

## **ADDENDUM REPORT PLANNING COMMITTEE 26th August 2010**

**Items: 17 & 18**

**Site: Former MoD Mount Wise**

**Ref: 10/00670/OUT & 10/01271 /OUT**

**Applicant: Mount Wise (Guernsey) Ltd**

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### Consultations

Ref 10/01271/OUT Highway Authority

The conditions attached to and specified upon the Notice of Planning Permission No.

06/01646/OUT relating to this development are reiterated and are still in force insofar as the same have not already been discharged to the satisfaction of the Local Planning Authority.

Reason: Not all the conditions attached to the said planning permission have yet been discharged and this condition is imposed on this present permission in order that it shall be clear to the applicant that the said undischarged conditions are still in force and have to be complied with.

### Additional letters of representation (LOR's)

Five additional letters of representation have been received

1) There is a lack of details regarding additional flats / houses accessed off Richmond Walk. Points out that have no objection to the development of the upper part of Mount Wise but do object to the addition of extra flats and houses accessed off Richmond Walk. Objected to the original application on grounds of capacity.

2) Reiterates concerns about overlooking from Mount Wise hose extension; seeks assurance that the service lane to the rear of George Street will not be used as a access; concerned about drainage capacity at the site; and possible use of George Street to provide access to the office element 9 (despite plans showing that it is not proposed).

3) Further letter of representation written after publication of Planning Committee report

Challenges the advice given to members that a developer 'right' to expect renewal arising from case law.

Questions whether the claim that the Highway Authority were aware of the potential development at Ocean Court is correct

Complains that the report does not state what conditions are recommended to embrace provisions set out in my representation to ensure completion without interruption or delay once development has started.

4) Welcome the scheme, but have reservations about the increase in traffic on Richmond Walk both during construction and after the project is complete. Had received an assurance from the developers that 'Not a brick would be laid until Richmond Walk is sorted out.' It is not clear what has been decided in relation to vehicle access along Richmond Walk.

#### Comments

Unlike areas 'B' and 'C' an application seeking reserved matters approval for area 'A', the Admiral's Orchard has yet to be received.

**'Right' to expect renewal** - It is accepted that this point could have been more clearly explained, and 'right' may be too strong a term. Circular 11/95 and its emphasis (para 60) *that there must be a material change in circumstances since the original permission if a refusal is to be contemplated* has been replaced with Circular 08/2005 and its advise Para 31 that *Local Planning Authorities should judge such (lapsed) applications against current planning considerations.*

However, where an application is made on a site where there is lapsed permission or a similar development, the precedent of that permission may still carry substantial weight, even though it cannot be implemented. Clearly, the weight to be given to a lapsed permission is less than that relating to an extant permission, but if there are no significant changed circumstances this weight may be considerable. It is also true that here is a long history of planning appeal cases where the principle of renewal of a lapsed permission, unless there has been a material change in circumstances, has been established.

Local Planning Authorities are not bound to follow previous planning decisions on matters of planning judgement, but if they intend to reverse such a decision or conclusion, in the absence of a change in circumstances, they must explain and justify that course of action.

**Awareness of the potential development at Ocean Court** - This refers to an historic, part implemented, planning permission from the 1970s (ref outline 2363170/40079/2 and reserved matters 3773173/1(b) 400799/8) which was the subject of a Lawful Development Certificate (ref.07/01175/PRDE). Although the Cert of lawfulness is dated after the original outline approval at Mount Wise, it is reasonable to assume that the Highway Authority was aware of this development potential at Ocean Court because it had been acknowledged in a more recent planning permission for residential development at Ocean Court, granted under ref 04/01353, just three years before.

**Phasing and ensuring completion** -The objections and concerns raised in the representations introduce one issue that was not considered in any great detail in relation to the original outline planning permission ref 06/01646/OUT: that of

phasing of the development and provisions to prevent the developer of a large site either abandoning it part way through implementation or 'cherry picking' the most commercially most attractive elements. The author of the LOR is effectively seeking use of a Completion Notice, or similar, and conditions to ensure phasing.

Both methods are planning 'tools' that have been used in the past. Completion notices are used by LPAs where the completion of a development which had been interrupted while affording the means, and should the development not after all be carried through, of disposing of the uncertainty created by an incompletely exercised permission. Conditions relating to phasing, usually inserted into Section 106 legal clauses to give them additional weight and enforceable authority, are sometimes attached to large developments, to both manage the development process and prevent 'cherry picking'. Where completion is crucial, they are sometimes used to try and prevent abandonment.

There are, of course, costs to the developer associated with completion notices. Generally unless the proposal relates to a very high value key site, or involves significant landscape degradation (e.g. strip mining), where a failure to secure completion or adequate remediation has significant consequence, their use is not appropriate as it adds unnecessarily to the overall development costs and, in its own way, becomes a small obstacle to delivery. Important as Mount Wise barracks site is to the future of Devonport, it does not fall into the category of a very high value key site, or involves significant landscape degradation. A distinction needs to be made between what are desirable development control objectives and what is necessary and reasonable.

The issue of phasing is slightly different. It is undoubtedly good practice to try and control the development of large sites and prevent 'cherry picking' of the most commercially attractive elements (although it is worth noting in passing that these vary over time – 2 bed flats a few years ago small 'starter' houses at present).

In this case the original outline permission was split into 4 areas (A-D) with a view to bringing forward development in phases. The applicant disliked the concept and submitted an ambitious reserved matters application (ref. 08/00442/REM) covering the whole site, but subsequently discovered that this was more than could be delivered. The second reserved matters application, a year later - ref 09/00525/REM, covered areas B and C, the small terraced house, minus the extra care home in B.

There is an argument that the LPA could have been more robust about phasing in relation to this site and sought to control it more directly and specifically. There were provisions relating to widening of Richmond Walk and phasing (and it is proposed that they are replicated). However, unlike the 'Vision' site, which was split into 14 areas and subject to a series of consecutive clauses, the phasing regime to prevent 'cherry picking', was fairly light touch.

The problem is that in a weak market conditions the LPA often faces a difficult choice of either: insisting upon adherence to tight phasing clauses/ conditions and risking stymieing the development altogether, or agreeing significant revision and 'watering down' of the clauses to allow flexibility and keep development 'going'.

In this case a very tight phasing regime was not imposed on the original outline permission (it would now require imposition of S106 clauses) and the applicant is believed to be ready to start building the most marketable element, the neo - Georgian style terraced houses, in areas B and C this autumn. They are considered sufficiently discrete from the other elements to be built and occupied independently, even in the unlikely event that the remainder of the site is undelivered or plans area changed.