

## NORTH HERTFORDSHIRE DISTRICT COUNCIL

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15 June 2021

Mr Paul Taylor  
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Our Ref: AF330478396

Contact: Tom Allington

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Dear Mr Taylor,

**Complaint Ref: AF330478396**

**Re: Complaint relating to Planning Application 20/00744/OP Proposed outline planning application for up to 99 dwellings at Land Opposite Heath Farm, Briary Lane, Royston**

I refer to your complaint received on 29<sup>th</sup> April 2021 concerning the above site, the planning application and the consideration and determination of this application at Planning Control Committee.

I have investigated this matter including checking of the application documents and the case officer's committee report. I set out below my findings in relation to your complaint.

Details of the complaint

Your complaint raises the following concerns:

**Access**

- 1) You raise concerns that a letter from the applicant dated 14<sup>th</sup> December 2020 was not available on the planning portal when the application was considered by Planning Control Committee on 12<sup>th</sup> April 2021 and you seek further information on this matter.
- 2) You raise concerns that the Council failed to properly consider land ownership issues and the deliverability of the proposed access.
- 3) You raise concerns regarding the nature of the change in opinion of the HCC Highways department on this application and you ask that all communications with the Highways Department be placed on the portal.

## EIA

- 4) You raise concerns that the Officer's committee report incorrectly refers to the EIA regulations and that a Screening opinion was not considered or carried out as part of this application and you seek further information on this matter.

## Further matters

- 5) You suggest that legal errors have been made during the processing of this application, including failure to publicise important material and a failure to engage with public issues. You therefore suggest that the Council carry out a full investigation into how this application was handled.

## Assessment of your complaint

I will provide my response and findings to each of the matters you have raised, using the numbering you have used in your letter. In response to the matters raised, I make reference to the Case Officer's Committee Report, which can be viewed on the Council's website via the following link:

<https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=151&MId=2701>

- 1) You raise concerns that a letter from the applicant dated 14<sup>th</sup> December 2020 was not available on the planning portal when the application was considered by Planning Control Committee on 12<sup>th</sup> April 2021 and you seek further information on this matter.

You have asked a series of questions relating to this matter, which I answer as follows:

*Please confirm:*

- a. *When this document was actually posted on the portal;*

From our records I note that this document would have been added to the Council's website on 19<sup>th</sup> April 2021.

- b. *Why this document had not been posted earlier so that the public would be able to comment on it;*

I understand that this was simply due to a clerical error. I note that the associated overlay plan was available on the website at the time the application was considered by committee.

- 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?*

I have been informed by my colleague Nurainatta Katevu (author of the letter to you dated 12<sup>st</sup> April 2021) that at the time of responding to your letter after 6pm on 12 April 2021, that she had received an email from the planning officer for clarification on the issue and was told that the letter of 14<sup>th</sup> December 2020 was on the planning portal. Due to time

pressures on the day Mrs Katevu did not verify that this was uploaded properly. For context, she only had sight of your letter on the day of the committee meeting and was in meetings and conducting interviews earlier in the day. At the time of writing the letter to Richard Buxton Solicitors (and which was also sent to members), this was sent in good faith with no intention to mislead.

- 2) You raise concerns that the Council failed to properly consider land ownership issues and the deliverability of the proposed access.

Having read the letter from the applicant dated 14<sup>th</sup> December 2021, I consider that its contents are and were not critical to the determination of the application (which was refused in any case), as this letter sought to clarify a matter of land ownership and therefore the accuracy of the submitted plans. Matters of ownership and boundary disputes are not for planning officers or planning applications to determine/ resolve and these are private civil matters.

The Case Officer took into account the concerns raised by local residents and having received further clarification on this from the applicant, it was considered this matter was resolved and it had been sufficiently demonstrated that the proposals, and more specifically the access, was deliverable. As such, the Council fully and properly considered this issue.

- 3) You raise concerns regarding the nature of the change in opinion of the HCC Highways department on this application and you ask that all communications with the Highways Department be placed on the portal.

