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GOVERNMENT OFFICE
FOR THE SOUTH WEST

Gouldens Solicitors
22 Tudor Street
LONDON
EC4Y OJJ

Room 517

The Pithay
Bristol BS1 2PB

Tel:-0117 9001880
Fax:-0117 9001906

Your Ref:-AT.dp.677097
Our Ref:-SW/P/5183/220/4

Date: 27 October 1997

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 77
APPLICATION BY SIR ROBERT McALPINE LTD
OUTLINE PLANNING PERMISSION FOR BUSINESS PARK AND ASSOCIATED
DEVELOPMENT
SITE ON LAND AT WHITE ROCK, SOUTH OF WADDETON INDUSTRIAL
ESTATE, BRIXHAM ROAD, PAIGNTON, DEVON**

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector, Mr S J Pratt BA (Hons) MRTPI, who on 25 February to 4 April 1997, held a public local inquiry into your clients' application for outline planning permission for the erection of a Business Park development, comprising the erection of units for employment purposes within Classes B1, B2 and B8 of the Town and Country Planning (Use Classes) Order 1987, together with associated highway and landscaping works and the creation of a balancing pond on land at White Rock, south of Waddeton Industrial Estate, west of Brixham Road, Paignton, Devon.

2. The application was made to Torbay Borough Council and the Secretary of State directed in pursuance of his powers under Section 77 of the Town and Country Planning Act 1990, that it be referred to him for decision instead of being dealt with by the local planning authority.

INSPECTOR'S RECOMMENDATION AND SUMMARY OF THE DECISION

3. A copy of the Inspector's report is attached. He recommended in paragraph 12.124 of his report that, in view of the considerations expressed in paragraphs 12.5



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to 12.117, your clients' application for outline planning permission should be refused. For the reasons given below, the Secretary of State accepts his recommendation and refuses your clients' application.

MATTERS ARISING

4. The Secretary of State notes from paragraph 3 of the Inspector's Report that, during the pre-inquiry meeting, your clients confirmed that their application would comprise primarily Class B1 uses with possibly some B2 uses but no Class B8 uses, as set out in the original application. He has, therefore, considered your clients' application on this basis.

5. Following the close of the public inquiry, the Secretary of State received a number of further representations in relation to the proposals and copies of these are attached. For ease of reference, they are recorded in the Schedule attached to this letter at Appendix A. This correspondence was not considered to raise any issue requiring reference back to the parties, either under the Town and Country Planning (Inquiries Procedure) Rules 1992, or under the rules of natural justice before proceeding to his decision in this case. The Secretary of State does not propose to deal in detail with every issue raised in the correspondence but all representations received have been taken into account by the Secretary of State in reaching his decision.

POLICY CONSIDERATIONS

6. Section 54A of the Town and Country Planning Act 1990 (introduced by section 26 of the Planning and Compensation Act 1991) requires the Secretary of State to determine this application in accordance with the development plan unless material considerations indicate otherwise. In this case, the statutory development plan applicable to the application site comprises the approved Devon County Structure Plan, incorporating the First Alteration (dated 9 July 1987), the Second Alteration (dated 17 July 1989) and the Third Alteration (dated 10 March 1994), the Torbay Local Plan (adopted 23 July 1991) and the Landscape Policy Areas Local Plan (approved in 1985 and reviewed in 1990). In addition, the South Hams Local Plan (adopted in April 1996) covers the areas adjoining the application site, including parts of the "Countryside Fringe" area. The plan to which section 54A applies is the approved or adopted development plan for an area and not any draft plan which may exist.

7. In determining this application, the Secretary of State has also taken into account, as material considerations, the relevant provisions of the Devon County Structure Plan First Review which was placed on deposit on 8 November 1996 and the Torbay Borough Local Plan Consultation Draft which was published on 29 July



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1996. The Examination in Public into the Structure Plan review commenced on 16 September 1997. Contrary to the inference in paragraph 12.23 of the Inspector's report, the local plan has not yet been placed on deposit and this is unlikely to occur in the near future, because of the complications of the Borough Council becoming a Unitary Authority in 1998.

