

From: Withers, Simon

Sent: 27 November 2014 14:24

To: 'paulm.smith'; info@paulsmithplanning.co.uk

Cc: Prior, Andrew; Bishop, Kevin; Thomas, Edward

Subject: FW: Proposed Residential development, Land Adj Hawthorn Rise, Peterchurch

Dear Mr Smith,

I have now reviewed the advice in respect of this matter and it does confirm, as I suspected, that the use of Grampian planning conditions is not unnecessarily unlawful, provided that they meet the 6 tests prescribed at 206 of the NPPF. In support of this view the advice cites the Barratt Homes case, wherein the judges argue quite forcefully that Grampian conditions are an entirely legitimate tool in order to ensure **phased development** (my emphasis) where sewerage infrastructure is currently inadequate.

However this does not end the matter since, what is far from clear in this case and the numerous others where Welsh Water have a standing objection in place, is whether the use of a Grampian condition that one might recommend would fail the tests of reasonableness and proportionality. It simply being the case that we don't know exactly what is required at the WwTW in order to provide the necessary capacity. The absence of such information could result in a situation where the condition would place too much of a burden upon the undertaker and/or the applicant to fund improvement works.

In the circumstances I believe the advice points towards the need for further dialogue with Welsh Water to establish:

- (a) What is the current capacity of the existing WwTW - this may release an initial phase of development;
- (b) What works are required in order to meet the requirements of future phases of development;
- (c) The cost of such works and the timescale and means of delivering such works.

Ultimately, whilst I cannot advise you or your client, that investing further resources in this matter, will unlock the potential of the Hawthorn Rise site in totality, it is for you to seek to demonstrate this through further contact with Welsh Water and devise a strategy that demonstrates how an acceptably drained development can be brought forward. Within this context it may be possible to allow certain elements of the development to be drained to a private system as an interim measure

but this, in my view, must be part of a robust package that demonstrates a viable mains solution in a manner that can be supported by Welsh Water and the Environment Agency in this case.

Separately, and in due course, we will be contacting Welsh Water to try and facilitate their continued involvement across the County where this issue is preventing housing delivery.

Yours sincerely

Simon Withers

Development Manager | Development Management

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From: paulm.smith [<mailto:paulm.smith@keme.co.uk>]

Sent: 26 November 2014 10:17

To: Withers, Simon

Subject: RE: Proposed Residential development, Land Adj Hawthorn Rise, Peterchurch

Dear Mr Withers,

Thank you for this. I asked the question because had I suggested to my client that we undertake a feasibility study (and all the cost in time and money that entails) I needed to know if it would address fully WW's objections. I assume that if your counsel considers a Grampian condition could not be imposed that he/she will be very specific under what conditions it could be providing me with a steer on how to respond.

I will wait and see about the condition and then advise my client.

I previously wondered if a S106 would be the subject of the Grampian 'test' conditions in the same way as a planning condition – I suppose a S106 would still need to be 'reasonable'.

Kind regards,

Paul Smith MRTPI

From: Withers, Simon [<mailto:SWithers@herefordshire.gov.uk>]

Sent: 24 November 2014 1:02 PM

To: 'paulm.smith'

Cc: Prior, Andrew

Subject: RE: Proposed Residential development, Land Adj Hawthorn Rise, Peterchurch

Dear Mr Smith,

We are expecting our legal opinion to be with us in the next day or two and my intention would be to provide an update as soon as the implications for your application and others is known.

In answer to your second point, I honestly believe it's a bit of both. The extract below is from their latest comments. It is clear that they are expecting your client to provide a feasibility study into the capacity of the WWTW and to set out what works if any are necessary to provide the necessary capacity. Such a study may unlock the potential and is alluded to in your own consultants report. The fact that Welsh Water don't know what the issue is and have no current plans to fund such works is what is shedding doubt upon the use of a Grampian condition, particularly when the Environment Agency are objecting to the private system.

SEWERAGE TREATMENT

We advised the developer as part of our pre-planning service that it would be necessary to undertake a Feasibility Study to establish whether a Waste Water Treatment Works has capacity to treat the proposed flows and any works that may be required to facilitate capacity.

However, we have yet to receive an instruction to undertake the feasibility study of the WwTW. In the absence of the outcome of this assessment we are unable to prescribe a suitably worded condition to ensure the provision of any infrastructure improvements that may be required. Accordingly, we have no alternative other than to **OBJECT** to the proposed development until such time as a Feasibility study has been commissioned, and the outcomes of the assessment are known.

There is a very outside chance of this application getting onto the agenda for the December meeting, if the use of a Grampian condition is deemed feasible, but unfortunately I am unable to commit to this at this stage.

Yours sincerely

Simon Withers

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From: paulm.smith [<mailto:paulm.smith@keme.co.uk>]

Sent: 24 November 2014 12:12

To: Withers, Simon

Subject: Proposed Residential development, Land Adj Hawthorn Rise, Peterchurch

Dear Mr Withers,

I wonder if you are able to confirm your Council's legal position on whether a Grampian conditions could be imposed upon any grant of outline planning permission for my client's planning application for up to 89 dwellings?

For the clarification can you advise me whether the 'sticking point' for Welsh Water is whether or not my client commissions an evaluation into the required works needed to the treatment works to accommodate my client's proposal or whether it is the proposition of imposing a Grampian condition in advance of these works appearing in the capital programme of Welsh Water?

Yours sincerely,

Paul Smith MRTPI