



Valuation Office Agency

DVS - Property Services Director

Leeds Valuation Office
Castle House
31 Lisbon Street
Leeds
LS1 4DR

To: Nigel Smith

Our Reference: 11780329.1/CEO

Email: request-372776-
a16d9c23@whatdotheyknow.com

E Mail : foi@voa.gsi.gov.uk

Date : 16 December 2016

Dear Mr Smith

Thank you for your email received on 21st November 2016 which we are treating as a request for information under FOIA.

Your Request for Information Under FOIA:

On 30th August 2016 SAFE Rottingdean brought to your attention extracts from the public reports presented to the planning committee on 20th April 2016 relating to St Aubyns School development application and items arising relating to Case number 1564171/PT dated 4th December 2015 issued by the District Valuer (DVS). There were omissions in the information provided to the DVS which SAFE believed were relevant to the conclusions drawn by the DVS report and requests for information.

The information requested is essential for both B&HCC planning committee members and the public to be able to reach a fully informed understanding as to the basis and intent of the DVS report - Case number 1564171/PT.

The response received dated 23rd September 2016 (your reference 1564171/PT) – copy attached, is regarded as unacceptable and inappropriate for the following reasons.

- Commenting that the redacted report was supplied by B&HCC is irrelevant to the content and requests made in the SAFE letter dated 30th August 2016 and is not an acceptable reason for rejection*
- The requests made and related information provided cannot be answered by B&HCC but only by the DVS as the information resides within the DVS as even the most superficial reading would have established*
- The DVS retain responsibility for its own report – whether redacted or not, and was requested to acknowledge receipt of information provided and whether this would have had an impact on their calculations and deliberations. No acknowledgement was provided.*
- No reasons of confidentiality or that the freedom of information act does not apply to the SAFE request, were presented in the reply – in fact no adequate reason for the refusal was provided, then the original letter and this clarification of the information requested should now be regarded as a formal request under the freedom of information process.*

SAFE is progressing this freedom of information request, in the light of:

- a) the acknowledged lack of in-house expertise about viability aspects of development applications as identified in the recent (2016) peer review of the B&HCC planning department (copy available on the B&HCC website)
- b) the degree of concerns expressed in the DV report on the viability assessment submitted with the recently refused application, which were not shared with the planning committee
- c) the principle of openness and transparency expressed clearly in the B&HCC constitution
- d) the involvement of Rottingdean Parish Council (the site is within the parish) and the related impact of this application on the emerging neighbourhood plan
- e) the intent of B&HCC to support the designation of the (entire) playing field as a Local Green Space at the earliest opportunity (protecting the playing field from development) as expressed in a full council meeting, minutes available on the B&HCC website.
- f) the documented intent of B&HCC officers to support viability as a reason for using at least part of the playing field for development despite protections provided by local and national policy and the opposition of statutory consultees and full council.

It is understood that any information/copy documentation provided to SAFE which would have any commercially sensitive information provided by Linden Homes as part of their viability study would be appropriately redacted.

Although SAFE does not accept that B&HCC were correct in this approach, (given recent regulatory) rulings, it is accepted for the purposes of enabling information requests to be answered.

The first request is for copies any correspondence and/or notes of conversations between B&HCC officers and the DVS after the initial letter of instruction dated 1st October 2015.

In the event of a viability report being submitted to support a new application on this site, would the DVS office please confirm that the information now provided will be taken into consideration in any future assessment of a viability report, being requested for this site?

Would this new information indicate the requirement for a revised benchmark land value calculation?

Other aspects for consideration in the event of a new Viability assessment being submitted

- NPPF 74 and local development plan CP16/17 policy restrictions
- Statutory consultees' initial and subsequent responses
- Local development plan CP20 affordable housing
- Brown / green field classification aspect of the playing field re valuation
- Concern about the basis of valuation of the field used in the viability assessment
- Basis for benchmark value as calculated from publically available data by DVS
- Covenants – existing restrictive covenants
- New strategic land assessment by B&HCC

Please specifically confirm receipt of this information.

The position as presented by the planning case officer upon which the planning committee relied would appear to include interpretations by the officer (of DVS opinion) which require clarification

Extracts from the B&HCC planning case officer documents presented to the planning committee.

8.16: Quote “The applicant’s report was referred to the District Valuer (DV) for an independent assessment with regards to whether any on-site affordable housing provision could be provided as part of a viable scheme and whether a scheme without development on the southern part of the playing field would be viable (such assessment took into account the required maintenance fund for the retained playing field and S106 contributions).”

