

# ROYSTON SAYS NO TO GLADMAN

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Sunday 18 July 2021

*By Email*

Dear Tom

**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**

Thank you for your letter dated Wednesday 16<sup>th</sup> June.

We discuss each of the points raised in our letter below.

1. 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.

**You state in your response:**

*The document was not uploaded due to a clerical error and that the associated overlay plan was available on the website at the time the application was considered by Committee.*

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

Regarding the response from Ms N Katevu on behalf of NHDC you also state

*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.*

*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.*

**Our response:**

The committee meeting was on 12<sup>th</sup> April 2021 and you confirm the document was uploaded after this meeting, on the 19<sup>th</sup> of April 2021. Therefore, you have acknowledged this document was not made available to members of the committee, nor was it a document available for public scrutiny.

The owners of No 23 have raised the boundary issue with the case officer on several occasions, specially it's potential impact to them, the implications to the delivery of the proposed access and lack of notices served. The officer was therefore well aware of the sensitivities involved and even took it upon themselves to raise this directly with the applicant, this resulted in the following response from the applicant in their letter dated 14<sup>th</sup> of December:

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*“Land Ownership - The access has been carefully designed to allow a refuse vehicle to turn in and out of the site and has been accepted by HCC Highways. The plans show the red line to include only land within the ownership of Mr and Mrs Baddeley and Mr. Gill and Mrs Turrell as being included within the application site. No third-party land has been included, and this has been checked and confirmed on several occasions. We have been made aware of the owners of 23 planting a tree since the application was submitted. We believe this to be in the wrong place and will resolve this at the appropriate time.*

Whilst we acknowledge the case officer must consider the evidence provided to them by the applicant, this should also apply to the evidence provided by other interested parties. In this case the owners of No23, who specially disputed the land ownership and provided reasonable evidence to counter the claim provided by the applicant (Title deeds and legal correspondence).

We therefore question why the letter and supporting information of the 14<sup>th</sup> of December in the very least had not been issued directly to the owners of No 23, given the sensitivity of the situation which had been made clear. Had this been done this would have allowed the officer to undertake their independent assessment and would likely had led to the officer raising a potential conflict with the Highways department regarding access (see our response to point 2 regarding further evidence).

It would appear from the evidence so far provided by you and from other correspondence we have had with NHDC, that weighting was only given to the evidence provided by the applicant without any regard to the evidence issued by the owners of No 23.

We accept that a clerical error would have resulted in the letter not being posted immediately after the receipt. We do not however accept this as justification for the lead in time ahead of committee nor for the complete lack of consultation by the case officer with the owners of No 23 and their appointed planner during this period.

There was nearly 4 months from receipt of this letter for this clerical oversight to have been rectified, with several opportunities made available to the case officer to investigate this matter further, following correspondence not just from No 23, but from Peter Waller (planner), ourselves, our solicitors Richard Buxton, and other members of the public.

You state the overlay plan was however made available. If your intention is to infer the overlay plan was sufficient on its own, to support the officers report and NHDC legal response for committee, then we consider this to be disingenuous. The plan by the applicant was produced as an attachment to the 14<sup>th</sup> of December letter, and was specifically referred to in the applicant's letter. As follows:

*“You can see on the submitted swept path analysis the red line application boundary is clearly within the land shown on the land registry title plan (the attached drawing no. 2019-112/502 shows the overlay of legal title) and indeed has been stepped in to ensure no third-party land has been included or is required. There is no need for us to amend our proposals nor indeed do we need to serve any further notices.”*

Therefore, the intention by the applicant was for this plan be considered in a similar regard, for example, as a planning technical report or technical note with supporting appendices. There are other

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matters addressed in the letter by the applicant that they use to give weighting to the overlay plan, which they refer to as “Legal”.

Whilst there may have been no intention by NHDC to mislead, of which we are very pleased to hear, misleading the committee, although unintentional, may have still occurred.

2. Concerns that the Council failed to properly consider land ownership issues and the deliverability of the proposed access.

#### **You state in your response:**

*Having read the letter from the applicant dated 14th 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.*

#### **Our Response:**

Had this letter not been considered material of consideration then we question why your own legal department referred to it and used it as evidence in their response to us and why the planning committee officer listed this letter as evidence in the committee report.

We have informed NHDC on numerous occasions the implications on lack of notice served and the potential impact to the delivery of access, which is not a reserved matter. Peter Waller, a qualified and knowledgeable planner even provided appeal evidence to NHDC of a case that was dismissed by an inspector due to land ownership discrepancies and lack of notice served. Therefore, this should not have been so casually dismissed and we would direct you back to the letter from Richard Buxton solicitors and Peter Waller on why it is a planning issue and not just a civil matter.

Your statement of “**which was refused in any case**” does not justify the oversight and it was the committee who refused and did a thorough review of the evidence before them, despite in our opinion the failure of the planning officer to do this work or provide all the necessary information.

We can now also inform you that the applicant, through their own legal counsel, **have now acknowledged, in writing, to the owners of No23 that there is indeed an ownership and boundary issue and they have overestimated land in their control.** The amount of land and the legal discussion regarding this matter is still ongoing with potential implications to the delivery of the access.

