

Our Ref: 62260794 let-PB-SW-
05.08.20-WPC

5 August 2020

Dear Mr Beckmann,

Land at Warburton Lane, Trafford (Appeal Ref: APP/Q4245/W/19/3243720)

Thank you for providing the Appellant with Warburton Parish Council's Addendum to its Statement of Case (SoC) (July 2020). In particular, this sets out the Parish Council's concerns (herein referred to as "WPC") with regards the extent and nature of 'changes' to the proposal 'during the appeal process' and the extent to which these are *Wheatcroft*¹ compliant.

The Appellant has reviewed the Addendum SoC and carefully considered the claims contained within and the supporting information it relies upon namely, a Secretary of State Decision pertaining to an appeal at Lotmead Farm, Swindon (Ref: APP/U3935/W/16/3154437) (dated 13 June 2018). The purpose of this letter is to address the further concerns raised by WPC and concurrently, the Appellant is inviting the Inspector to provide a preliminary view (prior to submission of evidence on 14 September) as to whether the *Wheatcroft* principles have been satisfied.

We take each of WPC's points in turn:

WHAT IS THE PROPOSAL THAT WAS BEFORE THE LOCAL PLANNING AUTHORITY FOR DETERMINATION?

As set out in the Draft Planning Statement of Common Ground (latest agreed draft dated 30 July 2020), the appeal proposal was first submitted to Trafford Borough Council (TBC) in the form of an outline planning application, with all matters reserved except for means of access. The description of development on the submitted application form was as follows:

'Residential development of up to 400 dwellings, including the creation of new points of access, provision of formal and informal open space, ancillary landscaping, car parking and highway and drainage works.'

The application comprised a number of plans and supporting reports, including the following:

- Site Location Plan (WARB-02-02-002)
- Existing Site Plan (Eastern Parcel) (1435-02-02-031 Rev A)

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]



- Existing Site Plan (Western Parcel) (1489-02-02-031 Rev A)
- Parameters Plan (IN6942.005A)
- Access Plan (SCP/16544/F09)
- Environmental Impact Assessment (EIA) in the form of an Environmental Statement (ES). This was underpinned by the aforementioned Parameters Plan.

During the course of the application and prior to the lodging of the appeal, additional information was submitted to respond to the comments of consultees. A full list of additional documents is provided in Section CD-A of the agreed Core Documents (CD) Schedule (A31-A58) (enclosed).

As set out in our letter to WPC (dated 22 June 2020) and reaffirmed by this Schedule, the only plan to be superseded during this time was in relation to the Parameters (Ref: AI942.010, dated 14 November 2020). The Appellant's accompanying letter to the Council at that time (CD Ref: A41) explained the differences between the previous and revised Parameter Plans and how the changes sought to address consultee comments received.

The Appellant requested that TBC determine the application on the basis of this revised plan, alongside the originally submitted information (as amended, where relevant). The Appellant also sought to amend the description of development to omit reference to 'up to 400 dwellings', but as confirmed in the Case Management Conference Note (March 2020), the Appellant has since confirmed that it wishes for the Inspector to determine the application on the basis of the original description of development (noted above).

The Officer Report to the Council's Planning and Development Management Committee (13 February 2020) had regard to both the original submitted plans and information and subsequent amendments, in advising the Committee as to how the Council would have determined the planning application had an appeal not been lodged.

During the course of the application, WPC was consulted on the application proposals.

HOW HAS THE SCHEME CHANGED DURING THE APPEAL PROCESS?

Our 22 June letter to WPC sought to identify the extent to which the proposal has changed from what was originally before TBC to determine.

In summary, it confirmed the changes to be as follows:

- 1 A revised Site Access Plan (SCP/16544/F09 Rev E) – the change solely relates to inclusion of a reference to a proposed Pelican Crossing being added to the plan. This change was in direct response to the request of the Council set out in its Committee Report which only became available after the appeal had been lodged. The overall nature and form of the access proposal is otherwise unchanged.
- 2 A revised off-site highways mitigation scheme pertaining to Flixton Crossroads – a preliminary improvement scheme was provided to the Council during the course of the application on 28 November 2019 (SCP/16544/SK11.1 Rev A). This was based on the construction of a four-arm roundabout in the event that a previously consented scheme for this junction (associated with a separate and unrelated planning permission) has not been implemented by the time the appeal proposal comes forward. The Appellant's position is that this proposed scheme remains an acceptable alternative solution in mitigating the impacts of the development.

Notwithstanding, upon receipt of the Committee Report and it becoming known to the Appellant that the Council would prefer an alternative solution (again, only communicated after the



appeal was lodged), the Appellant and Local Highway Authority (LHA)/Transport for Greater Manchester (TfGM) have been discussing a further scheme which no longer proposes a roundabout solution but improvements to the existing approaches to the junction. The principles of this revised solution have been agreed, subject to agreement to the modelled outputs. It is intended that details of this scheme will be appended to the Transport SoCG which is nearing agreement between the Council and the Appellant. We will provide a copy of the proposed drawing to WPC once agreed (expected imminently).