8. The Secretary of State has noted the arguments of the applicants and the Torbay Borough Council that the statutory development plan is out-of-date and that for the purposes of this decision, greater weight should be attached to the provisions of the emerging Structure Plan Review and draft Local Plan. However, he agrees with the Inspector that while the approved and adopted plans predate the issue of recent key national and regional policy guidance, including PPGs 1, 4, 7, 13 and RPG10, their key aims and policies nevertheless remain relevant today. The emerging plans are clearly up-to-date but remain at an early stage and, in the case of the draft Local Plan, with no early prospect of reaching deposit. Therefore, for the reasons set out more fully in paragraph 14 below, the Secretary of State fully supports the Inspector's conclusion that these plans should not carry significant weight for the purposes of this decision.

9. The Secretary of State has taken full account of the relevant guidance in Planning Policy Guidance Note (PPG) 1 "General Policy and Principles", PPG Note 4 "Industrial and Commercial Development and Small Firms", PPG Note 7 "The Countryside - Environmental Quality and Economic and Social Development", PPG Note 9 "Nature Conservation", PPG Note 12 "Development Plans and Regional Planning Guidance", PPG Note 13 "Transport" and to the advice in the Regional Planning Guidance for the South West (RPG10) issued in 1994.

MAIN ISSUES AND CONSIDERATIONS

10. As indicated by the Inspector, the central consideration in the determination of this application is whether the economic need for the development outweighs the environmental, landscape and other policy objections. The Secretary of State considers that the matters set out in the call-in letter of 24 July 1996, as re-stated by the Inspector in paragraph 12.3 of his report, provide a useful framework for considering the proposal. These are reproduced below for ease of reference:-

- (i) the relationship of the proposals to national, regional, strategic and local planning policy, including the implications for the employment development strategy for Torbay;
- (ii) the suitability of the site for the proposed development, including the likely impact on the environment and landscape and on the local highway network;
- (iii) the implications of the proposed development on the loss of high quality agricultural land;



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(iv) the need and justification for the proposed development; and

(v) any necessary planning conditions and agreements which may be appropriate.

11. After very careful consideration of all the available evidence, the Secretary of State agrees with the Inspector's conclusions on each of these main issues and would add the following comments.

12. In balancing the environmental and visual impact of the proposal against the economic justification for the development, the Secretary of State attaches substantial weight to the need to preserve the high quality of the Dart Valley AONB, as one of the finest riverine landscapes in the country. He accepts the Inspector's appraisal that the development itself and the very extensive areas of woodland planting envisaged would have a significantly adverse and wholly unacceptable visual impact on the AONB, the AGLV and the surrounding countryside, despite the longer term screening effects of the landscaping and mitigation measures. In the Secretary of State's view, this harm and the consequent conflict with the landscape protection policies of the statutory development plan and with national policy guidance in PPG7, represents the most compelling of the various objections raised to the proposed development.

13. The Secretary of State considers there are three further factors weighing against the scheme. The first of these relates to transport policy considerations. He supports the Inspector's reservations about the peripheral location of the application site for a development which will be a major generator of travel demand. Because of its inaccessibility by other modes of transport and its position at the south-west extremity of the Ring Road, on the far side of the built-up area, he is concerned that the development would result in a growth rather than a containment of car travel and as such would fail to accord with the objectives of PPG13 and the principles of sustainable development. Furthermore, while he accepts that the package of measures agreed with the highway authority would enable the local highway network to absorb the traffic flows, he shares the Inspector's concern about the impact of the additional traffic generated by the development on the wider road network, and especially on the unimproved sections of the Torbay Ring Road, on which a decision by the Secretary of State is still awaited.

14. Secondly, having regard to the advice in paragraph 47 of PPG1, the Secretary of State is concerned about the implications of the development for the emerging development plan strategy for employment in Torbay. This major proposal is without doubt a central plank of the emerging economic development strategy for Torbay, which is based on the need to broaden the economic base to offset the decline in the tourism and fishing industries and to create a substantial number of new jobs. But, as the Inspector points out, the emerging strategy and proposed level of employment land provision represent a major shift away from the strategy of



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long-term constraint embodied in the statutory development plan. Both these elements and the current proposal have been the subject of many objections which need to be properly debated through the development plan process. He agrees with the Inspector that to permit this proposal now would effectively pre-determine decisions about the scale and location of future employment provision in Torbay, both at a strategic level and site-specific level, leaving few other options for consideration. He therefore concludes that there is a soundly based objection on the grounds of prematurity which would only be outweighed by the most compelling case on grounds of need.

15. The third factor of concern relates to the loss of high-grade farmland and the acknowledged adverse impact on an existing farmholding. On the information available, the Secretary of State agrees with the Inspector that there is some doubt that the sequential approach advocated in PPG7 has been undertaken sufficiently rigorously. He notes, however, that MAFF's original objection was subsequently withdrawn, in the light of the economic arguments in support of the development and he concludes that this objection should only carry weight if the case on grounds of need is not made out.