This is not only an admission by the applicant that they have been wrong regarding the redline boundary but also justifies our concerns with the misinformation given by the applicant. It also raises questions on how NHDC could have been so sure that the evidence provided by the applicant, was accurate given the counter evidence provided by No 23 (title deeds, legal counsel) and why the

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applicant was given preferential treatment by the case officer. It is therefore in our opinion clear that NHDC did not consider this matter fully and properly.

We consider that this matter alone, had the committee agreed to planning, would have been justifiable grounds for seeking a judicial review.

3. Concerns regarding the nature of the change in opinion of the HCC Highways department on this application and all communications with the Highways Department be placed on the portal.

#### **Your Response:**

*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 23rd April 2020 and the revised comments dated 18th 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.*

#### **Our Response:**

We thank you for your time and consideration regarding this matter. We are still of the opinion that there was insufficient evidence provided to residents on the justification for the removal of the objection and our own technical experts raised several points on why the Highways Authority was wrong to approve the application.

We do acknowledge that NHDC must take the view of their statutory consultees into consideration as part of the planning process and that although NHDC have the power to overrule at planning, it is difficult for this to be done when the Highways Authority have provided insufficient evidence to support such as stance, despite as in this case the committee raised significant concerns with highways.

Should this site indeed go to appeal then it is our intention to raise highway matters. Should we find that the inspector dismisses the site and a reason used is specific to highways, then we shall consider our legal options on taking this matter up with the Highways Authority. We note as an interested party that we shall keep you informed regarding any progress of this, in the hope it will be of use to your department going forward.

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4. Concerns raised 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 request for further information on this matter.

#### **Your response:**

*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 dwelling house 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.*

#### **Our Response**

It is remarkably cavalier to acknowledge the fact that the officer misunderstood/misapplied the law ("I acknowledge that the Officer's Committee report was in error") and saying it made no difference, this is not really the point. Our legal team have made several representations not only regarding the error made by the officer but also evidence on why a full and robust Screening Opinion is required for this site, with supporting evidence of case law.

Accepting the site could go to appeal does not abolish an error made by the department, it should not be for residents to raise this important issue.

Given your response we shall be making representations, should this site go to appeal, regarding the lack of EIA. We still stand by the conclusions made by our legal advisors, Richard Buxton, on this matter and feel your response has not sufficiently addressed this point.

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5. Suggestion 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. Suggestion that the Council carry out a full investigation into how this application was handled.

## **Your Response:**

*I acknowledge that the letter from the applicants regarding land ownership at the access point, dated 14th 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*

## **Our Response**

We now have evidence from the applicant that there is an error with the boundary, and this is with solicitors. This clearly shows the officer was wrong to ignore the information provided by the residents, their planner, and our legal counsel.

You have admitted a clerical error was made but given no consideration of the officer failing to ensure, despite several opportunities to do so, to engage with the residents at No 23 during a 4-month period. You make no reference to the officer being wrong in your response to Statement 5 regarding the EIA in the committee report.

## **Conclusion**

As you state in your letter, the site is likely to be subject to an appeal, of which we understand the applicant have informally notified NHDC. However, we are unaware of an official registration of an appeal has not yet been made with the Secretary of State.

Whilst we are understanding of good intentions, we are still very disappointed in the conduct of the officer, planning department and your recent response. Given the recent acknowledgment by the applicant regarding the error on land ownership it is now clear the advice given to the committee regarding the boundary was wrong.

However, the seemingly cavalier attitude from NHDC in responding to this detailed complaint remains a real concern for us and the many supporters within the community. We, as taxpayers and voters rely on officers employed doing their job; to act with propriety and always seeking to act within a planning balance framework. It was therefore shocking to see the lack of scrutiny; for example, taking the applicants word re the boundary issue relating to the application, then when challenged at committee trying to dismiss it as "a civil matter", when (as detailed in this letter) we have now been vindicated by the applicant themselves with their actions since the planning committee.

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Following consultation with our legal and technical experts, although we believe we have strong case to raise our complaint with the local government ombudsman, we have made the decision to not proceed as we would rather move on constructively and instead work with NHDC at the appeal. However, we reserve the right to review this subject to the appeal and its outcome.

We are also, as mentioned earlier in this letter, very concerned at the ambiguity of whether Gladman have appealed or not. The letter we received from you states: *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.* Yet, to our knowledge no appeal has been lodged. Clarity on this matter would be appreciated. On what evidence or information did you make this statement?

If an appeal is lodged it is vital that NHDC conduct themselves in a professional and competent way. To that end we therefore once again request that the case officers involved during the application process for this site from NHDC Planning and from Hertfordshire County Council Highways are not involved in any appeal if lodged; to give the best chance of winning any appeal, but to also restore public confidence in NHDC Planning; the hundreds watching the meeting online have lost complete confidence in those involved.

We remain committed to moving forward constructively and working with you should any appeal be launched, and this is something we will discuss in a forthcoming meeting with Ruth Brown and Simon Ellis, however the damage to public trust that this episode has caused should not be underestimated.

Yours faithfully,

**Royston Says No to Gladman**