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30 November 2018

Please ask for:  
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Mr P Chapman  
Linden Homes South  
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Our Ref: BE/142/15/OUT, BE/18/17/PL, BE/113/17/RES,  
BE/77/18/PL, BE/78/18/RES and BE/117/18/DOC.

Dear Mr Chapman,

**RE: Land West of New Barn Lane, Bersted**

I write in relation to the above site and our recent communication concerning the validity of the application (BE/78/18/RES). As you are aware the position of the Local Planning Authority (LPA) is that the time period for the submission of the reserved matters application

A s.73 application under reference BE/18/17/PL relating to conditions 3 (approved plans) and 23 (vehicular access) imposed under reference BE/142/15/OUT was approved conditionally on 5<sup>th</sup> May 2017 with 28 Conditions and 7 Informatives. This included Conditions 1 and 2 which used the exact same wording as those originally imposed under reference BE/142/15/OUT.

Under s.73 the variation of those conditions is expressly prohibited and, therefore, the Council, as the LPA, had no power to vary them.

Conditions 1 and 2 of the permission granted under s.73 of the Town and Country Planning Act 1990, dated 5<sup>th</sup> May 2017, must be read in light of the decision in *R(on the application of Reid) v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 2174* and the statutory provision providing the same time limits as they did under BE/142/15/OUT.

Given that you are unable to vary the time limits through a s.73 application, you proposed that the Council could accept an application to vary the Conditions under Section 96A on the basis that the extension of time would be a non-material variation.

Two decisions have been provided from other Local Planning Authorities who have been willing to accept such variations to conditions relating to the time for the submission of Reserved Matters application and commencement date. However, these are decisions which have not been tested through the courts and do not consider the interaction between s.96A and s.73 of the Town and Country Planning Act 1990. Therefore, these decisions can be given no weight beyond acknowledging that it has happened elsewhere.

Further, s.96A of the Town and Country Planning Act 1990 must be read in light of s.73 and, therefore, as there is a prohibition under s.73 it cannot be avoided by treating an application to vary the conditions as non-material amendments under s.96A.

Given the above the current reserved matters application under reference BE/78/18/RES is invalid by virtue of the wording of Condition 1 imposed under reference BE/142/15/OUT. Therefore, this application will be made invalid and the planning fee refunded.

In order to amend the layout of the proposed development, to incorporate the 10 additional dwellings, it will be necessary to submit an application for full planning permission for a total of 100 dwellings. This is the only way to regularise the scheme which is intended for implementation.

Should the implementation of the amended layout continue without being regularised then the LPA will have no option but to take further enforcement action.

I also wish to provide an update in relation to BE/117/18/DOC specifically in relation to Condition 5 (Surface Water Drainage). I am aware that the most recent drainage plan has proposed the removal of a number of trees proposed within the approved landscaping scheme along the north-western boundary in order to avoid conflict with the attenuation tanks in this area. This results in a conflict between the approval under BE/113/17/RES and the proposed DOC.

Given the conflict of the drainage layout with the approved landscaping scheme, Condition 5 cannot be discharged until this matter is regularised. However, you are now in a position where you are not able to amend this by way of a further reserved matters application under s.73 or s.96A nor would the LPA view the landscape amendments as non-material.

The only means by which this conflict could be addressed would be through the amendment of the drainage strategy. Our drainage engineers have confirmed that they would require a 5m easement between the trees and attenuation tanks in order to avoid this conflict.

Given that it is not possible to discharge the outstanding drainage conditions at this time, the Local Planning Authority will be seeking an injunction to prevent development of the site until such time as planning permission has been obtained for the development or the outstanding conditions have been discharged. It is anticipated that papers associated with this will be served by the 7<sup>th</sup> December 2018.

The Council is happy to meet to discuss how you resolve all of these complicated issues that have arisen as a result of you not getting all of the requisite permissions in place prior to the commencement of development. However, my view at this time is that;

- i. In order to get all of the requisite conditions discharged so that you can implement BE/142/15/OUT & BE/113/17/RES, you will need to amend the proposed drainage scheme to accord with your reserved matters approvals.
- ii. If you wish to pursue a different scheme for 100 dwellings, on the site, you will need a completely new Full planning application for these 100 dwellings.

I have to be very clear at this point that the LPA will take the required enforcement action to ensure that these matters are fully resolved before any further development is able to proceed on this site.

Yours Sincerely,



Neil Crowther  
Group Head of Planning