

**IN THE HIGH COURT OF JUSTICE**  
**CO/2372/2021**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Claim No.

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

**THE QUEEN** **Claimant**  
**(on the application of FEWS LANE CONSORTIUM LTD)**

- and -

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** **Defendant**

- and -

**LANDBROOK HOMES LTD** **Interested**  
**Party**

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**DRAFT CLAIMANT'S SECOND REQUEST FOR FURTHER INFORMATION OR**  
**CLARIFICATION UNDER CPR PART 18 AND PRACTICE DIRECTION 18**

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To the Defendant's Solicitor

You are requested to provide the following clarification or information under CPR Part 18 and the Part 18 Practice Direction by \_\_\_\_\_.

The Defendant does not accept that CPR Part 18 applies to judicial review proceedings issued under CPR 54. However, the Defendant provides the responses below pursuant to its duty of candour using the table below for convenience.

This is the fourth time of asking in regards to the information requested in Nos. 1 through 4.

Whilst the Defendant accepts that the Claimant (FLCL) has made a number of requests asking for information, as the Claimant is aware the Defendant has sent upwards of a dozen emails/letters to the Claimant as referred to below and accordingly it is not accepted that the Defendant has failed to enter into correspondence with the Claimant. The Defendant provided proper and proportionate responses in a timely fashion.

1. email sent to FLCL at 13:54 on 4<sup>th</sup> June 2021 (with copies of correspondence between FLCL and Cambs County Council in December 2018 attached)

2. email sent to FLCL at 09:03 on 8<sup>th</sup> June 2021

3. email sent to FLCL at 10:27 on 14<sup>th</sup> June 2021

4. email sent to FLCL at 16:59 on 5<sup>th</sup> July 2021 (with a copy of the Pre-Action response letter dated 14<sup>th</sup> May 2021)

5. email sent to FLCL at 13:09 on 6<sup>th</sup> July 2021

6. email sent to FLCL at 15:34 on 6<sup>th</sup> July 2021

7. email sent to FLCL at 13:32 on 29th July 2021
8. email sent to FLCL at 11:36 on 6<sup>th</sup> August 2021
9. email sent to FLCL at 15:40 on 6<sup>th</sup> August 2021
10. email sent to FLCL at 13:13 on 9th August 2021
11. email sent to FLCL at 15:47 on 9<sup>th</sup> August 2021
12. email sent to FLCL at 11:08 on 10<sup>th</sup> August 2021
13. email sent to FLCL at 18:43 on 10<sup>th</sup> August 2021
14. email sent to FLCL at 18:59 on 10<sup>th</sup> August 2021
15. email sent to FLCL at 17:26 on 23<sup>th</sup> August 2021
16. email sent to FLCL at 09:59 on 24<sup>th</sup> August 2021

The Defendant did not accept an offer to extend time to comply with these requests prior to filing the acknowledgment of service.

Please see above. The Defendant took the reasonable view that in addition to its responses in the emails referred to above, its Summary Grounds would deal with the substance of the points raised.

	Request	Response
1	Why did the Defendant decide to use “a previous version of <i>The Design Manual for Road and Bridges</i> ” [CB/165] in its evaluation of this planning application?	<p>The Local Highway Authority had advised that 1.5m pedestrian visibility splays within the public highway were acceptable in this instance and in so doing referenced DMRB . The Case Officer relied upon the LHA advice.</p> <p>The Design Manual for Roads and Bridges comprises a suite of documents that contain information about current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the UK. In effect the DMRB is the only source of detailed guidance on matters such as visibility splays and it is common practice amongst Local Highway Authorities to use it for a wide range of situations beyond motorways and trunk roads, such as the small scale scheme</p>

	Request	Response
		<p>under challenge here (cf. Manual for Streets which does not contain detailed guidance on such matters).</p> <p>The Officer Report stated that it is understood that the minimum recommendation of a 1.5m splay is derived from a previous version of DMRB. One of the documents in the previous version of the DMRB, doc ref. TD4195 (Vehicular access to all purpose trunk roads), provides a detailed schematic showing that in fact 1m splays either side of a 2m wide access up to a footway can be acceptable. Whilst TD4195 has been superseded by document ref. CD123 (Geometric design of at-grade priority and signal-controlled junctions) as part of the current DMRB, the schematic remains unchanged.</p> <p>The reference to the DMRB as part of the evaluation of the planning application was therefore within the context of its use by the Local Highway Authority as part of a wide range of national guidance that it relies upon to underpin its response as statutory consultee on highways matters. The Local Highway Authority's position was ultimately informed by judgment. Officers did not depart from that judgment in the Officer Report, and the matter was ultimately left to the Planning Committee to consider.</p>
2	<p>Can the Defendant please identify any other planning applications in the recent past in which it has evaluated a planning application for minor residential development against the standards contained in any version of the <i>Design Manual for Roads and Bridges</i>?</p>	<p>The LPA would have to undertake a study to establish that information but on the substantive point, the LHA has stated that it has accepted the creation of pedestrian visibility splays within the adopted public highway elsewhere within South Cambridgeshire.</p>

