

MEMORANDUM

For the Head of Law and Governance

To: Tony Ward

cc: Ross Chambers

From: Sue Mullins

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Date:

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Leek Wootton Housing Allocation / Policy DS22

Thank you for your instructions on this matter. Following on from consideration of the issue and our helpful conversation earlier this week, I now set out our formal advice on this matter. I understand that this advice will be shared with persons outside Warwick District Council (WDC).

Background

Leek Wootton Police Headquarters is situated on this site. At the time of the preparation of the Warwick District Council Local Plan adopted in 2017, the intention of Warwickshire Police was to merge with West Mercia Police. As a result of this planned merger, Warwickshire Police no longer had any need for the Headquarters building on the site and was therefore intending to sell the site for development.

Warwickshire Police worked with the Council and other parties through the Local Plan process to prepare a masterplan for the allocation of the site for development. The draft masterplan was agreed in principle (but not formally) and formed a key part of the evidence submitted to the Local Plan Examination. The outcome of the process was the adoption of Policy DS22.

The aim of Policy DS22 is to ensure the comprehensive and timely development of the entirety of the allocation. There were two explicit key elements to the site's development. Firstly, the conversion of Woodcote House to apartments (with some new build housing in the immediate curtilage of Woodcote House) and, secondly, the development of further land within the allocation site that was a 'greenfield' element.

Since adoption of the Local Plan, including Policy DS22, the merger between Warwickshire Police and West Mercia Police is no longer proceeding and, as a consequence, Warwickshire Police have fully re-occupied Woodcote House as their Headquarters. More recently Warwickshire Police have sold the 'greenfield' development parts of the site to Cala Homes. Cala Homes are now seeking Planning permission for residential development of the 'greenfield' part of the site (Planning Application: W/22/0465).

Issues for consideration

It appears highly unlikely that Cala Homes will be able to develop the entirety of the site allocation in the comprehensive and timely way envisaged in Policy DS22 and the draft Masterplan as the Police Headquarters Building is continuing to be occupied by Warwickshire Police.

The local community's perception is that the Local Plan Planning Inspector approved the allocation and 'special circumstances' that enabled the justification for the removal of the site from the greenbelt on the basis that the site would come forward as a wholly residential development with a comprehensive package of benefits available to both existing and future residents of the village. Any departure from this full package (as per the draft Masterplan presented to the Local Plan Examination) is likely to be viewed by the local community as representing an unacceptable departure from what was 'promised' and will not be in the spirit of the 'offer' made in the draft Masterplan at the point of the Local Plan Examination.

From the WDC perspective, it would be useful to be able to approve/ realise some housing development at this location to assist in meeting the housing requirements of the Local. Planning officers' view is that the principle of residential development is established at this location, albeit that the circumstances have changed.

Appendix Item 5: Legal Opinion on DS22

Advice

WDC, in its capacity as the Local Planning Authority (LPA), has received a planning application from Cala Homes in respect of the Leek Wootton site, and this has to be determined. Planning applications are determined under Section 70 of the Town and Country Planning Act 1990 (TCPA). Section 70(2) of the TCPA provides as follows:

- (2) In dealing with an application for planning permission or permission in principle the authority shall have regard to-**
- (a) the provisions of the development plan, so far as material to the application,**
 - ...
 - (c) any other material considerations.**

Section 336 of the TCPA states that the:

"development plan" must be construed in accordance with section 38 of the Planning and Compulsory Purchase Act 2004"

The development plan comprises any regional strategy for the area, the development plan documents adopted or approved for the area and any neighbourhood development plans made in relation to the area (Section 38 Planning and Compulsory Purchase Act 2004). The development plan therefore includes the Local Plan adopted in 2017, as well as the Neighbourhood Plan for Leek Wootton and Guy's Cliffe of Spring 2018. The draft Masterplan for the site will also be a material consideration in the determination of the application, although may carry less weight due to the fact that it has not been formally adopted.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides as follows:

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The status of the Development Plan is further reinforced by the National Planning Policy Framework which states at paragraph 47:

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

In determining the planning application for this site, the LPA therefore has to have regard to Policy DS.22 in the Local Plan as it is clearly relevant to the application, the Neighbourhood Development Plan and the draft Masterplan. The application should be determined in accordance with Policy DS.22 (and other relevant provisions of the development plan) unless material considerations indicate otherwise.

Policy DS.22 and the draft Masterplan in relation to the site are both predicated on a comprehensive development of the whole site which is why Policy DS.22 provides that:

"All planning applications for development of the site within the Growth Village Envelope must comply with the Masterplan and accord with other relevant policies of this Local Plan and any adopted Neighbourhood Development Plan, taking account of viability. In determining any planning applications on the site the local planning authority will seek to ensure that the proposals:

- a. Protect and enhance the historic assets and their setting;**
- b. Secure the sustainable long-term future of Woodcote House as a Grade 2 Listed Building;**
- c. Contribute positively to the landscape character;**
- d. Deliver a mix of housing, including affordable housing;**
- e. Demonstrate a high quality of design and layout, including an appropriate means of access and circulation;**
- f. Make provision for all reasonable infrastructure requirements, including open space;**

- g. Make provision for the future management / maintenance of the balance of the site (those areas not to be utilised for housing development),**
h. The Council will require the developer to enter into an agreement / agree a mechanism in order to provide certainty that both the new build (greenfield) housing elements on the allocation and Woodcote House conversion (and the associated restoration of its setting) are delivered simultaneously or within a mutually acceptable timescale”.

Development of the site in the comprehensive way envisaged by Policy DS.22 and the draft Masterplan is highly unlikely to be achieved given the change in circumstances as a result of the failed Police merger and the current application cannot comply with all the provisions of Policy DS.22. Indeed, any application to develop the site without the inclusion of the Police Headquarters building could not comply with policy DS.22 in its entirety.

This does not mean that any and all applications to develop the site which do not wholly comply with Policy DS.22 should automatically be refused. The starting point has to be the policy, but this should be considered in the light of any material considerations indicating that a departure from the policy may be acceptable. It is not at all unusual for development plan policies to be superseded by events subsequent to the adoption of such policies, given the lengthy provision for development, consideration and approval of such policies, and there is no obligation on LPAs to “slavishly adhere” to the development plan if material considerations indicate that departure from those policies is considered, on balance, to be acceptable (R (Cala Homes (South) Ltd v Secretary of State for Communities and Local Government [2011]).

The change in circumstances brought about by the failed police merger and the likelihood of the whole site coming forward for comprehensive development are, in my view, material considerations in determining the application and should be weighed in the usual way when considering the application. It is for Planning Officers/ Planning Committee to make a judgement on where the balance lies between the development plan and the application, as with any other application which is not in complete accord with relevant development plan policies.

The LPA therefore has to determine the planning application on the basis of the situation as it currently stands, taking into account all relevant material considerations and giving reasons for any departure from the development plan.

Please let me know if you require any further advice or assistance.

Regards

Sue Mullins

Team Leader – Planning and Regulatory
 Legal Services

