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Our ref: PT/RB/HIL3/1

Your ref: 20/00744/OP

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29 April 2021

Dear Sirs

Re Land opposite Heath Farm, Briary Lane, Royston, Hertfordshire: Outline Planning Application for up to 99 dwellings introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point via the demolition of an existing property on Echo Hill (all matters to be reserved save access).

1. As you are aware, we have been instructed on behalf of Royston Says No To Gladman, a local community group. We wrote to the Chief Planning Officer on 15 March and 8 April 2021, primarily in relation to the failure to request an EIA screening opinion and matters of concern regarding Access. We received no response to our first letter and only a brief response to our second letter on 12 April 2021, on the evening when the planning committee was due to consider the above application ("The Application").
2. Contrary to the recommendation in the Officer's Report "OR", the members of the planning committee unanimously refused the Application. Nevertheless, we have been asked to address your comments on the Access and EIA screening issues. Our client has also asked that we express their concerns, and the concerns of the residents which they represent, on the conduct of North Hertfordshire District Council ("NHDC") Planning Department and of Hertfordshire County Council Highways ("HCCH") officers, prior to and on the evening of the planning meeting, specifically regarding misinformation provided in the OR and your letter of 12 April 2021.

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Access

3. In our letter of 8 April, we had raised important questions about the deliverability of Access to the site. The concerns included legal ownership of the land required to provide access and about the possibility of complying with the proposed conditions (in relation to turning circles and the gradient).
4. Your letter of 12 April 2021 stated:

“Access – this issue has been raised by the officer with the applicant and a response was received dated 14 December 2020 which is accessible on the planning portal and is sufficient for the officer’s purpose”.
5. The first point to make is that the letter you refer to, dated 14 December, was not available on the planning portal and was only made available on the planning portal during the week commencing 19 April 2021 (and this appears to have been a response to concerns to NHDC about the absence of this document being raised by a member of the public).
6. Please confirm:
 - a. When this document was actually posted on the portal;
 - b. Why this document had not been posted earlier so that the public would be able to comment on it; and
 - c. Why you incorrectly stated to us and to the committee (on the night of the planning committee meeting) that it was on the portal, giving the (false) impression that it had been available for public scrutiny?
7. Answers to these questions are particularly necessary in light of the repeated questions and concerns that had been raised about the issue of Access. Our Client had raised the concerns about legal ownership to the Officer in its RAG summary document and NHDC had been shown title documentation which conflicted with the applicant’s position. We had repeated these concerns in our letter of 8 April and had identified the legal steps that should have been taken in relation to certification and notice.
8. Despite this, and notwithstanding that we had pointed out that under s.65 of the Town and Country Planning Act 1990, a local planning authority “shall not entertain” an application unless the requirements are met, your letter of 12 April suggested that the applicant’s letter of 14 December 2020 was “sufficient for the officer’s purpose”. This was followed by representatives of NHDC referring to this issue as a “Civil Matter” when addressing the planning committee.
9. The concerns about ownership and the potential implications for delivery of this application were clearly material factors which needed to be carefully considered and fully addressed in the OR. The failure to publish the response on the portal, the unquestioning acceptance of the applicant’s assertions, the failure to engage with the issues raised by our Client and others, the suggestion that the applicant’s response was sufficient, and the misunderstanding of the legal significance of these issues, are all examples of significant failings in the handling of the Application by NHDC planning department.
10. *Our Client has related concerns* regarding Hertfordshire County Council Highways’ (HCCH) treatment of this issue. Despite repeated requests, no explanation has been given for HCCH’s dramatic U-turn following their initially very strong objection. The FOI requests made by our Client have not provided any documentation to explain what led to such a dramatic change.

In addition, during the planning committee meeting, the HCCH representative seemed to have no grasp as to the detail of the scheme, particularly in relation to gradients, as demonstrated in his responses to the questions from committee members.

11. We request that NHDC places all communications with HCCH (by all parties) on the portal, including all documentation which relates to the scope of the HCCH initial refusal and to HCCH changing its position.

EIA

12. In our letter of 8 April (as well as our earlier letter dated 15 March), we had also raised important questions about EIA.
13. Your letter of 12 April 2021 stated that it was possible to rely upon the screening opinion obtained for the earlier application (which was for a higher number of dwellings) and that the Council had been able to fully consider the proposal through the extensive application material submitted.
14. *Once again, this response ignores a number of important points and seems to misunderstand the legal position and the Council's responsibilities:*
 - a) *The application was for urban development on a site of more than 0.5 hectares, and so falls under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 ("EIA Regulations"). Your letter ignores the fact that the Officer incorrectly said in the OR that the proposed development does not fall within Schedule 2. As we had pointed out this was not the view of the applicant or the conclusion of the previous screening opinion.*
 - b) *The suggestion that the previous screening opinion could be relied upon because this application had fewer houses ignores the point that the new application was different (especially in relation to access) and that these could have environmental impacts. It was unsafe to assume that the differences would not have environmental impacts and so there should have been a screening opinion.*
 - c) *The EIA Regulations do not provide for a negative screening opinion to "determine" that a development is not EIA development. Therefore, even after a negative screening decision, it is still necessary to consider if a development is or could be EIA development. We had pointed out that when the earlier application went before the Planning Committee, the OR concluded that the application would have resulted in significant environmental impacts. That view was reflected in its decision to reject that application. Therefore, when the new application was received, the question of whether this was EIA development should have been reconsidered.*
 - d) *You will appreciate that under s.3 of the EIA Regulations, a planning authority is forbidden to grant planning permission "for EIA development unless an EIA has been carried out in respect of that development."*
15. Your letter also stated that the Council had been able to fully consider the proposal through the extensive material provided. If this is a suggestion that the reports could make up for the lack of an environmental statement, that also demonstrates a misunderstanding of the EIA Regulations. As we have previously pointed out, part of the purpose of the EIA process is to address the general public's concern about the possibility of unknown or unforeseen effects of a development. The environmental statement should allay fears created by lack of information and enable the public to understand for themselves how its conclusions have been reached, and to form their own judgments on the significance of the environmental issues

raised. Even if other reports have been submitted, these do not obviate the need for an environmental statement (Berkeley v SS Environment [2001] 2AC 603).

SSSI

16. Your letter states that the issues we had raised had been considered in detail in the officer's report at 4.3.39 to 4.3.52. We are surprised at this statement since a simple analysis will demonstrate that this is not the case.

Further Matters

17. It is crucial that the public have trust and confidence in those working in local government. Notwithstanding the concerns we have raised about the legal errors that were made and would have left NHDC vulnerable to challenge, there is widespread concern within the local community about the way this application was handled. This ranges from the lack of publication of important material, the failure to engage with the issues raised by the public, and the failure to question the material provided by the applicant. Had it not been for the forensic questioning by the committee, a different decision could have been reached.
18. The unanimous rejection of the Application should lead to an investigation of the way that this application was processed. The further matters that we have raised should also lead NHDC to carry out a detailed investigation, the results of which should be shared with the public.
19. Finally, if the applicant does appeal, or if a further similar application is made, we trust that NHDC will ensure that different officers will be involved.
20. We look forward to your response to the questions above and full details of the steps that NHDC will be taking to investigate the issues that have been raised.

Yours faithfully

A handwritten signature in black ink that reads "Richard Buxton Solicitors". The script is cursive and fluid.

Richard Buxton Solicitors
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