As set out in our previous correspondence, the Appellant is not seeking the express consent for the mitigation scheme itself. Rather, the purpose of the drawing (and accompanying modelling) is to demonstrate that there is an alternative solution to mitigating the impacts of new traffic from the development at this junction without first relying on works to be undertaken by a third party or indeed delivery of the proposed Carrington Relief Road. Such works are solely limited to land within the LHA boundary and would be required pursuant to a Grampian condition (requiring further details to be submitted to and agreed by the Council) and either implemented pursuant to a S278 Agreement (timing dependent) or a financial contribution paid to the LHA. For these reasons, we do not consider that the proposed revisions to the Flixton Crossroads mitigation scheme give rise to prejudice to third parties.

- 3 The aforementioned revised Parameters Plan included reference to 'Potential Pedestrian Bridge Crossings', for the purpose of identifying where such connections might be located relative to the proposed development. When we previously wrote to you, their detail was the subject of two separate applications for planning permission which had been consulted on and were being considered by TBC. We explained that their purpose was in support of the appeal proposal and therefore it was appropriate to consider their relevance in preparing the EIA Addendum (see below). However, we made clear that the bridge proposals in their own right do not comprise any formal part of the appeal proposal and it was envisaged that their implementation would only be tied into any grant of planning permission by way of a further Grampian Condition.

Since then, the position has changed as TBC has indicated that it cannot support the bridge proposals at the current time. The Appellant has therefore formally withdrawn the applications and at the time of writing, the Appellant no longer seeks to rely on them in support of the appeal.

WHAT NEW INFORMATION HAS BEEN SUBMITTED AS PART OF THE APPEAL PROCESS?

Following on from our letter to the Planning Inspectorate (24 February 2020) and for the reasons set out in our 22 June letter to WPC, the only new information to have been submitted since the appeal has been lodged is in respect of an EIA Addendum.

The purpose of the Addendum was to:

- take account of the changes to the Parameters Plan (submitted previously on 14 November);
- have regard to the updated information submitted to TBC prior to the lodging of the appeal (i.e. between 14 November and 20 December);
- address consultee issues which only became known to the Appellant when the aforementioned Committee Report was published in February (post lodging of the appeal);
- have regard to the submitted bridge applications (albeit these elements are now obsolete); and



- consider the impacts of only the appeal proposal (i.e. the outline scheme) as opposed to both the outline and (previously submitted) full applications, on the basis that the latter had since been formally withdrawn.

Whilst the EIA Addendum does include two new chapters (relating to Built Heritage and Archaeology), all other chapters simply consider whether the aforementioned changes fundamentally alter the conclusions of the original submitted ES.

Our 24 February letter explained why it was not possible for the Appellant to prepare and submit the Addendum prior to submission of the appeal, in particular, in respect of the two new chapters.

Notwithstanding, the Appellant offered to agree with the parties that the proposed ES Addendum be treated as if it were 'New Evidence', on the basis that there was sufficient time before the submission of evidence to formally publish and consult on the Addendum and to ensure that no parties were prejudiced in any way. Whilst not expressly referenced in the minutes of the Case Conference Note pertaining to 28 February 2020, the principles of this approach were understood to have been agreed by the main parties.

TO WHAT EXTENT HAVE CHANGES OR NEW INFORMATION BEEN CONSULTED UPON?

During the course of the application, both the original plans and submission documents and subsequent amendments were consulted on by TBC. Initial consultation took place immediately following validation of the application, with a further targeted consultation undertaken subsequently (December 2019/January 2020).

The Council since notified statutory consultees and any interested persons of the appeal and we note that a number of submissions were made to the Planning Inspectorate, including from WPC in seeking Rule 6 status. We presume that WPC reviewed the appeal documentation available at that time (which included all plans/documents submitted during the course of the application and prior to lodging of the appeal), in coming to the conclusion that it wished to formally participate as a Rule 6 party in the appeal.

In terms of the changes / new information which the Inspector has been asked to formally take into consideration since the appeal was lodged, namely:

- a revised site access plan; and
- EIA Addendum

these documents have been in the public domain and available to consider since at least 5 March 2020 (in so far as the EIA Addendum), with the revised Site Access Plan (SCP/16544/F09 Rev E) submitted to TBC on 12 February 2020 in addressing comments arising from publication of the Committee Report.

Turning to the original Flixton Crossroads mitigation scheme, we reiterate that this was first submitted on 28 November 2019. No new schemes have been formally submitted for consideration by the Inspector since then, though the Appellant has previously identified that as part of discussions on the Highways SoCG, a further alternative scheme has in principle been agreed. We will endeavour to provide details of this to all parties as soon as possible and will need to agree with the Inspector how this is dealt with. However, for the reasons set out above, we do not consider that this revised scheme of works gives rise to any prejudice.

