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SOLICITORS

FAO Steve Weaver
Planning Officer
Development Control
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

31st May 2023

Your Reference: APP/23/00076
Our Reference: RST/A4274-4

Direct Line: 0117 930 9550
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Dear Mr Weaver

RE: Tournerbury Woods, Tournerbury Lane, Hayling Island, Hampshire, PO11 9DL

Application APP/23/00076 (“the Application”)

Our client: A G Philips & Son Limited (“AGP”)

The following representations on the Application are made on behalf of our clients: AGP of Tournerbury Farm, Tournerbury Lane, Hayling Island Hampshire P011 9DL. AGP own Tournerbury Farm neighbouring Tournerbury Woods, Tournerbury Lane, Hayling Island (the Application land). [REDACTED]

Background.

1. We are aware that a letter from HMPC Limited dated 25th April 2023 part-titled ‘*Land owners’ agreement for new access route*’ (“the Letter”) has been published by the Havant Borough Council (“the LPA”). You will be aware that the letter concerns negotiations between our client and the Application applicants.
2. The primary purpose of this letter is to respond in part to the Letter insofar as confirming our client’s position in relation to the negotiations concerning the grant of access to the Applicants over our client’s land, referred to in that correspondence (“the Agreement”).
3. There is no value to the LPA’s officers if our correspondence deals at length with all the points raised by the Letter. When taken individually and holistically, multiple of the points presented by

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correspondence are unfortunately misconceived, and our view is that they must be safely disregarded.

4. However, we set out a limited response to the key points running through the Letter below. Accordingly, we make these rather self-evident and concise thematic points in response to extracts from specific representations in the Letter and have numbered the paragraphs for ease of future reference.
5. “For planning purposes I am confident the principal points are covered sufficiently to allow the application to progress to determination”.
- 5.1. Our response to this statement is underpinned by leading principles as to the treatment of public consultation responses to the Application, as set out below.
- 5.2. As you are aware, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 also states that the authority dealing with the planning application should have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 5.3. In addition, the National Planning Policy Guidance (“NPPG”), on ‘Consultation and pre-decision matters’ sets out the Government’s planning guidance for England and is a material consideration in determining a planning application. Paragraph 3 of that section of the NPPG prescribes that:

‘Anyone can respond to a planning consultation. In addition to individuals who might be directly affected by a planning application, community groups and specific interest groups (national as well as local in some cases) may wish to provide representations on planning applications.’
- 5.4. It is a fundamental tenet of administrative law that a public body must make decisions that lie within the requirements of its governing legislation, and to perform certain statutory duties in determining a question. Doing otherwise would render their decision ultra vires.
- 5.5. As a result, the LPA will be aware of its duty to take into account representations received in response to publicity given to the application (s.65 and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595), art.33 (England), including representations given by members of the public and statutory consultees.
- 5.6. Leading case law authority on the application of this duty, set down in *R v Brent London Borough Council, Ex p Gunning* (1985) 84 LGR 168, requires that the product of consultation must be conscientiously taken into account when an ultimate decision is taken by the same.
- 5.7. The LPA is under a duty to take into account representations received in response to publicity given to the application (s.65 and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595), art.33 (England), including representations given by members of the public and statutory consultees.

- 5.8. The legal requirements for a proper consultation exercise adopted by Hodgson J in R v Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168 after they were submitted in legal argument by Mr Stephen Sedley QC. The requirements are:
- a. Sufficient reasons for the proposal must be provided to allow intelligent consideration and response.
 - b. Adequate time must be given for response.
 - c. The product of the consultation must be conscientiously taken into account in finalising proposals.
6. The abovementioned legal requirements for a proper consultation exercise set down in Gunning include that consultation must be made at a time when proposals are at a formative stage. Given that the Heads of Terms are not agreed and the Letter is given unilaterally and in speculative terms, it is therefore not at present possible for the LPA to safely take the Letter into account as a material consideration in the determination of the Application, as the Letter suggests in the comment quoted at paragraph 5 above.
7. As a result, our view is that the LPA is unable to take the comment and the Letter as a whole as a reliable view on the Application whatsoever. This is because in the circumstances much of the body of the Letter is, with the greatest respect, in our view unable to provide any reliable or balanced understanding of the Agreement at present. Whilst the heads of terms continue to progress in a positive manner, it is simply not for the Applicants' agents to give uncorroborated views on the same, and only proper for the final form of agreement to be taken as a relevant material consideration in determining the Application By the LPA.
8. "Concern remains that implementation of permission APP/17/00207 as amended is not lawful, as it fails to comply with all conditions agreed as part of this application, including construction methodology".
9. The LPA will be aware of the factual position that no occurrences of a breach of planning control exist in relation to the above referenced application.
10. "We have assumed the right of way will include all land within the application red line needed for the purpose of gaining access and egress from Tournurbury Woods".
11. This statement is further speculation as to the final form the Agreement will take, and we urge the LPA to decline the invitation the Letter makes in speculating what that will be.
12. The purpose of this letter is not to suggest that our client has any less of an appetite to support the alternative route as an exceptionally important material consideration in the determination of the Application. It would allow the Applicant to implement their scheme without creating an unauthorised legal burden on AGP's land, impacting their amenity and livelihood.
13. As you know, the LPA identified and granted planning permission for an obvious alternative route which removes all the adverse effects - which the applicant and his professional advisors have acknowledged on many occasions in writing. The use of this alternative route, as it has already been constructed would not require planning conditions which interfere with the landowner's rights. As a result, we urge the LPA to wait to consider a settled form of the Agreement in determination of the application, rather than proceed to a decision on the basis of the Letter.

14. Action required by the LPA.

- 14.1. We have advised our clients that in the special circumstances of this case, the Letter does not provide a legally sound consultation response. Taking into account the further details that this correspondence provides, and confirmation as a matter of fact that the underlying negotiations are ongoing, the Letter falls away.
- 14.2. The upshot of this is that no fair-minded and informed local planning authority should give substantial weight to consultation responses that have not been calculated in accordance with the full suite of application documents and most recent position of both parties here. This matter, if unresolved may risk a legal challenge to the LPA, and as a result we urge it to await further updates given jointly by our clients and the Applicants as to the Agreement. We are at present, and have been more many months, instructed by our client to progress the Agreement negotiations with urgency and a strong wish to achieve a mutually acceptable way forwards on the same.
- 14.3. If there are any questions that arise from the content of this letter please don't hesitate to contact the writer on the details above.

Yours sincerely



Rebecca Stanton

Solicitor

Thrings LLP