The instruction letter to the DV presents the situation as if development on the playing field has been agreed and is acceptable (subject to viability concerns) and does not present NPPF 74 and the related objection from Sport England as factors affecting valuation aspects of any viability assessment.

Development on any part of the playing field is contrary to local and national policies and would require referral to the Secretary of State.

Questions:

Was the DVS aware of and /or provided copies of A) NPPF 74, local policies CP16 and 17 and B) the reasoned and balanced written opinion of Sport England as the statutory consultee?

Would the statutory consultee opinion carry significant weight as a factor in determining the site values?

Does the necessity for referral to the Secretary of State impact on the benchmark value of the land/site?

Would this information have had any impact on the benchmark values of the campus and playing field as calculated by the DVS?

8.18: Quote “It is acknowledged that the DV assessment also concluded that a scheme with no development in the playing fields and all private units (i.e. no affordable housing units) on the campus part of the site would not be viable.”

This is regarded as misleading to a significant degree as the implication from the wording used is that any scheme with no development on the playing field would not be viable. This implication is expressed in other documentation initiated by B&HCC officers. The principle of partial development of the playing field is being presented as an essential feature to achieve a viable development on this site as a result of the DVS report.

Questions:

Does the conclusion drawn in the DVS report relate solely to the application as presented (and based on the information provided at that time)?

Would it be appropriate to use this conclusion or any interpretation from this report in relation to a subsequent application with different site development residential unit designs?

Is “ANY scheme of development with no development in the playing fields would not be viable” an accurate interpretation of the DV report conclusion? If so what rationale supports this conclusion?

The accuracy of this benchmark value is critical to the conclusions drawn about viability.

According to the RICS the benchmark value of land should be established independently from residual value and therefore is not reliant on any commercially sensitive or confidential information. The instruction letter did not contain all pertinent information required for the calculation of an appropriate benchmark value for this site.

Questions and Requests:

The RICS guidance indicates that benchmark values should be established from industry standards and/or public accessible data. As the conclusions drawn are/should be based on available local transactional data, will the DVS provide the benchmark land value (and how calculated) attributed to the site based on the development of the school campus site with no development on the playing field?

Has the Benchmark Land Value been determined based on “no planning permissions exist” basis, or as if planning permission is likely to be obtained?

A significant feature of any assessment, in this instance, relates to the Benchmark Value attributed to the playing field. The report indicated that the valuation submitted in the viability report was not acceptable to the DVS. No commercially sensitive information provided by the applicant appears to be involved in the calculation performed by the DVS leading to the DVS conclusion.

Will the DVS provide the basis of (and assumptions made) the Benchmark Value calculation and supporting evidence such as greenfield/amenity green open space classifications used to determine valuation?

Do policy, regulatory and legal restrictions/constraints on the uses of a site impact on the “reasonableness” of the site value as assessed by the DV?

Do “access to site for construction” difficulties impact on the “reasonableness” of the site value as assessed by the DV?

Note: the site is adjacent to an AQMA and local access to the site is via narrow residential roads close to two primary schools.

When assessing against “the planning obligations” as mentioned in 1.10 of the DV assessment, do planning obligations as far as the DV is concerned include:

- 1. Affordable Housing (client’s opinion usual)?*
- 2. CIL or section 106 financial obligations (client’s opinion usual)?*
- 3. Negating NPPF guidance/restrictions/protectations for*
 - a) school playing fields / open space?*
 - b) heritage assets (listed buildings)?*
 - c) conservation area impact?*
 - d) EU and UK legal obligations re Air Quality Management - or the related mitigation costs associated with the above. (client’s opinion rarely, only in exceptional circumstances)?*

Where do normal commercial risks/costs differ from planning financial obligations for NPPF viability purposes as considered by the DVS?

Planning brief. Extract relating to - Ensuring viability and deliverability "It is important that the requirements of planning briefs are realistic and deliverable, otherwise it is possible that unrealistic expectations are formed which may result in the promotion of schemes which are not viable, introducing delays into the development process. However, this should not be to the detriment of heritage assets, a point which is reinforced within paragraph 132 of the NPPF: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation... Significance can be harmed or lost through the alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification" Developers will therefore need to provide clear and convincing justification for any harm caused to heritage assets as a result of putting forward a viable scheme. In these circumstances, the local planning authority would need to assess whether the benefits arising from the proposed development outweigh the harm caused to heritage assets and/ or the departure from policy. Furthermore, Paragraph 74 of the NPPF is also to be considered in regard to the existing open space, sports and recreational buildings and land, including the playing field." Note: the chart in the planning brief indicating the area available for development does not include the playing field as being available.