As I am sure you will be aware, it is quite normal practice for statutory consultees, including the Local Highway Authority, to revise their stance or to withdraw their initial objections, following the submission of further information, amended plans and/ or the imposition of conditions and Section obligations to overcome the initial objection, as was the case in this instance. The HCC Highway officer original objection comments dated 23<sup>rd</sup> April 2020 and the revised comments dated 18<sup>th</sup> November 2020 are both available to view on the Council's website, which outline the reasons for their recommendations at the different stages.

Furthermore, matters relating to highways and access are discussed in detail in the Officer's Committee Report at sections 4.3.54 to 4.3.57 and 4.3.60 to 4.3.68, which outline why these matters were considered to be acceptable.

With regard to the communication between NHDC officers and the HCC Highway officer, it is not normal practice to place all correspondence between officers and statutory consultees on the Council's website/ portal. If you wish to view these communications, I would recommend that you request these via a Freedom of Information Request under the 2000 Act.

- 4) You raise concerns that the Officer's committee report incorrectly refers to the EIA regulations and that a Screening opinion was not considered or carried out as part of this application and you seek further information on this matter.

The EIA Regulations 2017 at 10. B) of Schedule 2 states the following:

*10. Infrastructure Projects – (b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;*

*Applicable thresholds and criteria:*

*(i) The development includes more than 1 hectare of urban development which is not dwellinghouse development; or*

*(ii) the development includes more than 150 dwellings; or*

*(iii) the overall area of the development exceeds 5 hectares.*

The proposals in this case was for less than 150 dwellings, and although the built form in terms of the area of proposed housing would cover an area less than 5ha, the 'overall area of development' exceeds 5ha. As such, I acknowledge that the Officer's Committee report is in error, as I agree that the development falls within Schedule 2 of the EIA regulations. However, this does not necessarily mean that the proposals represent EIA development and that an Environmental Statement (ES) was required.

As noted in the report and in the previous response to you, a Screening Opinion was carried out with regard to the previous proposals and which found that the previous, larger proposal was not EIA development. It is therefore reasonable to conclude that this smaller development, which was considered to have significantly reduced environmental impacts, would also not be EIA development. As such, in concluding that it was not EIA development, it is reasonable to rely upon the significant material submitted as part of the application to assess the impacts of the proposals. It is considered that the change in location of the proposed access would not result in such significant impacts as to justify or warrant an ES in this instance. As such, although a Screening opinion was not carried out in this specific instance, it is my considered view that the proposals would not have required an ES in any case.

As you are likely aware, the refusal of planning permission is now subject of an appeal and so it will be for the Planning Inspector to consider whether or not the proposals represent EIA development and whether or not an ES should have been required in this instance.

- 5) You suggest that legal errors have been made during the processing of this application, including failure to publicise important material and a failure to engage with public issues. You therefore suggest that the Council carry out a full investigation into how this application was handled.

I acknowledge that the letter from the applicants regarding land ownership at the access point, dated 14<sup>th</sup> December 2020, should have been made available on the Council's website. However as noted above, this was only due to a clerical error. Other than this, bearing in mind the response I have provided above, I do not agree that the Council has made any other notable errors.

### Conclusion

I have found that the planning application ref: 20/00744/OP was dealt with in a professional manner having regard to the Council's standard practices and procedures and that the report provided to the Planning Committee enabled the Committee to make a sound and reasonable decision based upon planning grounds (which was refused in any

case). Consultation on the application was also carried out in accordance with the statutory requirements.

I hope the above comments are of assistance. However, if you feel that your concerns have not been suitably addressed you may apply to have your complaint escalated to stage 2 of the Council's complaints procedure, which would be handled by Simon Ellis (Development and Conservation Manager). You will need to make this request through the Council's customer services: <http://www.north-herts.gov.uk/home/customer-services/comments-compliments-and-complaints>

Please note that Council reserves the right not to allow your complaint to be escalated to stage 2 if it feels the stage 1 response has suitably addressed your concerns.

Yours sincerely,

Tom Allington  
Principal Planning Officer - Strategic Sites