

# ITEM 11

## DEVELOPMENT CONTROL COMMITTEE

15 NOVEMBER 2000

**Not for publication by virtue of Paragraph 12 (Legal Advice) of Part I of Schedule 12A of the Local Government Act 1972**

### **PROPOSED ERECTION OF 71 DWELLINGS WITH ANCILLARY WORKS INCLUDING NEW ACCESS AND NEW RIVERSIDE WALK AT PART OF COWPER TANNERY, LAND OFF WESTON ROAD, OLNEY FOR HAMILTON HOMES LIMITED.**

At its meeting on 23 August 2000 (Minute DC34/01 refers), the Committee resolved that the application submitted under reference 99/01378/FUL by Hamilton Homes Limited for housing on part of the Cowper Tannery site be refused. The relevant Committee Minute (DC34/01) reads:

“Refused on the grounds of unsatisfactory design and layout, contrary to Policies PH7, PH10, PH11, DC2 and DC3 of the Adopted Local Plan, and on the grounds of unsatisfactory provision for physical and social infrastructure improvements in Olney, contrary to Policies PG1A, PG1, PG4 and CF4 of the Adopted Local Plan.”

Subsequently a letter was received from the applicant's agent stating:

“In relation to the refusal of the application, I am instructed to inform you of my clients serious concerns regarding the decision the Committee reached in this case. As you are aware, the application was submitted in October 1999. The application was designed by my clients architect to be in compliance with the Design Brief approved by the Committee in May 1999.

In addition, my clients architect undertook extensive discussions with your in-house architect Paul Affleck over a period of many months. These discussions resulted in the submission of a series of amended plans which were the subject of further discussions. Finally, agreement was reached on design matters between my clients architect and Paul Affleck.

The officers then recommended the application for approval.

In addition, previously, we had presented the scheme at various stages to the Site Panel, and indeed the Committee also made observations on how the scheme was progressing when agreeing to defer the application at Committee meetings earlier in the year, to allow site investigations relating to contamination to be completed. At that interim stage both the Site Panel and the Committee had commented that the revised design was progressing well and was much improved from the original submission.

As you will therefore appreciate, we were very surprised and seriously concerned to hear that the application had been refused on design grounds. It would appear that the Members of the Committee set aside the approved Design Brief, the professional advice of its own Officers and the work of the Site Panel.

You will not be surprised to hear that my client is likely to lodge an Appeal against the refusal and will proceed to Inquiry with the assistance of leading Counsel. Given the circumstances an application for an award of costs against your Council will inevitably be made. In order to proceed to an Inquiry, having regard to the number of professional witnesses that will be needed, the use of leading Counsel etc., my clients costs are estimated to be in the region of £75,000."

An appeal against the decision to refuse permission was lodged on 20 October 2000. The appellants have asked for the appeal to be dealt with by Public Inquiry. However, they have indicated their willingness to ask the Planning Inspectorate to hold the appeal in abeyance and to submit a further application if the Council indicated that it was minded to reconsider the matter.

The Committee will recall that the original application was the subject of an officer recommendation for permission. It remains the officers' opinion that a refusal is unlikely to be sustained at appeal. In the circumstances, it has been considered prudent for the Council to seek an independent Counsel's opinion on the relative strengths and weaknesses of the Council's position and an assessment of the likely outcome, should the appeal by Hamilton Homes Limited proceed. It is hoped that a Counsel's opinion will be available prior to the Committee meeting which can be circulated to Committee Members on a confidential basis. A letter has also been sent to the appellant's agents asking, on a strictly without prejudice basis, whether their clients might be willing to make any changes to their proposal which could address any of the Committee's concerns. Any response received to this letter will be reported at the meeting.

It is understood that a number of major housebuilders have shown an interest in purchasing the site from Hamilton Homes and in developing it themselves. One of these is David Wilson Homes who have recently produced a scheme for the erection of about 90 dwellings on the site which they were intending to present to a meeting of Olney Town Council on 6 November 2000.

The Committee should be aware that the costs of fighting an appeal with regard to this matter are substantial. It would be necessary to employ consultants to act for the Council because of current workload pressures and the need for the case to be presented by someone not involved in previous negotiations. It would also be necessary for the Council to be legally represented by Counsel. The appeal would be dealt with at a Public Inquiry which would probably last 2 or 3 days. The Council's costs for its consultant/Counsel would be approximately £25,000 to £35,000. If the Council not only lost the appeal but also had an award of costs against it, the Council would also have to pay Hamilton Homes' costs which their agents have estimated to be in the region of £75,000. In a worst case scenario therefore the Council would incur costs of up to £110,000. The Council's relevant budget for the whole financial year is £35,720. This budget is intended to cover the cost of all consultants, counsel costs, and any costs awards against the Council in connection with Development Control in the financial year 2000-2001.

A further specific problem is the weakness of the Council's position at appeal in relation to securing the provision of finance, land or rights of way for the Millennium Bridge. The applicant's last minute offer at the meeting on 23 August 2000 was a financial contribution of £250,000 to physical and social infrastructure improvements in the Olney area for future allocation by the Committee, a further financial contribution of £55,000 specifically for highway improvements in the southern half of Olney, the transfer of on-site public open space to this Council (with a commuted lump sum of £80,000 for future maintenance) and the 'island' sites on the opposite side of the river being either transferred to this Council or made the subject of a right of way in relation to the Millennium Bridge. This offer by the appellants took into account the fact that the fixed price contract for contamination remediation on the site would be £2,000,000. The Committee is advised that the above planning gain offer would fail to accord with Government advice in Circular 1/97: Planning Obligations. In particular, if the matter proceeds to appeal it is most unlikely that the Council would be able to secure a financial contribution of £250,000 to unspecified physical and social infrastructure improvements or the provision of any money, land or rights of way in relation to the future provision of the Millennium Bridge. An appeal inspector would almost certainly only be prepared to require on-site affordable housing provision and limited financial contributions to specific items such as off-site highway improvements, public transport and education.

A significant element of the Planning Gain package offered by the applicants is therefore very likely to be lost in the event of permission being granted by an Inspector as a consequence of the appeal.

Taking into account Counsel's opinion to be circulated on a confidential basis to Committee Members and any amendments Hamilton Homes may be willing to make to their proposal, the Committee are asked to decide whether to invite a fresh application by Hamilton Homes for favourable consideration.