Comments/questions on the above extract include:

Can "unreasonable expectations" include an expectation of the owner for an unrealistically high land value?

As additional costs associated with Heritage assets are included in construction costs, usually separately identified as exceptional costs, it is assumed that they have been included in costs. If these costs were abnormally high due to deterioration permitted by the owners, would it be reasonable for these costs to be excluded from a viability assessment as they should in principle be allocated against site land values?

Heritage considerations were cited as reasons for refusal but NPPF 74 was not quoted as a reason for refusal. In the omissions section below, correspondence with Sport England (a statutory consultee until late 2018) illustrating that they regard the field as being unsuitable for development having had regard to both the local and city open space requirements and the inadequate justifications provided by the developer, are available. Their opinion is regarded as so significant that in the event that an application is likely to be approved contrary to their opinion, then the application must be referred to the Secretary of State. Given this situation and the fact that the Rottingdean Parish Council in April 2015 voted for the designation of the entire playing field as a local green space (NPPF 76 and 77) in the emerging neighbourhood plan, which has been endorsed by a B&HCC full council vote/recommendation, the availability of the playing field for development has not yet been determined. Additionally, this site is not located in the eight areas identified in City Plan One as sustainable development areas or in other areas in City Plan One such as the Urban Fringe.

Although officers may express an opinion, on balance, as to whether benefits of development utilising the playing field outweigh regulatory/policy/guidance obstacles (these cover not only open space policies but also heritage and conservation area policies), it is for the planning committee to make that final determination. In such

circumstances, would and should the DVS take these factors into consideration in establishing the benchmark value.

The planning committee appear to have been misled as to completeness of facts and relative significance to enable an adequately informed decision of balance. The above indicates that the opinion of SAFE, the basis for valuation of the playing field should be on a green amenity land basis has considerable merit.

Questions and Requests:

What were the considerations affecting the valuation used in the benchmark calculation of the playing field by the DVS?

Did these include the factors listed below?

Omissions of relevant data known to B&HCC planning department but not provided to the DV Considerations for Benchmark land value assessment of St Aubyns school site re viability

- 1. Existing restrictive covenant. OMISSION (not relevant for planning but important for valuation purposes).*
- 2. Develop School Campus site and existing owners retain ownership of the field. POSSIBILITY*
- 3. Heritage asset restrictions – listed building OBSTACLE*
- 4. Conservation area – impact OBSTACLE*
- 5. Site not in any of areas identified as sustainable development areas nor identified in the urban fringe report as a site available for development – not planned for additional residential development up to 2030 in City Plan Part One or in scoping of City Plan Part Two. OMISSION*
- 6. Playing field – NPPF 74, B&HCC CP16, Local Green Space – emerging neighbourhood plan designation OMISSION*
- 7. Greenfield / Brownfield site designation open to interpretation OMISSION*
- 8. CIL / Section 106 contributions and Affordable Housing OBSTACLE*
- 9. 2 approaches/offers for continuing use (School and Blind Veterans) rejected. “Current use” valuation information available OMISSION*
- 10. Purchase costs and recent site land revaluation by owner OMISSION*
- 11. Cumulative infrastructure impact of other major developments OMISSION*
- 12. Sustainable development considerations*
 - Education - no places available in junior schools*
 - Health – Doctors etc - existing surgeries oversubscribed*
 - Air Quality Management area – no current plans for remediation in City Plan One*
 - Local Road network capacity – congestion throughout the day (not just peak times)*
 - Public Transport limitations - existing services full at peak times*
 - Parking - existing shortage for valuation purposes**OMISSIONS*

Would the refusal of the recent planning application affect future benchmark land value calculations?

Covenants

There are two titles covering the area known as the playing field. There exist 2 restrictive covenants on the playing field and there are existing beneficiaries of those covenants. Although these are not considered in relation to planning permissions, in

the event that the playing field is not protected from development by NPPF 74, then the value attributed to the site could be affected by these restrictive covenants. These include but are not limited to:

- Nothing shall be built on the strips which are 15ft deep from the north and east boundaries*
- No dwelling house is to be erected on the land or any part with a less frontage with the garden than 40 ft*
- No buildings other than detached or semi-detached houses shall be erected on (the majority of, but including, the southern section of) the playing field.*

Benchmark Land Valuation

A key element of such an assessment is the judgement applied as to what is a competitive return for a willing land owner – a reasonable value attributed to the site land value. Such judgement can be informed and exercised in a number of ways, but key to any such judgement is complete and accurate information being provided to the assessor.