	Request	Response
		<p>As referred to in answer to Question 1 above, it is standard practice for Local Highway Authorities, including Cambridgeshire County Council, to use the DMRB as part of a suite of national guidance to underpin its comments on a range of planning applications. Whilst the document may not expressly be referred to as having been considered and applied in many other planning applications, this is because it is guidance used as a matter of course by the Local Highway Authority, along with other national highway guidance, as a tool to underpin its comments. Express reference to DMRB was made in the Officer Report so as to provide a fuller response, given that highway safety had been raised by a third party.</p>
3	<p>Why did the Defendant instruct its planning committee that the <i>Design Manual for Roads and Bridges</i> was the “correct” guidance to apply in regards to this application?</p>	<p>Please see response to question 1</p> <p>Ultimately, the test to be applied in relation to highway safety matters is that contained in paragraph 111 of the NPPF:</p> <p><i>Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.</i></p> <p>The concerns raised by third parties as to the adequacy of visibility splays at the junction of Fewes Lane with High Street were considered. However, national highways guidance, including from the DMRB, supported the view that they were adequate. Drawing on that guidance, the Local Highway</p>

	Request	Response
		<p>Authority raised no issue with the visibility splays in this instance. There was nothing unlawful in the consideration of this issue, and the Planning Committee's judgment on it, by following the recommendation to grant the application.</p>
4	<p>The planning officer's report contained the following quotation from paragraph 21a-031-20180615 of the Planning Practice Guidance [CB/175]: "In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question." Did the Defendant follow this approach when determining this application? If not, why did the Defendant decide not to follow this approach?</p>	<p>This point is substantively dealt with in the Defendant's Summary Grounds at paras. 62-68. The following response is for clarification only.</p> <p>The LPA did rely upon the guidance from paragraph 21a-031-20180615 of the Planning Practice Guidance. This was set out within the report and, during the committee meeting, it was confirmed that the guidance remained extant.</p> <p>The report identified that the S73 application sought only to amend the Traffic Management Plan condition, however, the report and the officer presentation also addressed matters such as the visibility splays since these had been raised by third parties.</p> <p>During the officer presentation, Members were given advice on the relevant statutory test to ensure they were clear on how they were to consider the application. Section 73(2) of the Town and Country Planning Act 1990 was specifically read out to them.</p>
5	<p>On what date were the Claimant's representations submitted on 19 May 2021 added to the Defendant's planning register?</p>	<p>26<sup>th</sup> May 2021 at 8:50am.</p>
6	<p>Were members of the Defendant's planning committee provided with a copy of Claimant's representations submitted on 19 May 2021?</p>	<p>No, however the officer addressed the content of the representation in his presentation.</p> <p>The representation identified that</p> <p><i>"it is necessary that all members of the district council involved in the decision making process in any capacity have been correctly directed as to which considerations are material and what</i></p>

	Request	Response
		<p><i>questions they are being asked to assess in regards to the application”.</i></p> <p>It referred to the relevant statutory test, identified that there was a degree of confusion amongst Members and the Parish Council regarding</p> <p><i>“whether it is possible to ask the decision maker to attach new conditions that were not attached to the extant permission” and asked that “these issues are brought to the attention of the local members and the parish council to clarify any confusion that may linger from previous attempts to decide this application”.</i></p> <p>The officer responded to this request in his presentation by expressly identifying the relevant statutory test, Section 73(2) to Members to ensure that they were clear on how they were to consider the application. There was clear opportunity for Members to seek further clarification had they been unclear on how they should proceed to consider the application.</p>
7	Were members of the Defendant's planning committee informed that the Claimant's representations submitted on 19 May 2021 had been received and were available on the Defendant's planning register? If so, by what means and on what date were the members informed?	No
8	A prepared statement [ <b>Defendant's Acknowledgment of Service Bundle/24</b> ] was read out to the committee by an officer before the planning application was considered. Why was the committee not provided with this information in writing sufficiently in advance of the meeting to consider the information in the prepared statement together with the officer's report?	As part of the LPA's standard operational practice, officers' oral presentations are not provided to Members in writing ahead of the committee meeting.

Signed

Claimant \_\_\_\_\_

Position or office held \_\_\_\_\_

(If signing on behalf of firm or company)

**The Statement of truth is to be completed by the Responding Party when responding on this form.\***

Statement of truth

I believe that the facts stated in this response are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Defendant to sign this statement.

Full name \_\_\_\_\_

Name of Defendant's solicitor's firm \_\_\_\_\_

Signed \_\_\_\_\_

\*(Defendant) ('s solicitor)

Position or office held \_\_\_\_\_

(if signing on behalf of firm or company)