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South Cambridgeshire District Council
South Cambridgeshire Hall
Cambourne Business Park
Cambourne
Cambridge CB23 6EA

Dear Sir/Madam

Judicial review pre-action protocol letter: Planning applications 20/02453/S73 & 20/05101/FUL

(1) South Cambridgeshire District Council (the "**Council**"), South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge CB23 6EA, is the prospective defendant in a claim for judicial review. In light of the Council's current remote working arrangements, this correspondence has been sent by email only.

(2) The prospective claimant is the Fews Lane Consortium Ltd (the "**Consortium**"), The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium represents the interests of local residents in regards to issues of planning and development.

(3) The Council has decided to entertain two purported applications for planning permission (references 20/02453/S73 and 20/05101/FUL) despite the applications' noncompliance with the statutory requirements pursuant to the Town and Country Planning Act 1990 (the "**1990 Act**") and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "**2015 Order**"). The Council's decisions to entertain purported planning applications 20/02453/S73 and 20/05101/FUL are to be challenged through judicial review.

(4) The prospective claimant considers the applicant for planning permission, Landbrook Homes Ltd, to be an interested party. A copy of this letter has been sent to Landbrook Homes Ltd at 36a Church Street, Willingham, Cambridge CB24 5HT.

(5) Article 7(1) of the 2015 Order provides that:

> "an application for planning permission must—
> (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);
> (b) include the particulars specified or referred to in the form;
> (c) except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A(2)(c) (planning permission for development already carried out) of the 1990 Act or is an application of a kind referred to in article 20(1)(b) or (c), be accompanied, whether electronically or otherwise, by—
> (i) a plan which identifies the land to which the application relates;
> (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application".

(6) The application form for planning permission specifies that a location plan must be submitted that complies with the following instructions:

> "The application site must be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays (access around a road junction or access, which should be free from obstruction), landscaping, car parking and open areas around buildings)."

(7) Section 327A of the 1990 Act provides that:

> "(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—
> (a) the form or manner in which the application must be made;
> (b) the form or content of any document or other matter which accompanies the application.
> (2) The local planning authority must not entertain such an application if it fails to comply with the requirement."

(8) In *Maximus Networks Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1933 (Admin), [2019] PTSR 312, Dove J states at [24] that:

> "Section 327A of the 1990 Act makes clear that the local planning authority has no discretion to waive or overlook failures to comply with the requirements provided by the legislation for the proper formulation of an application. By implication it makes clear that if a local planning authority were to do so that would amount to an error of law justifying the court's intervention."

(9) The land outlined in red on the location plan submitted with purported application 20/05101/FUL does not include all the land necessary to carry out the proposed development. Specifically, the land outlined in red fails to include the land required for visibility splays.

(10) Purported application 20/02453/S73 has been submitted pursuant to section 73 of the 1990 Act. Pursuant to article 7(1)(c)(i) of the 2015 Order, no location is required for when submitting an application under section 73, presumably because the application for underlying planning permission was valid when it was determined.

(11) Purported application 20/02453/S73 seeks permission for the same development approved in permission S/0277/19/FL but subject to different conditions. In the case of purported application S/0277/19/FL, the area outlined in red on the location plan, which is relied upon also by purported application 20/02453/S73, failed to include all the land necessary to carry out the proposed development. Specifically, the land outlined in red failed to include the land required for visibility splays.

(12) Unless or until the purported applications comply with the statutory requirements, under section 327A of the 1990 Act, the prospective defendant has no jurisdiction to entertain, much less approve, either application.

(13) Accordingly, the prospective claimant intends to seek an order prohibiting the prospective defendant from continuing the entertain the purported planning applications in question and an order that the prospective defendant pay the prospective claimant's costs in the claim.

(14) Section 31 of the Senior Courts Act 1981 provides that:

> "(3C) When considering whether to grant leave to make an application for judicial review, the High Court—

(a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
(b) must consider that question if the defendant asks it to do so.

(3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave."

(15) In the case of the two purported applications in question, the decision of the prospective defendant to unlawfully entertain the purported applications despite their noncompliance with the statutory requirements is highly likely to directly prejudice the interests of the claimant.

(16) In *Mouchell Superannuation Fund Trustees v Oxfordshire County Council* [1992] 1 PLR 97 (at 105), Glidewell LJ states that:

> "the combined effect of section 14(1) and (2) of the 1947 Act [which is equivalent to section 29(1)and 30(1) of the 1971 Act] was, and the combined effect of the successor provisions in the current legislation is, that a condition requiring the carrying out of works may validly be imposed only if the works are to be carried out on land either within the application site or on other land 'under the control of the applicant'. Thus, a condition purporting to require the carrying out of works on land neither within the application site nor within the control of the applicant is outside the powers of the Act."[1]

(17) Ordinarily when granting planning permission with vehicular access to an adopted public highway, a positive planning condition is typically necessary to requiring ongoing maintenance for the visibility splays in question.

(18) However, in this case, the prospective defendant has decided to entertain purported planning applications where that land necessary for visibility splays has been specifically excluded from the application site in contravention of the requirements of the 2015 Order. This effectively prevents a condition for adequate visibility splays from being attached to any permission granted.

(19) The Consortium intends to issue proceedings as an Aarhus Convention claim pursuant to Parts 45.41 – 45.45 of the Civil Procedure Rules because the claim challenges the legality of a decision of a body exercising a public function which is within the scope of Article 9(2) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters agreed at Aarhus, Denmark on 25 June 1998 (the Aarhus Convention).

(20) The Consortium does not envisage that it will be necessary to propose any variation of the standard limits on recoverable costs as stated in Parts 45.43(2)(b) and 45.43(3) of the Civil Procedure Rules.

(21) Should it become necessary to issue a claim, a complete statement of the prospective claimant's financial resources and a statement of financial support received will be provided to the prospective defendant at the earliest opportunity and, in any event, will be served with the claim form. At present, the Consortium's total assets are less than £25, and the Consortium's total cash on hand is less than £25.

(22) The Consortium's address for the response and service of documents is: Fews Lane Consortium Ltd, The Elms, Fews Lane, Longstanton, Cambridge CB24 3DP. The Consortium will accept a pre-action protocol response by email to <dgf@fewslane.co.uk>.

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[1] The successor provisions in the 1990 Act are sections 70(1) and 72(1).

(23) In the event that legal proceedings become necessary in regards to this prospective claim, please note that the Fews Lane Consortium Ltd does NOT accept service by email.

(24) The prospective claimant would like to propose 14 May, which is 14 days from today, as the date for any pre-action protocol response.

Kind regards,

Daniel Fulton
Director