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8 March 2024

Dear Kirsty

Land at Beech Farm, Hawkhurst Road, Sedlescombe TN33 0QS
Planning application reference numbers RR/2022/840/P and RR/2022/2690/P ("the Applications")

As you are aware, I am instructed by Ticehurst Parish Council in relation to the Applications. These are due to be considered by the Planning Committee on 14 March 2024, following the quashing by consent of the decision made by the Planning Committee in July 2022 in relation to application RR/2022/840/P.

Ground 3 of the judicial review claim argued that paragraph 80 (now paragraph 84) of the NPPF does not apply to mixed-use developments, such as the live-work unit being proposed by the Applications. This ground was not considered by the Court as the previous decision was quashed by consent on ground 1 only, with the claimant reserving its position in relation to grounds 2-4.

The applicant has submitted emails to the LPA from the PAS in which the Principal Consultant at the PAS stated as follows: "provided the unit is being used as a dwelling (eg a primary residence) then yes it should be considered against whether it would meet the requirements, and restrictions, of paragraph 80 of the NPPF". This statement followed an earlier response from the Principal Consultant in which she stated as follows: "if the [live-work] unit is used as a main residence then it would fall under the definition of a dwellinghouse and could be counted within a land supply or housing delivery test figures".

The Officer's Report which has been prepared for the Committee Meeting does not address this point.

With due respect to the Principal Consultant, her opinion set out in the emails is incorrect in law. Her analysis proceeds on a misunderstanding of the use class within which a live-work unit falls. Having been informed by

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the applicant that the unit would be split 75/25 between live and work, the Principial Consultant erred by not advising the applicant that such a unit would be sui generis, rather than Use Class C3. (The LPA will understand that a live-work unit is sui generis, having itself granted consents on that basis for live-work units within the district (eg at Pepperpot Barn, Dallington (RR/2022/1219/P)).

Whilst a live-work unit may be counted within a land supply or housing delivery calculation (according to the PAS), that is a different question to whether a live-work (sui generis) unit would be within the remit of paragraph 84. The Principal Consultant's reasoning, namely, that such a unit would fall within paragraph 84 because its primary use is a residence fails to consider the correct meaning of the term "homes" in the context of paragraph 84.

The meaning of paragraph 84 (or paragraph 79 as it then was) was addressed by the Court in *R. (on the application of Wiltshire Council) v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 954 (Admin). In *Wiltshire*, the Court was asked to consider the meaning of the policy in the context of the exception at paragraph 79(d) (sub-division of an existing residential dwelling). (The equivalent provision in paragraph 84(d) refers to "residential building" rather than "residential dwelling".)

The Court explained the position as follows (emphasis added):

"26. The issue is not whether the word "dwelling" is reasonably capable of carrying the meaning given to it by the Inspector but rather whether that is the correct meaning in the policy context. Once that issue of law is determined there may well be questions of planning judgement on a particular case as to whether those facts fall within para.79(d), for example whether the building being sub-divided is properly described as one dwelling or not.

29. Most importantly, in my view the context strongly militates towards a narrow interpretation. The sub-paragraphs in para.79 are exceptions to the general policy against creating new residential development in isolated rural locations. It is important to have in mind that the policy reason for not supporting new housing in such locations is that it would be fundamentally unsustainable, being poorly located for local services, and that sustainability lies at the heart of the NPPF. As such, it does in my view follow that the exceptions should be narrowly construed as being in general not supportive of sustainable development. The exceptions are all forms of development which could be said to enhance the countryside, whether by adding housing for rural workers, or reusing redundant buildings.

30. It is clear from the NPPF Ch.5, and paras 77–79 in particular, that the general thrust of the policy to increase housing is specifically excluded when it comes to the creation of isolated homes in rural locations."

The "narrow interpretation" favoured by the Court of what would constitute an exception under paragraph 79 was based on the "policy context" in which that exception resided. The Court held that paragraph 79 (now 84) is a restrictive policy which seeks to prevent isolated homes in the countryside. This "narrow interpretation" was applied by the Court in *Wiltshire*, notwithstanding that the development in that case related to a question of whether an annex, which was lawfully occupied as a residential annex to the main dwelling located 19 metres away, could be independently used as a dwelling under the exception in paragraph 79(d).

Despite the existing annex being in lawful C3 use, the Court nevertheless decided that the "correct meaning in the policy context" was that paragraph 79 did not authorise the independent use of the dwelling. The Court emphasised that this was a matter of law, not planning judgement.

Applying *Wiltshire* to the Applications, the same principle applies. The correct, narrow interpretation of paragraph 84 means that it is only homes (ie within Use Class C3) which may benefit from the exceptions in the paragraph. A live-work unit is not a C3 use, it is sui generis. Such a unit would not fall within the parameters of paragraph 84, in the same way that, say, a mixed use shop/flat would not fall within paragraph 84.

The correct meaning of paragraph 84 is clear. As a matter of law, it should be interpreted narrowly, as a restrictive policy. For these reasons, and as explained in *Wiltshire*, a sui generis, live-work unit is not within paragraph 84. The fact that such a unit may be included by the PAS for the purposes of calculating land supply is irrelevant to this question of law.

I would be grateful, therefore, if you could consider this issue and advise your client accordingly in advance of the Committee Meeting next week.

Kind regards

Yours sincerely

Tim Taylor
Director
KHIFT LTD