs enclosed herewith numbered 1-6 show views of Burston House from a number of different directions. The photographs have been taken from public rights of way in the area and clearly show that the site is prominent in the landscape. It therefore follows that any development on the site needs to be considered on the context of its prominent location in the landscape. It should be noted that the site is clearly located in what is designated as open countryside and is most certainly located outside the development boundary.

30. The remaining four photographs enclosed herewith numbered 7-10 show another existing development by Care Perspectives Limited and is indicative of the style and designs that have taken place on the company's other site. It is contended that designs for the scheme set out in the appeal proposals are inappropriate in the context of the area.

31. It is contended that the proposed new ward block is simply too large and still far too near to Higdon Close. It therefore follows that the

appellant has not made the new proposal any more acceptable than the previous proposal.

32. At the hearing we shall refer to all of the previous correspondence relating to the current planning application and the previous planning application. We shall also refer in detail to the previous appeal decision letter issued by Ms Jean Jones on 25th July 2004. We shall also refer to the previous statements of case we submitted on behalf of our clients and we shall also refer to previous correspondence which objectors have lodged with the Council and the Planning Inspectorate. We shall also refer to the Officer Reports not only to the current planning application but also to the previous planning application.

33. For ease of reference we enclose herewith a copy of our previous submissions relating to the previous application. You will note that our previous statement of case was dated 16th March 2004. We also attach hereto a summary of our further objections to the current planning application which is the subject of the current planning appeal dated 22nd March 2005. We also attach hereto a copy of our letter of 5th May 2005 addressed to John Tomlinson Chief Planning Officer at South Norfolk District Council. We also attach hereto a copy of our previous letter of 8th November 2003 which referred to the previous application which also incorporates a reference to a series of photographs referred to herein.

We would ask that the appeal be dismissed.

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