The EIA Addendum was first publicised by the Appellant by way of a Press Release in a local newspaper (Trafford Messenger) and the erection of Site Notices, both highlighting that the



information would be available to view (in paper form) at the Council's office from 5 March 2020 and providing an opportunity to comment to PINS by 24 March 2020. In agreement with TBC, separate notification letters were sent to the Environment Agency (EA) and Natural England (NE). WPC was also copied the correspondence when the Appellant provided this to PINS.

Subsequently and in light of lockdown restrictions as a result of Covid-19, the Appellant agreed to re-advertise the Addendum (again by way of a Press Release and Site Notices), signposting that the information was now also available on the Council's website and providing a further period of time (until 18 July 2020) to provide any comments to PINS. The EA and NE were also further notified. Again, WPC was copied the correspondence as the Appellant notified PINS, including provision of a plan identifying the six locations where site notices had been erected.

For these reasons, the Appellant is confident that all reasonable attempts have been made to make interested parties aware of the submitted information throughout the application and appeal process and that adequate opportunity has been provided to review and comment on any changes.

WHY THE CHANGES OR NEW INFORMATION SHOULD BE ALLOWED IN CONSIDERING THE APPEAL

Through this letter; our previous correspondence to PINS (24 February); and, reflective of discussion that has thus far taken place at both Case Conferences, we have explained why the new site access plan; EIA Addendum; and, revised Flixton Crossroads mitigation scheme should be duly considered as forming part of the appeal proposal by the Inspector.

We have clearly identified why this information could not reasonably have been submitted any earlier (i.e. before the appeal was lodged) but how in any event, all reasonable efforts have been made to make interested parties aware of the information subsequently, in seeking to avoid any potential prejudice to third parties. WPC has been actively notified throughout in this regard.

THE BASIS ON WHICH THE APPEAL PROPOSAL IS *WHEATCROFT* COMPLIANT

Turning to the appeal proposal as it now stands, we do not consider that in relying on the aforementioned changes or indeed new information (i.e. the EIA Addendum), that the appeal proposal has materially changed from that which was before TBC for determination prior to the lodging of the appeal.

In this regard, we note WPC's references in their SoC Addendum to the alleged similarities between the situation here and that which was before the Inspector determining the aforementioned Lotmead appeal.

Having read the Inspector's Report and accompanying SoS Decision in that case, there are a number of significant differences in circumstances, most notably in Lotmead the Appellant sought to make the following changes 12 months following the submission of the appeal and three months prior to the Inquiry opening:

- 1 Revisions to the application site boundary (red line) to accommodate localised highway works;
- 2 Changes to the description of development and proposed mix of land uses, *inter alia* to include an additional 2 Form Entry Primary School on a further 2.2 Ha of land;
- 3 Fundamental scheme changes affecting the positioning of certain land uses and reflective of further significant technical/environmental work, including in respect of drainage and flood risk.

By contrast, in the case of my client's appeal, the Appellant's changes are relatively modest.



We wholly disagree with WPC's suggestion that any comparable can be drawn between the approach of the Appellant to making changes and submitting new information at Lotmead and the circumstances of this particular appeal.

Here, the Appellant has only sought to promote changes in response to consultee feedback and as explained, exceptional circumstances have prevented such changes and/or new information being provided prior to the lodging of the appeal.

Overall, the changes in no way materially alter the nature of the development proposal that is the subject of this appeal and the Appellant is strongly of the view that the further information that has been submitted fully accords with the principles of Wheatcroft.

NEXT STEPS

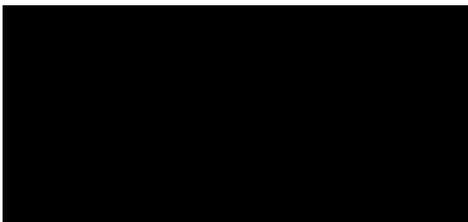
We note that WPC has reserved its position with regards whether the appeal proposal accords with Wheatcroft until such time that further information is provided. We trust that this letter provides the additional information it is seeking in order to conclude whether this remains a principle line of objection to the appeal proposal.

In the meantime, we have prepared a separate letter to the Inspector inviting her to take a preliminary view as to the acceptability of the proposals in this context, mindful that in the event that either WPC or indeed the Inspector raises any further concerns, the issues will need to be further addressed in evidence.

We would be grateful if you could acknowledge receipt by return and provide an indication as to when WPC might be in a position to confirm whether this is a matter that WPC will be presenting evidence on to the Inquiry.

We look forward to hearing from you further.

Yours sincerely



Sarah Wozencroft

CC:
Mr Paul Beckmann, Warburton Parish Council
Ms Gaye Fletcher, Warburton Parish Council
Mr Tim Salter, PINS
Redrow Homes North West

Enc :
Core Documents Schedule (3 August 2020)