

Legal & Democracy
Solicitor to the Council & Monitoring Officer
T W Mortimer LLB Solicitor

Ask for: Jeremy Baker

Our Ref: JDIB/DS54-0669-21
Your Refs: APP/W2275/Q/23/3333923 &
APP/E2205/Q/23/3334094
Date: 11 November 2024

Helen Skinner
Inquiries & Major Casework
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol BS1 6PN
By email only: [REDACTED]

Dear Ms Skinner

Town and Country Planning Act 1990.

Appeals by: Hodson Developments (Ashford) Limited; Chilmington Green Developments Limited; Hodson Developments (CG ONE) Limited; Hodson Developments (CG TWO) Limited; and Hodson Developments (CG THREE) Limited.
Site Address: Land at Chilmington Green Ashford Road Great Chart Ashford Kent

I write further to our telephone conversation on Friday when we discussed the Inspectorate's Start Letters dated 5 November.

Notification and Consultation arrangements

I explained that the Start Letters arrived in the middle of a week's leave for our Case Officer, Faye Tomlinson, and that as there has not been any public consultation to date on these s.106B Appeals, nor on the s.106A Applications that were appealed, we now need to set this in motion 'from scratch' following her return.

Given the highly unusual circumstances of these Appeals, which are quite unlike any s.78 Appeal, we now need to create a fresh website entry for the relevant documentation, and bespoke notification/consultation letters to suit, because the Model Notification Letter is unsuitable. These were discussed only in outline at the Exploratory Meeting on 1 October, and the Inspector's post-Exploratory Meeting letter dated 8 October does not include any further guidance.

In order to put forward a positive proposal for consultation to you as I indicated on the telephone, we have considered the various correspondence that you and we have received from the Appellants' solicitors, Fladgate, and concluded tentatively that the documents that they appear to consider now set out/comprise the Appeal are the following, which were enclosed with some of their correspondence:-

00799521



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AshfordBoroughCouncil



1. Composite version of the existing s.106, as amended by the Supplemental Agreement dated 29 March 2019 and the Deed of Variation dated 13 July 2022 – provided by Fladgate on 29 July. (We are not aware, however, that the small errors in this document identified by Kent County Council (KCC) at the Exploratory Meeting have yet been rectified, and we anticipate therefore this document being updated this week – perhaps the Appellants' solicitors would kindly advise.)
2. Revised table of modifications to the s.106 now proposed by the Appellants (replacing Annex A to the Application) – provided by Fladgate on 25 October.
3. Versions of the s.106 incorporating the changes now proposed by the Appellants to the existing composite version, in both clean and compared forms – provided by Fladgate on 25 October.
4. Revised Statement of Case (replacing that submitted with the Appeals) – provided by Fladgate on 25 October.
5. Revised Explanatory Statement (replacing that submitted with the Applications in October 2022/August 2023) – provided by Fladgate on 1 November.

As I explained on the telephone, these Appeals have been on foot for 25 and 15 months respectively and over that time, the Appellants have made numerous amendments to, supplementation of and withdrawals of parts of the original Appeal documentation, hence we consider that your suggestion to consult on 'everything' would be extremely confusing for all consultees, and thus probably unfair to them in that it would not give them clear and transparent proposals on which to comment.

I am copying this letter to:-

- Fladgate so that they can confirm that the documents we propose to consult on (1. – 5. as set out above) are the correct and complete ones; and
- KCC for awareness of our intended consultation arrangements, since we undertook that our consultation will be in respect of both Appeals, in order to avoid the confusion of, and need for the public to engage with, two parallel Appeal processes at the same time.

Thank you for kindly agreeing that, given the above circumstances, we need longer than the 5 working days set in the Start Letters (which is the standard period in s.78 Appeal cases) to get the notification/consultation under way in this particular case. We are now confident that we can commence the consultation by the end of this week, i.e. 15 November, and to that end I should be obliged to hear from Fladgate, KCC and the Inspectorate no later than Wednesday 13 November that our proposed consultation as above is agreed.

I confirm that we will ensure that the public is given 28 days to respond, as you requested. The response deadline is therefore likely to be Friday 13 December. We will seek to collate and process the results of the consultation and transmit them all to the Inspectorate, KCC and the Appellants' solicitors as soon as possible after its close, however it is clearly highly likely that (depending on the volume and complexity of the responses) this

may not be completed on the morning of Monday 16 December, and even if it is, there will be no time for the recipients, including the Inspector, or us ourselves, to read or digest them before the Case Management Conference which has been scheduled for the afternoon of 16 December.

Case Management Conference (CMC) arrangements

The pre-Exploratory Meeting Inspector's Note of 30 September, the discussion at the Exploratory Meeting, and the post-Exploratory Meeting letter of 8 October all referred to a CMC to be held to set the timetable for the Appeals going forward. However, these clear intentions and statements do not seem to have been honoured, since the Start Letters seek to set out a binding timetable, not a timetable for consideration and discussion at a CMC.

We specifically note that the Appellant's solicitors' email of 10 October strongly indicates/implies that (revised) Viability Assessment information will be submitted by the Appellant in due course. Therefore, we wish to re-emphasise at this time the concern we expressed at the Exploratory Meeting that, if this occurs as part of the Proofs of Evidence which the Start Letters call for by 21 January, this will not provide us and KCC with sufficient time to consider and obtain specialist advice from our joint consultants, Bespoke Property Services, on the new Viability information. It would therefore severely prejudice our and KCC's ability to respond adequately to that new evidence in our evidence and at the Inquiry itself, resulting in an inevitable adjournment of the Viability session(s) of the Inquiry, and of other sessions linked to the Viability issue.

Moreover, this timing of any new Viability evidence would also have the effect of ensuring that the public, the numerous landowners/developers of the Appeal site other than the Appellants, and other stakeholders, must provide all their comments on the Appeals before seeing any detailed Viability information (since none is comprised within documents 1.-5. above), with it all coming in after consultation has closed. We consider it is self-evident that this would prejudice those parties and their responses too.

We therefore respectfully seek, to avoid these consequences, a ruling from the Inspector that, if any Viability Assessment or information is to be relied upon by the Appellants (other than any which is given in documents 1.-5. above), then this be submitted no later than two clear working days before the CMC, in order that its implications for public consultation, the position and evidence of the parties, and the timetabling of the Appeals, can be considered at a CMC, as was the basis of the discussion at the Exploratory Meeting.

We would request therefore that the timing of CMCs be reconsidered, with the post-consultation CMC currently scheduled for 16 December being moved to later in the same week. If it is appropriate to hold an additional, earlier CMC to consider the Appellants' proposals and timings for submitting Viability information for the Appeals, then of course we would not object to that.

Yours sincerely


Jeremy Baker

Principal Solicitor - Strategic Development, and Deputy Monitoring Officer
for and on behalf of
Solicitor to the Council & Monitoring Officer