

## CITY AND COUNTRY GROUP

The King Edward VII Hospital, King's Drive, Easebourne, Midhurst, West Sussex

### OPINION AND ADVICE

1. I am asked to advise City and Country ("the Applicant") with respect to the planning and listed building applications ("the Applications") for redevelopment of The King Edward VII Hospital ("the Application Site") currently before the South Downs National Park Authority ("SDNPA") for determination. The Applications are due to be considered by the SDNPA on Monday 11<sup>th</sup> July 2011. An officer's report to the planning committee recommends refusal of the Applications. I have been asked to advise whether the basis of the refusal, as contained in the officer's report to committee, is sustainable and/or reasonable.

#### Summary of Advice

2. I am bound to say that the basis of refusal as proposed by the planning officer in this case represents possibly the most outstandingly unreasonable recommendation in respect of which it has ever been my misfortune to advise. For the reasons which follow, I conclude that the proposed refusal as recommended in the officer's report is misconceived, misleading and flagrant in its defiance of not only the advice of English Heritage but also SDNPA's own previous resolution with respect to the Application Site. I have no doubt, given the nature and breadth of the reasons for refusal, that the ensuing planning appeal will be long and expensive, requiring witnesses from many disciplines. I equally have no doubt that the appeals will be successful and that a full award of costs will be made against SDNPA following such public inquiry arising from its unreasonable conduct in refusing planning permission.
3. I have deliberately sought to keep this Opinion and Advice as short as reasonably practicable, especially given that it may be read by busy members of the SDNPA. There is very much more that I would wish to say, and I reserve the right to do so in due course in the event that it is necessary.

## National Importance of the Heritage Assets

4. The national importance of the heritage assets comprised within the Application Site (including the Grade II\* listed hospital, the Grade II\* listed Chapel, the grade II registered Historic Park and Gardens designed and laid out by Gertrude Jekyll, as well as the numerous other listed buildings) should not be in doubt. As recently as 23 May 2011, David Brock of English Heritage ("EH") described "these remarkable buildings" as "of the highest significance". He said that "there can have been few more life-affirming buildings ever designed for long-term medical care in this country" and he observed that "the hospital belongs to incomparably the most exciting era of architecture to mark Sussex profoundly". More recently, on 21 June 2011, Mr Brock wrote to the SDNPA that "the hospital is an outstanding example of public building and philanthropy from the Edwardian era ...".
  
5. There can be no dispute, although this is not evident from the officer's report, that the buildings comprised within the Application Site are desperately in need of restoration, conservation and a long term management and maintenance strategy. It is at least acknowledged that since the buildings have been left unoccupied there has been water incursion and substantial damage to the interior of the Sanatorium and the Chapel, the latter of which is on the EH "Buildings at Risk" register. The integrity and setting of the heritage assets has been substantially and significantly compromised by the relatively modern accretions, which will largely be removed by the redevelopment proposals.

## The Planning History

6. Of particular relevance are the planning permissions which have already been granted with respect to the Application Site. They include the application in 2003 and grant of planning permission in 2004 for the erection of 350 dwellings, 134 bed hospital plus 400 car parking spaces for the hospital; and application of 2006 and grant of permission in 2008 for 263 dwellings. In 2008 planning permission was granted for the provision of 261 assisted care units (including 33 staff units) on the Application Site. The Application Site has therefore long been recognised as being appropriate as a location for major redevelopment. Indeed, the Application

Site's contribution to the supply of housing has been recently recognised in the *Strategic Housing Land Availability Assessment* for 260 units.

### The Applications

7. The Applications were considered by SDNPA, as a consultee, in November 2010 and the SDNPA raised no objections to the Applications. This was a provisional view because it was contingent on the following, namely that:

7.1. The independent assessor (being the DVS) confirms that the quantum and nature of development proposed is no more than is necessary to achieve the objectives of allowing no more enabling development than is necessary to secure restoration and conservation, and ensuring that more enabling development is not sought in the future;

7.2. Neither EH nor Natural England ("NE") raise insurmountable objections to the proposed development;

7.3. Minimal works to King's Drive and its junction with the A286 are acceptable to the Highway Authority;

7.4. Permission is granted subject to conditions and a legal agreement.

8. Chichester District Council ("CDC") was local planning authority for the area until 1 April 2011, whereupon the planning functions were assumed by SDNPA. A report was prepared for CDC for a meeting on 20 April 2011, in order to allow CDC to make a recommendation to SDNPA. In light of the scale of the conservation deficit, as calculated in accordance with the English Heritage Enabling Development Guidance by the DVS, CDC and EH Officers recommended for refusal on the grounds that they required more comfort that the scheme would be delivered. City & Country submitted a report to the DVS detailing their reasoning for their strongly held view that they could deliver the scheme despite the conservation deficit due to their specialist skills and expertise and taking into consideration the long life of the project. The DVS concurred with this view stating "the prospect of delivering the scheme does not appear unrealistic." The recommendation was rejected by members who voted in favour of the grant of permission.

