

Bentley Paucefoot Parish Council

Your Ref: LAC/SH/BEN512/2

30 June 2021

By email to bentleypaucefoot@gmail.com

**Planning Application 16/263/2016/077/OUT
Your Letter dated 17 May 2021**

Thank you for your letter dated 17 May 2021.

The Applicants Site Access and Development Triggers (the Document)

It is agreed that the Document is a background document in accordance with s100D of the Local Government (Access to Information) Act 1985. For the purposes of this section background papers are those documents relating to the subject matter of the report which:

“a) disclose any facts or matters on which in the opinion of the Proper Officer the report or an important part of the report is based have in his opinion been relied on to a material extent in preparing the report”.

The Document was uploaded on the Council’s website on 6 April 2020. The case officer also annotated the Document separately and uploaded it again on 12 August 2020. Bromsgrove District Council planning committee then considered the application on 22 September 2020 and resolved to grant permission subject to the completion of a s106 agreement. From correspondence that we have seen it would also seem that BPPC were made aware of the Document circa 23 March 2020. My clients were not aware of this Document until March 2020, although I can confirm that the case officer attended a meeting with the County Council Highway Authority and developer’s team in August 2019 where the matters also covered in the earlier document were discussed.

The Document was considered material by the County Council to the application and influenced the recommendations received from the County Council which was reported to the decision-making committees of Redditch Borough Council and District Bromsgrove Council before decisions were made. I can confirm that the officers were not directly aware of the Document at this point although the Document did influence and was considered material by Worcestershire County Council’s highways which was reported in the officer’s report to Committee.

Redditch Borough Council planning committee made a decision to grant planning permission subject to the completion of a s106 agreement on 19 February 2020. The agreed position is that the Document was not on the website prior to a decision being made by Redditch

Borough Council planning committee and for all intents and purposes officers were unaware of the Document at this point; but as stated above, the Document was taken into consideration and was a material consideration which influenced the representations made by Worcestershire County Council Highways which were included in the officers' report to Committee. As a consequence members had all of the relevant information before them at that time to make an appropriate decision. Redditch Borough Council planning committee on 13 November 2019 deferred the making of a decision for a number of reasons, one of which was the following; *"To enable officers to undertake further negotiations regarding the Birchfield Lane access being used as the initial access for construction traffic"*. A construction access review was submitted by the applicant on 15 January 2020 and this formed part of the case officer's report to Redditch Borough Council planning committee when it made the decision on 19 February 2020. Redditch Borough Council planning committee further deferred this matter on 13 November 2019 *"to enable officers to give further consideration to the proposed condition limiting use of the Foxlydiate Lane access during the construction phase"*. Officers also provided an update on this particular matter at the committee meeting on 19 February before a decision was taken.

The Document was available for consideration by the public and members of Bromsgrove planning committee a clear five working days before any decisions were made by Bromsgrove planning committee, please see the above paragraph. The agenda and public committee reports were also accessible which is in compliance with the requirements of the Local Government Act 1972. BPPC are fully aware that all background documents are placed on the Council's website and it is noted that BPPC is a consultee and makes regular representations on many planning applications, therefore members from the Parish Council know how the system works.

It is accepted that the Document was not available for the Redditch committee decision and as a consequence was not uploaded to the Council's website prior to the committee making the decision on 19 February 2020, the Council officers were not aware of the document at this point; but the position that is being taken is that the decision would not have been made in any different manner even if the Document had been available for the following reasons: The Document was fully dealt with and commented on in the consultation response received from Worcestershire County Council highways authority and set out in the case officer's report to committee before the decision was made on 19 February 2020. Members at Redditch planning committee were particularly concerned about access issues and as a consequence requested a further review of the access on Birchfield Lane/Foxlydiate Lane and the applicants provided a construction access review document in relation to Birchfield Lane which was dealt with in the committee report by the case officer to Redditch Borough Council planning committee before it made its final decision subject to the completion of a s106 agreement.

You also make reference to the case of *Joicy R (on the application of) v Northumberland County Council*¹. After due consideration we consider the situation is different here as set out in the case and can be distinguished from the present situation. The Document was fully considered and reviewed by Worcestershire County Council (the highways authority) and dealt with in their consultation response which was included in the officers report to both planning committees; as a consequence at all times the members had all of the correct information before them to make an informed planning decision.

BPPC were given ample opportunity to comment on the Document in relation to the decision made by the planning committee of Bromsgrove District Council. In relation to the decision made by Redditch Borough Council the position is as above, members and officers were not

¹ 2014 (EWHC) 3657 (Admin)

aware of the existence of the Document. In dealing with the decision made by Redditch Borough Council members were particularly concerned about the accesses to Foxlydiate Lane and Birchfield Lane in relation to construction traffic and requested further information at the deferral on 13 November 2019; they also had before them the consultation response from Worcestershire highways which was informed by the Document.

The situation with the Document in relation to the decision taken by Redditch Borough Council is that Redditch were only considering as part of the planning application a small part of the Foxlydiate development and as a consequence of this our position is that although the Document, if officers and members had been aware of it would have been material, it would have been a background document.

The officers were unaware of the Document but the Document was reported in the comments from the highways authority and members of committee also asked for additional information in relation to the Birchfield/Foxlydiate Lane accesses prior to a decision being made by Redditch planning committee on 19 February 2020.

A further point raised in the Joicy judgment was the following:

“That a decision made in breach of the legislative right to know would be vitiated unless the decision maker could demonstrate that its decision would inevitably have been the same had it complied with the statutory obligation to disclose in a timely fashion”.

There is a remedial test set down by Lord Justice May in R (Smith) v North Eastern Derbyshire Primary Care Trust². May LJ held that *“the decision after consultation would have been the same is not enough. The decision maker must show that the decision would inevitably have been the same with proper consultation if the Claimant is to be denied relief”.*

In this situation our position is that through the consultation response provided by Worcestershire highways authority and through the additional questions asked by members at the meeting of Redditch Borough Council any decision would have been the same even taking into consideration any consultation response from BPPC. This is of course taking into consideration either committees could have refused the planning application at any point.


You have further raised the point about Mott MacDonald , this was dealt with in the letter of 13 April. We can confirm that although Mott MacDonald had provided highways advice in the past, Worcestershire County Council highways authority are the highway authority for both applications and their consultation response was considered and applied by officers. Mott MacDonald was aware of the document and provided appropriate comments which were not in conflict with the advice provided by Worcestershire County Council highways authority.

Your position is noted in relation to reference to the Victorian Society. The Victorian Society are a statutory consultee but they are not a statutory consultee for the purposes of these planning applications. If the Victorian Society had been a statutory consultee here, clearly members would have been aware of their response and their position would have been considered as part of the decision made by the members at both committees. Mott MacDonald are not a statutory consultee, they are a consultant employed to provide support on planning applications in the Bromsgrove District Council area where appropriate. I can confirm that the case officer did consider Mott MacDonald comments and as you have properly noted reference was made to these comments in the committee report.

² 2006 1WLR 3315

Reference is also made to contributions for community transport and free home to school transport. We understand this was raised with Worcestershire County Council at the meeting on 17th June and a response will be provided directly from the County Council. , I also note that reference is made to questions on the CEMP. I have discussed this with the case officer who has indicated that the concerns of BPPC were properly dealt with in the condition that forms part of the draft planning permission.

Yours sincerely

A handwritten signature in cursive script that reads "Claire Felton".

Claire Felton
Head of Legal, Democratic and Property Services

Bromsgrove District Council and Redditch Borough Council

c.felton@bromsgroveandredditch.gov.uk