

Ms L. Aantaa-Collier
Wilkes Partnership
41 Church Street
Birmingham
B3 2RT

Your ref: LAC/SHO/BEN512/1

By email

16 April 2021

Dear Ms Aantaa-Collier,

Your Client: Bentley Paucefoot Parish Council - Planning Application – Ref 16/0263

We have now had the opportunity of reviewing the contents of your letter dated 3rd March 2021.

Firstly, we note that you have previously and presumably are still instructed to represent Worcestershire Primary Healthcare Trust in relation to this planning application. It is noted that you are now also representing Bentley Paucefoot Parish Council ("**BPPC**"). This would seem to place you, on the basis of your instructions, in a conflict of interest. Please could you explain why this is not the case.

The Applicant's Site Access and Development Triggers

Document and access of traffic management matters:

The Applicant's site and access development triggers document (the "**Document**"): The purpose behind the Document was to address the original consultation response from Worcestershire County Council (the "**Highways Authority**") (27 July 2018) recommended a condition limiting development to 200 units until the main access junction was completed. A meeting took place in August 2019 where an alternative condition was discussed and agreed allowing 600 units to be built before completion of the main junction and restricting the use of Foxlydiate Lane to construction traffic to 200 units.

In your letter you assert that the Document had "a material impact on the proposed phasing as a Local Highways Authority ("**LHA**") changed its advice on phasing to that suggested by the Applicant". Although it is considered that this Document is a relevant document and a material consideration, it is not agreed that it had a material impact. Any change in wording was to a suggested condition only with the updated Worcestershire County Council response being included in the Committee Reports both to Bromsgrove District Council Planning Committee and Redditch Borough Council Planning Committee. Please note, that Worcestershire County Council is the Highways Authority and as a consequence the officers dealing with the application for both Redditch and Bromsgrove Council would take into full consideration the response received from the County Council, the statutory Highways

Authority. Please note, that Mott MacDonald (“MM”) are not the Highways Authority and are only employed by Bromsgrove District Council to provide background support on certain planning applications, including Foxlydiate. As a consequence, the information which was raised in the Document was fully taken into consideration in the representations which were received from the Highways Authority, and as a consequence the representations were included in the Committee Reports received by both the Planning Committees at Bromsgrove District Council and also Redditch Borough Council. Therefore, members had before them all of the necessary information available to them when making their decision. The changes made were only in relation to the phasing of accesses and were considered by officers who were then preparing the Committee Reports. It is not necessary for officers to provide members with the detail of every change considered; such changes are rightly delegated to officers before they present their conclusions in the Committee Report.

I note that you also express concern that MM had not seen the Document by 28th August 2019, prior to the meeting of Bromsgrove District Council Committee on 14th October, meaning that there had been no scrutiny of the statements in the Officers’ Report. This is immaterial as it is for the officers to review the information available, which they did, and advise members on the relevant conditions and trigger points. I must remind you that it is not the place of MM to provide the Highway Consultation Response. This is for the Highways Authority, and the Document was fully reviewed and appraised by them prior to them providing a written Consultation Response to both Planning Committees which were fully taken into consideration by the Case Officer. Our position is that the Document and all of the highway issues were properly considered by officers and reported to Committee in an appropriate manner.

You also assert the following “Members were given factually incorrect information in the OR. It confirmed erroneously that the key parts of the detailed element of the planning application had been fully checked to be safe and policy compliant by the Council’s own consultants employed specifically to check the transport elements and the assessment by the LHA”. This is not agreed. The position is that the Document had been fully considered by the Highways Authority. They had provided the Consultation Response which was fully dealt with in the reports to both Planning Committees and this also dealt with such issues as safety and policy, which were fully taken into account. I reemphasise that MM act as a consultant; the Case Officer quite properly took into full consideration the comments from the Highways Authority and their consultation response had fully considered all of the matters raised by the Document.

I note that you further state the following “BPPC further challenge the assertion that all BPPC submissions have been scrutinised and subject to detailed discussion by both MM and the LHA with no evidence of this being provided”. The position is that all of the responses received from BPPC were properly considered by officers and that the Committees when the decisions were made to support the development of Foxlydiate had all of the HA evidence before them; the Document had been fully reviewed by the LHA.