Extracts from NPPF and guidance Paragraph: 023 Reference ID: 10-023-20140306 Land Value

Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected. In all cases, land or site value should:

- reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and*
- be informed by comparable, market-based evidence wherever possible.*

Where transacted bids are significantly above the market norm, they should not be used as part of this exercise. Revision date: 06 03 2014

Paragraph: 024 Reference ID: 10-024-20140306 Competitive return to developers and land owners The National Planning Policy Framework states that viability should consider “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible. A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy. Revision date: 06 03 2014

It appears to SAFE that the “development site land value” anticipated by the owner is unrealistically high – in relation to the development limitations imposed by B&HCC City Plan One, NPPF policies, the planning brief and the intent to protect the playing field from residential development as expressed by Rottingdean Parish Council in the emerging neighbourhood plan and by the response of B&HCC to two petitions from local residents.

This unrealistically high expectation can be confirmed by reference to:

- a) The initial purchase price of the school (1£)*

- b) *The amounts spent on remediation and maintenance since purchase*
- c) *The revaluation (and its basis) of the site prior to the original planning application reflected in the accounts of the owner – if they are prepared to share that information (even on a confidential and limited distribution basis). It may be that the owners are trying to recover school operating losses incurred since the purchase (as it would appear that limited due diligence was performed) and have capitalised such expenses.*
- d) *The unsuccessful negotiations with Hurst College and Blind Veterans (to avoid the amenity loss to the community of the school closure) Existing or alternative use valuations plus a reasonable owner premium could be compared to both the benchmark and residual values to validate the appropriateness of the owner site valuation. It has not been possible for SAFE to establish whether the “book value” of the land has been provided as support for land values attributed to the site however, if this is the case, it is relevant to note that the applicants revalued the site within a couple of years (no earlier than 2013) of the purchase. The actual financial level of this revaluation cannot be established as the related accounts do not contain this revaluation on a site by site basis nor will the applicants respond to requests for information. However, it is considered that this revaluation for this site is likely to exceed 10 million pounds.*

Alternative use values appear to be substantially below residential development value.

Questions

Did the DVS establish any alternative use values for comparison purposes?

What basis for such calculations was used?

Was the DVS advised of the discussions with the Blind Veterans Association and Hurst College?

What is the residual land value which would allow the school campus to be developed with 40% affordable housing and no development on the playing field using the information provided in the viability assessment?

SAFE would appreciate a response to these queries and information requests as soon as possible due to impending submission of a new application which may be supported by a revised viability report.

Response to your request:

I have considered your request under the terms of the Freedom of Information Act 2000 (FOIA) as the Valuation Office Agency (VOA) is an executive agency of HM Revenue and Customs.

Studying your request, I consider that it falls into two broad categories, as captured below:

- 1) A request for disclosure of all exchanges in the contractual case between VOA and its client, together with a number of questions specifically concerning the details of the valuation factors taken into account and the process adopted in the case.

2) A number of detailed questions seeking information on the factors taken into account in viability assessment work more generally and seeking the VOA's opinion on a number of potential alternative valuation scenarios for the case at hand.

I shall address each in turn.

When considering your request, under the FOIA, the VOA, including its DVS business stream, cannot take into account who has asked for the information (it is applicant blind) nor the reason why you are seeking this information. To clarify, section 1(1) of the FOIA provides two general rights to those who make requests for information.

They are:-

- a) the right to be informed in writing by the public authority whether or not it holds the information sought in the request; and
- b) if so, the right to have that information communicated.

These rights are subject to a number of exemptions under the FOIA.

In particular, when another law prevents disclosure of information, it is exempt from disclosure under section 44(1) (a) of the FOIA. Further, if confirming or denying whether information is held under FOIA would itself reveal information which is exempt under section 44(1) (a), the duty to confirm or deny information is held does not arise; section 44(2) FOIA refers.

Response to 1) above: your request for disclosure of all exchanges in the contractual case between VOA and its client, together with a number of questions specifically concerning the details of the valuation factors taken into account and the process adopted in the case.

