

THRINGS
SOLICITORS

Ms Alice Maurice
FAO Mr Paul Dignan MSc PhD
Planning Inspector
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Reference: APP/X1735/C/20/3248610,
APP/X1735/C/20/3248611,
APP/X1735/C/20/3248612,
APP/X1735/W/21/3278661,
APP/X1735/X/21/3278706

13th May 2022

Our Reference: MCK/A4274-4

Direct Line: 01794310320
Email: mgilks@thrings.com

Dear Ms. Maurice,

Town and Country Planning Act 1990

Appeals by Mr Christopher Snell, The Tournurbury Holdings Ltd, Mrs

Alice Snell, Mr and Mrs Chris and Alice Snell

Site Addresses:

Tournurbury Lane, Hayling Island, Hampshire, PO11 9DL

and

Tournurbury Woods, Tournurbury Lane, Hayling Island, Hampshire, PO11 9DL

We would be very grateful indeed if you would kindly put these submissions before the Inspector. May we make it absolutely clear that these submissions are not at all directed to the Inspector or each of the parties' learned Counsel but are in respect of the inaction of the main parties qua their corporate personalities.

We ought to also add that in so far as our reading of this firm's attendance note of the pre-inquiry meeting (PIM) goes, it is possible the writer may have not understood the full picture. The writer was not present at the PIM. However, while the comments are perhaps necessarily impressionistic, they are not unfair or unreasonable.

We respectfully suggest that what is wholly unreasonable is that one week on from the PIM meeting, each of two Rule 6 parties are being expected to expend hundreds or even thousands of pounds

Stuart Court ■ Salisbury Road ■ Romsey ■ SO51 6DJ ■ Tel: 01794 310 300

Email: solicitors@thrings.com ■ www.thrings.com Also in Bath, Bristol, London and Swindon

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preparing proofs for 7 June 2022, leaving effectively only eighteen working days to a deadline. It is not acceptable that at the time of writing the two principal parties to the inquiry appear to be in disarray.

Unfortunately, our understanding is that because of the position of the main parties, the Inspector is not at this time able to provide a final note with the settled directions.

We are unclear if there has been the promised communication from the appellant's Counsel to the Inspector? It may be that there has been a communication of which the Rule 6 parties are unaware. It may be that Counsel for the appellant has not received instructions?

Application One: adjournment or dismissal of appeal for want of prosecution.

Whatever the reason, the position is wholly unsatisfactory. Accordingly, on behalf of AG Phillips and Son Limited, may this be taken as a formal application in writing that in the interests of justice and to avoid further wasted costs the Inspector orders an adjournment of this inquiry to the autumn, or dismisses the appeals for want of prosecution by the appellants.

It is wholly untenable for AG Phillips and Son Ltd to have eighteen working days out from the deadline for proofs, the main parties cannot even agree on whether there need be any inquiry in respect of any of the three appeals. The necessity for witnesses is not clear and there has been no circulation of an any statement of common ground. We politely suggest that this is no way for main parties to lay the ground for Rule 6 parties to prepare for an 8 day inquiry. We say, quite regretfully, that the situation is arguably close to becoming an abuse of the appeal system, far beyond the bounds of justification under the banner of the understandable entreaties from the Inspectorate for local planning authorities and appellants to find common ground up to the moment of the opening of an inquiry.

The appellant also undertook to provide at least two notes on legal and procedural issues, as well as a statement of common ground, none of which the Rule 6 parties could contribute towards or have time to comment upon in the remaining time available before the opening date of the inquiry. Some of these notes could be prepared in advance of the inquiry to save time, and as we have explained, the statement of common ground is still awaited. As far as we understand there is a question still outstanding of an agreed amendment to the wording of the enforcement notice, without these foundational matters at least properly addressed by the main parties at this stage.

Furthermore, the Rule 6 parties do not have sight of the draft of the planning obligation that the appellant has conceded may be necessary, and that Counsel for the local planning authority properly said was the "default" option because it would be necessary in any event for a nutrient neutrality financial payment. We also respectfully submit that the concept of the appellant withdrawing the enforcement notice appeal on the basis of non-prosecution is quite the wrong way around, since under section 180 the CLEUD or the grant of permission on appeal or on application would cure the requirement with steps in enforcement notice incompatible with the grant of planning permission. Of course, if the assurance of non-prosecution were limited to the period up to the determination of the appeal or application, that is perhaps more acceptable.

On reflection, we cannot safely advise AG Phillips and Son Ltd to sink more money into preparation for this inquiry without a clear direction from the Inspector as to whether we are going ahead to a public inquiry in just about six weeks' time.

If the neither the appellant nor the local planning authority are going to make or support any application for an adjournment, it seems to me that our client ought not least to avoid suffering the

excess costs. The purpose of this correspondence is to try to mitigate our losses in advance of an application for costs against both parties for unreasonable behaviour.

Application Two: unreasonable costs.

Accordingly, we make a second application conditional on resolution of the position on Monday 16 May 2022. We must advise our client to prepare for the inquiry, since we are already behind time. We also must reserve our expert witnesses and Counsel for an eight day inquiry, and accordingly we shall be preparing from Monday 16th May and we shall be making an application for any costs of the PIM, this correspondence and our application, as well as any further costs including the brief fee for our client's Counsel and the reservation of our experts time. This will include the expenditure incurred by our clients if any expert is contractually bound to appear thereby incurring further liability to our clients, up to the point of the resolution of this impasse.

We have circulated this letter to the main parties, the other Rule 6 party and each of the parties Counsel.

We respectfully request the Inspector to consider our client's two applications and to give appropriate directions as he sees fit, after inviting further representations on these or any other matters relevant to the appeal proceedings.

Any further correspondence in this matter may be directed to Mr. Matt Gilks (mgilks@thrings.com) or Ms. Rebecca Stanton (rstanton@thrings.com).

Yours sincerely,



Matthew Gilks

Senior Associate

Thrings LLP