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Our Ref: GGA.DD

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Please ask for Grant Anderson

By email: anna.miller@eaststaffsbc.gov.uk
cc: alan.harvey@eaststaffsbc.gov.uk

Dear Sirs

Re: **B Uttoxeter Property Holdings Limited – Former Bamford Works, Pinfold Street, Uttoxeter**
Planning Application Ref: P/2017/01307

We have had the opportunity to consider the officers' report of the Planning Committee in respect of the application on which we respond as follows.

1. The officers suggest that determination of the level of affordable housing to be provided by the application should be deferred to the reserved matters stage. This position has been reached in accordance with advice from CPV to the Council. The officers have also made clear in the report to Committee that if JCB are prepared to agree to that approach, then officers will recommend the application for approval, failing which, they recommend refusal.

We have obtained Leading Counsel's written advice on the outstanding issue of affordable housing and attach a copy.

You will note that Leading Counsel is advising that it would be unlawful for the Council to defer determination of the affordable housing until the reserved matters stage. It follows that it is wrong for officers to expect JCB to agree to a course of action, to secure a positive recommendation for the application, which it would be unlawful for the Council to take itself and to recommend that the application is refused because JCB refuse to do so.

To address the legal flaw identified by Leading Counsel, the Council should, as Leading Counsel has advised is lawful and appropriate, determine the level of affordable housing at this outline stage of the planning process. In that regard, we have set out a further proposal in section 3 of this letter to try and address this issue.

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2. In addition to the above fundamental legal issue, we also attach a letter from Savills, JCB's retained agents, which addresses two points.

Firstly, the comment in the officers' report at paragraph 22.13 that no evidence has been produced by JCB of the extensive market testing it has undertaken in respect of the higher density scheme originally anticipated for the site. The Savills' letter confirms the extensive marketing of the site which has taken place on the basis of the higher density scheme and records that notwithstanding that campaign, no development partner has been secured.

Secondly, it explains Savills' view why deferring determination of the affordable housing to the reserved matters stage would prejudice JCB's ability to further market the site successfully in order to secure a development partner/purchaser with the inevitable consequence of further delay in the site coming forward contrary to the wishes of not only JCB, but also the local community and indeed the Council.

3. Notwithstanding the above, it seems to JCB that, as all parties wish this development to come forward now without further delay, a way forward to try and resolve the impasse must be found.

A principal concern of CPV who have been advising the Council, is that as the application is in outline, the exact costs will not be finalised until later in the planning process. In this regard, the main issue raised by CPV is that the figure assumed in the viability appraisal for the abnormal foundation costs is not yet sufficiently certain and therefore determination of the affordable housing should be deferred to the reserved matters stage. As set out above, Leading Counsel has advised that such an approach is unlawful.

To address CPV's concerns on this point, we would also ask the Council to consider the following proposals:

- (a) The figure for abnormal foundations in the viability appraisal is the Council's lower figure of £577,376 and not the figure estimated by JCB's professional team of £672,875.
- (b) The figure of £577,376 has been calculated on the basis that all of the dwellings in the principal housing area (zone 1) will require abnormal foundations and that 54 of these will require piled foundations. CPV have queried how the number of 54 has been justified. The number of dwellings requiring piled foundations is based on the detailed ground investigation work already undertaken by JCB's contractors and the advice of the geotechnical/engineering consultants. In short, they have advised that half of the area in zone 1 will require piled foundations meaning that half of the number of dwellings proposed for that area will require piled foundations ie 54 dwellings. That number is therefore based on technical evidence and informed professional opinion. No counter evidence has been provided by CPV other than to make a general assertion that as this number will not be determined finally until the reserved matters stage it could be less (and indeed failing to point out it could be more). We consider considerably more weight should be attached to the technical evidence and informed professional advice from JCB's team who have been working in detail on the site than the general assertions of CPV.
- (c) Despite this, and with a view to trying to address the residual concerns of officers, JCB is prepared to increase the affordable housing offer from 2% to 5% on the basis that such an increase would provide an adequate buffer/contingency for any variations to the abnormal foundation costs. Such an offer is also consistent with the level of affordable housing accepted by the Council previously in relation to the site. We would stress that this offer is made on a without prejudice basis on the condition that the Council are prepared to approve the application.

The other residual concern of CPV is that a higher density scheme could still potentially come forward and that such a scheme might generate a higher affordable housing contribution than the 2% demonstrated by the viability appraisal for the policy compliant scheme. This concern refers in particular to the fact that the application seeks approval for up to 148 dwellings, whereas the viability appraisal has only considered a development of 138 dwellings.

As set out in Savills' letter, given the extensive and unsuccessful marketing campaign on the higher density scheme and the views of Savills as agent, it is considered highly unlikely that the higher density scheme will come forward. Again, we consider that factual evidence and the professional opinion of agents specialising in the marketing of such sites should carry significantly more weight than the generalised assertions of CPV.

In addition to that evidence, we would also point out that is open to the Council, in accordance with Leading Counsel's advice, to impose a condition on any planning permission restricting the maximum number of dwellings that can come forward to 138 dwellings. Such a condition would prevent a higher density scheme of 148 dwellings coming forward and would address the concern raised by CPV and the officers. JCB would invite the Council to impose such a condition if the Council is minded to grant planning permission.

The details of any reserved matters for the site will in any event be subject to further approval by the Council and this will give the Council right of approval over matters of layout etc which will inevitably include development density.

We would invite officers to consider this letter and enclosures and would be happy to discuss the contents with a view to trying to resolve the current impasse. Given the proximity of the Planning Committee, we have also sent a copy of this letter to members of the Committee so that they are aware of the current position.

Yours faithfully

 Hill Dickinson LLP

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