I confirm that the VOA holds information within the scope of your request. However this is exempt information under Section 44 (1) (a) of the FOIA due to our duty of confidentiality set out in sections 18 (1) and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA).

Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) provides that Valuation Office Agency staff, as Revenue and Customs officials, may not disclose information which is held by them in connection with any of our functions. The information you seek, where held, would be held in connection with our functions relating to property valuations / advice provided under section 10 of the CRCA to one of our clients to whom we have a general and legal duty of confidentiality (see below).

Section 23(1) CRCA states that where information falling in section 18(1) relates to a '*person*' who is identified or who could be identified from that information the exemption in section 44(1) (a) FOIA applies.

'Person' includes both living persons and legal entities (see paragraph 110 of the explanatory notes to the CRCA) such as a client of the VOA. Section 23 of the CRCA has been subsequently amended by section 19 of the Borders, Citizenship and Immigration Act 2009 to clarify that we do not consider any other statutory gateways when responding to a FOIA request.

This means that the VOA's and / or HMRC's duty of confidentiality extends to all its client / taxpayer property records because of the restrictions set out in Sections 18 (1) and 23 (as

amended) of the CRCA and cite Section 44 of the FOIA which refers to another enactment (Act).

Section 44 is an absolute exemption and therefore does not require a consideration of the public interest.

To make people aware of the restrictions placed on us we state in our FOI Publication Scheme under '*Information we will not disclose under the FOIA*'

"Release of information under FOI is release to the world. Public authorities are not allowed to take account of the identity of the person making the request, or their motives, when deciding what information will be disclosed in response to an FOI request."

To carry out its functions the Valuation Office Agency (as part of HM Revenue and Customs HMRC) holds confidential customer information including information on properties. When HMRC was created in April 2005, Parliament decided that any information held for an HMRC function that identifies a 'person', (including legal entities such as limited companies), or which would enable their identity to be deduced, is exempt from disclosure under the FOI regime. The provision is set out in Section 23 of the Commissioners for Revenue and Customs Act (2005) and applies even if the requestor is an individual asking for information we hold about them, or a director asking for our information about their company. "

We go on to state:

"[District Valuer Services \(DVS\)](#) is the commercial property services arm of the Valuation Office Agency (VOA), providing professional property advice right across the public sector, including private and third sector clients involved in delivering public services and functions of a public nature. In line with the Information Commissioner's guidance the Agency will always consult with its client before considering whether it is in a position to release any information requested. It may be more appropriate to make a request direct to the respective client, rather than the Agency, when seeking information."

This is available on our corporate website, the link being:

<http://www.voa.gov.uk/corporate/freedomOfInformation.html>

Response to 2) above: your questions seeking information on the factors taken into account in viability assessment work more generally and seeking the VOA's opinion on a number of potential alternative valuation scenarios for the case at hand.

The questions posed seek the VOA's views and opinions either on potential alternative scenarios/future instructions relating to the case or questions phrased more generally about wider development viability issues and considerations.

The FOI Act covers all information held, whatever its age, classification, format, source or location. The Act states: 'any person' making a request to a public authority is entitled to be told whether the public authority 'holds' the information, and have that information 'communicated' to him (subject to exemptions).

The Act therefore concerns information held and does not provide a statutory gateway for the provision of responses to requests for opinions, views or other professional advice. As the questions posed in your FOI request do not fall within the provisions of FOIA, I must advise you that I am unable to respond to them.

I appreciate this will be disappointing and not the answer you had hoped for.

Your Appeal rights

If you are not happy with this response to your FOIA request you may seek a review by writing to;

Valuation Office Agency, Information Law and Disclosure Team, Head Office, 6th Floor, Wingate House, 93/107 Shaftesbury Avenue, London, W1D 5BU

Email: foi@voa.gsi.gov.uk

You must request a review within 2 months of the date of this letter. It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Valuation Office Agency. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Outside of FOIA / the way forward:

As you are aware we have consulted with our client about this matter and a copy of this response will be shared with them.

Yours Sincerely

Patricia Bowen

Director of Property Services

Here are links to the Legislation quoted in this request – for your convenience.

Freedom of Information Act 2000 (FOIA)

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

Commissioners for Revenue and Customs Act 2005 (CRCA) –

<http://www.legislation.gov.uk/ukpga/2005/11/contents>

Borders, Citizenship and Immigration Act 2009

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090011_en.pdf