9. However, in light of the recommendation and an indication from the SDNPA officer that the EH objection must be removed in order to gain a recommendation for approval, a further application was made by the Applicant for a further 22 units. The DVS assessed the Applicant's viability appraisal assessment, reporting by letter to SDNPA on 28 April 2011. This assessment took into account both sales revenue and construction cost growth, as opposed to a present day cost assessment. It concluded that the assessment was realistic and "the prospect of delivering the scheme does not appear unrealistic".
  
10. By letter dated 21 June 2011 EH considered the impact of the development proposals (including the new additional 22 units proposal). EH advised that "the repair and restoration of these heritage assets would definitely be a public benefit because of their individual quality and the quality of the ensemble" and that "there can be no doubt that the repair and restoration of these assets is a worthy public objective". EH undertook the necessary balancing exercise by considering the harm to the setting of the heritage assets. Its conclusion was that the first application did not succeed in providing a small enough conservation deficit. However, with the second application "in view of the public benefit from the restoration of these superb buildings, we would be prepared in that case to recommend that approval could be given". It is particularly important to note that this was a conclusion reached based in the full knowledge that the approach of the Applicant and the DVS was to take account of sales revenue and construction cost growth, and EH's conclusion assumed this approach too.
  
11. Having regard to the SDNPA's resolution of November 2010, criteria (1) and (2) (relating to EH) were satisfied. There is no dispute that NE are satisfied with the proposals, subject to the completion of the s. 106 agreement. Criterion (3) has also been satisfied. There is no dispute as to the need for conditions and a s.106 agreement.
  
12. Notwithstanding all this, a planning officer has written reports to committee in respect of the Applications, which are due to be considered on 11 July 2011, recommending the refusal of each application. His final conclusion and recommendation is that each Application should be refused. In respect of the applications for planning permission, this is because

**“it is considered that the public benefit of bringing the heritage assets back into use does not outweigh the ... disbenefits of departing from the development plan”**

and he then went on to list a number of alleged disbenefits.

13. I do not propose to address each of those points in turn in this Opinion. Some of them are utterly misconceived, such as the suggestion that there is “no proven need” for the housing. In fact, there is a serious five year housing land supply shortage, even on the planning authority’s figures. There is reference to the recent CALA case, in which I appeared for CALA – in fact in the Court of Appeal, not the High Court as the report wrongly states – and the suggestion that the abolition of the South East Plan is a material consideration (see para 7.16) is a misreading. The Court explained that it can be a material consideration in certain extreme cases. This is not one of them. In addition, the lack of affordable housing cannot be used as a reason to refuse permission given the overwhelming evidence that the provision of such affordable housing could not be justified financially. Equally the suggestion that the proposals will “unbalance the community with such a high proportion of new residents” seems to be a consideration which carries substantial weight in the mind of the planning officer and local people, but ignores the previous intensive use of the Site and its importance in the community. Moreover, and importantly, it was not a basis for refusal according to the elected CDC councillors.
14. There is no doubt that, for the reasons set out in the Applicant’s letter of 8 July 2011 which I have read, there are many other fundamental flaws and misleading comments within the reports to committee. But the central point I must address is as follows.
15. There has been a thorough and detailed expert assessment of the development proposals by EH, who are satisfied that (with the additional 22 houses) that the development scheme as a whole should be supported. The officer who undertook the assessment consulted extensively with one of the primary authors of the EH guidance on enabling development. The said author of the guidance even took the time to visit the site. EH has addressed the significance of the heritage assets and the balance between the effect of the development on the setting and integrity of those assets and the desirability of restoring their setting through the development proposals as well as ensuring a viable future for them. There is no a “finely balanced” judgment to make, as the SDNPA’s officer’s report suggests (para 8.1). The reality is that the application proposals represent a level of development which is the minimum level which is necessary to ensure a long

term viable future for the Application Site and the heritage assets contained within it. There is, and can be, no suggestion to the contrary.

16. In addition, the approach of the planning officer is to dismiss the Applicant's assessment of the viability of the proposals because it takes account of assumed growth in sales revenue and construction costs. Whilst the EH guidance is to assess proposals on the basis of present day values, this is not written in stone, as its author clearly appreciates.
  
17. The approach of the planning officer is to consign the future of this nationally important site, and the nationally important heritage assets within it, to oblivion. Such an approach is, in my experience, wholly without precedent. It is one which I do not believe would be countenanced by any right-thinking and responsible planning authority. It flies in the face of the SDNPA's own assessment made in November 2010 (and incidentally no explanation is given for why such a volte face is justified). It flies in the face of one of the purposes of National Park designation, namely the conservation and enhancement of the cultural heritage of the National Park.
  
18. The approach advocated by the planning officer is outstandingly unreasonable and unjustified and it is not an approach which would be upheld by the Secretary of State on appeal. I have no doubt that the Appellant would be awarded its full costs of the inevitable public inquiry.
  
19. Finally, I have been asked to advise on the length of time that any public inquiry would last. Given the scatter-gun array of reasons for refusal which are given, my best guess at this stage is that such an inquiry would last between three and five weeks.

**PETER VILLAGE QC**

**Friday, 8 July 2011**

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