You further set out the following, “At no point was it made clear to Committee Members or the public the original OR had been misleading. On the contrary, members were reminded, both in the conclusion of the OR (at 7.4.3) and verbally that they had previously resolved to approve the substantive proposal and the application had been approved by Redditch Borough Council even though the decision had been based on misleading information. The officers further failed to disclose the fact that Redditch Borough Council Planning Committee had not had the knowledge of the new information”. The position here is that members were aware of the Document in that it was fully dealt with in the Consultation Response from the LHA and it is not agreed that the members were misled in any way. Redditch Borough Council Planning Committee had all of the information before it prior to making any formal decision.

You further state the following: “As a consequence the LHA had mislead both Bromsgrove District Council and Redditch Borough Council’s Planning Committees by stating their transport consultant had scrutinised the transport elements of the planning application”. It is not agreed that the LHA mislead either Bromsgrove District Council or Redditch Borough’s Planning Committees. The Committee Members had before them the Consultation Response from the LPA which properly provided all of the scrutinised information from the document as part of the Consultation Response. Although the LPA considers the Document material, it is one of the many material considerations that need to be reviewed and considered a part of the review and decision-making process for the planning application.

We understand that prior to the second Planning Committee at Bromsgrove a letter was issued by your clients noting that some of the documents had not been available on the online portal, including the Document. I understand your clients also raise concerns about what documentation had been reviewed by MM. The position is that all of the documents referred to by your clients were uploaded onto the Council’s portal and that MM were subsequently consulted on all condition related documents prior to the second Bromsgrove District Council Planning Committee. As a consequence, we are satisfied that both Committees had all of the information before them to make an appropriate decision in relation to this planning application and that your clients had ample opportunity to comment on the Document. We are also satisfied that the Document was fully considered by the LHA and this information was provided to both Planning Committees. MM also provided comments on the Document and both Planning Committees were aware of this.

Legal Principles

1. Failure to take into consideration material planning considerations contrary to s.70(2) of the Town and Country Planning Act 1990 (as amended) (“**TCPA**”).

With regard to decision-making generally it is well established that there is a clear distinction between whether something is relevant to the decision (if it is) the weight to be given to it. Lord Hoffman put it in this way in *Tesco Stores Limited -v- the Secretary of State 1995 (1) WLR759 and 780* and the following was stated “The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given”. The former is a question of law and the latter is a question of planning judgement, which is entirely a matter for the Planning Authority. Provided that the Planning Authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the Planning Authority thinks fit, or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.

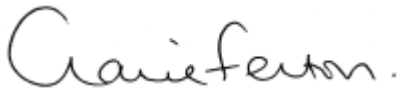
The position here is clear. Although in the LPA’s position the Document was a material consideration; a proper review of all of the risk and access issues which were outlined in the document were properly considered and reviewed by the LHA. Their responses to the LPA had the document fully reviewed and included in the response. All of this information was then taken into consideration by the Case Officer, comments were included in the reports to the Planning Committees. As a consequence, the position that is taken by the LPA is that the members of both Planning Committees had at all times all of the appropriate highway information before them to make appropriate decisions.

2. Failure to disseminate Environmental Information: Clearly, in this situation the LPA must determine what documents are material; as the norm, the Council would not

place on the website all of the documents which were considered by the LHA. The Consultation Response from the Consultee Highways Authority is sufficient. That said, the Document was placed on the Council's planning portal for the public to note and consider.

3. Failure to adequately consult the public: it is not agreed that Redditch Borough Council failed to allow adequate public consultation prior to the Committee of February 2020. In relation to public consultation, details in relation to the application were placed in the Bromsgrove & Redditch Standard on 20th April 2018 and also on 22nd April 2016, site notices were placed on 4th April 2016 and on 17th April 2018. All documents were placed on the Council's planning portal for consideration.

Yours faithfully

A handwritten signature in black ink that reads "Claire Felton". The signature is written in a cursive, flowing style.

Claire Felton