16. In considering the need and justification for the proposed development, the Secretary of State has had full regard to the facts that the Torbay area has serious economic problems, that the site lies within an area where Regional Selective Assistance and ERDF Objective 5(b) grants are available, and that it is national and regional policy to encourage employment in such areas. He has no doubt that the proposal would make a welcome contribution towards the creation of much-needed jobs and the diversification of Torbay's economic base and he has given due weight to the strength of support for the project from the local planning authority and several regional development agencies.

17. The Inspector has analysed the economic arguments in support of the scheme in considerable detail in paragraphs 12.77 to 12.106 of his report and on the basis of the evidence before him, the Secretary of State finds no reason to reject his conclusions. This site, at more than 30 ha, is much larger than the recognised minimum critical mass needed for a business park of this kind and it is generally accepted that there are no other sites of this size and quality available in Torbay. However, in the light of the amount of employment land already identified, allocated and capable of being brought forward, the Secretary of State accepts the Inspector's conclusion that there is no compelling case on either qualitative or quantitative grounds for the early release of this major green-field site. In reaching this view, he has noted your clients' confirmation that the availability of grant aid is not essential for the viability of the project and is therefore satisfied that this factor should not weigh heavily in support of the urgent release of this site. Furthermore, given the lack of evidence of any market demand from major inward investors, and the identified shortcomings of the site for this purpose, as compared with better-placed



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locations elsewhere in the region, the Secretary of State remains concerned at the prospect of such an environmentally sensitive site ultimately being developed, despite the best efforts of your clients, with more traditional business and industrial uses, which would simply replace the existing identified sites.

SUMMARY OF CONCLUSIONS

18. Having very carefully weighed all the objections to the scheme against the case that has been advanced in terms of need and benefits for the local economy, the Secretary of State is not persuaded that this project represents so vital an element in the solution to Torbay's particular economic needs as to outweigh the harm arising from its visual and environmental impact and the conflict with the principles of the plan-led system.

FORMAL DECISION

19. For the reasons given above and by the Inspector, the Secretary of State hereby refuses to grant consent for your clients' application.

RIGHT TO CHALLENGE

20. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

21. A copy of this letter has been sent to Torbay Borough Council and to all the other parties who appeared at the public local inquiry.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'E L Pritchard'.

MRS E L PRITCHARD

Authorised by the Secretary of State for the Environment
to sign in that behalf



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PLANNING

PLANNING APPEALS UNDER SECTION 78 AND CALLED-IN PLANNING APPLICATIONS UNDER SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990

LISTED BUILDING CONSENT APPEALS UNDER SECTION 20 AND CALLED-IN LISTED BUILDING CONSENT APPLICATIONS UNDER SECTION 12 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

RIGHT TO CHALLENGE THE DECISION

Under the provisions of Section 288 of the Town and Country Planning Act 1990, or Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a person who is aggrieved by the decision given in the accompanying letter may seek to have it quashed by an application, made to the High Court.

The grounds upon which such an application may be made to the Court are:

- (i) that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
- (ii) that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

The "relevant requirements" are defined in Section 288 of the Act; they are the requirements of the Act and the Tribunals and Inquiries Act 1971, or any enactment replaced thereby, and the requirements of any orders, regulations or rules made under those Acts or under any of the Act replaced by those Acts. These include:

For appeals decided by the written method, the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (SI 1987 No 701);

For appeals and referred applications decided following a local inquiry, the Town and Country Planning (Inquiries Procedure) Rules 1992 (SI 1992 No 2038).

A person who thinks he may have grounds for challenging the decision is advised to seek legal advice before taking any action. It is important to note however, that any application to quash an appeal decision must be made to the High Court within six weeks of the date of the decision letter.

FOR CASES DECIDED FOLLOWING A LOCAL INQUIRY ONLY

RIGHT TO INSPECT DOCUMENTS

Under the provisions of Rule 17(3) of the Town and Country Planning (Inquiries Procedure) Rules 1992, any person who has received a copy of the Inspector's report may apply to the Secretary of State in writing within 6 weeks of the date of the Secretary of State's decision for an opportunity of inspecting any documents appended to the report. Such documents etc are listed in an appendix to the report. Any application under this provision should be sent to the address from which the decision was issued, quoting the Department's reference number shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least 3 days notice should be given, if possible.