Dear Stephen,

Planning Application S/0793/18/FL.

Further to our telephone discussion this morning I am writing as indicated to set out the issues that arise as result of my consideration of this application and he manner in which it has been determined by the Council. I am instructed by Katherine Kell in respect of this matter and I have seen a copy of her letter to you. You have yet to respond to that letter.

As indicated to you my clients have instructed me to advise as to an application for judicial review. This letter is not a Pee-Action Protocol Letter but does give an indication as to the matters that would be included in such a letter. I have taken the view that we do not need to go down that route at present as I am simply requesting that the Council re-considers the matter in light pf the contents of this letter and the further representations that will follow in the next few days. My clients have commissioned a review of the application and decisions affecting this site by planning consultants and the results of such a review will follow either tomorrow or Monday. They should be read in conjunction with this letter.

During our telephone conversation you agreed that you would speak to the planning officer and ask that the decision not be issued until such time as the Council, has considered the contents of this letter and the further report from the planning consultants. I await to hear from you as to your discussions with the planning officer but it would obviously be in all parties interest from a financial point of view if a judicial review could be avoided.

Consistency of Decisions

The principal issue that arises in this matter is that of consistency. The starting point in considering this issue is the recent Court of Appeal decision in DLA DeliveryLtd v Baroness Cumberlegde of Newick and Secretary of State for Communities and Local Government [2018] EWCA Civ 1305. In that case the Court of Appeal held that the Secretary of State was required to take account of his own decisions in an unrelated case dealing with the same issues. It further stated that no reasonable secretary of state would have failed to take reasonable steps to ensure that his own decisions in cases of the same kind, in the same district, during the same period, were consistent with each other, or that any inconsistency was clearly explained. Obviously any duty that is applied to the Secretary of State also applies to local planning authorities. I attach a Lawtel summary for your information.

In the case of the planning application about which objection is now made the Council has consistently refused any application within the 25 metre zone derived from its adopted policy. This is obvious from the reasons for refusal as set out in the face of the decision notices. Quite simply the Council has failed to properly apply the principle of consistency or its adopted policy that it has used to refuse similar applications on the same site. In the absence of a detailed explanation, which would need to have been contained in a committee report, the Council has erred in law. On this basis the decision would be quashed on a judicial review

application and the council would not be able to argue that the decision would be the same in order to avoid a quashing order as patently the decision would not necessarily be the same. Indeed, it is a reasonable to conclude that the decision would be completely different.

Procedural Issues

The second issue relates to process. As set out in my clients letter to you there are numerous issues surrounding the handling of this application. You indicated that my clients had been able to address the committee and thus resolve many of the issues. With respect that is incorrect and would withstand scrutiny by the Courts. My client raised a number of detailed technical points at the Committee. These had not been considered in detail by the officers and they had not commented to the required level of detail. Once the issues had been raised the proper course of action would have been for the committee to have deferred the decision to enable the officers to fully and properly consider the detailed points and then report back with a considered view as to how those points impacted on the recommendation to committee. A decision cannot safely stand when it is based on incorrect sectional drawings, incorrect factual statements as to the closeness of the proposed properties and the extent of overlooking. The difference between 10.5 meters and 13 metres in the context of this application is very significant given we are talking about overlooking and its impact on amenity not only for our clients but any prospective occupants of the proposed properties. It is also a significant breach of the council's policy.

Next Steps

As discussed during our telephone conversation the request on behalf of my clients is simple. What the Council is requested to do si to refrain from issuing the decision notice in accordance with the current resolution of the committee, report the matter back to the next available committee explaining the issues that we have raised above and the further representations that will follow shortly. It will obviously be for the officers to consider the recommendation to be made but in light of the case law and procedural issues raised above it is difficult to see how any decision other than refusal would be able to be justified given the consistent application of adopted policy that has prevailed on this site to date. I look forward to hearing from you as a matter of urgency with confirmation that the Council will so act so as to avoid an application for judicial review at this stage.

I reserve the right to add further issues in the event that my client is forced to pursue a judicial review.

Yours sincerely