

BY EMAIL AND POST

Howard Bone
Planning Management
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Our ref: SJA/029915.00001

10 July 2015

Dear Mr Bone

Silver Hill

On behalf of Councillor Gottlieb, I have reviewed the report to the Overview and Scrutiny Committee.

- 1 The report is notable in that, when published, there are significant documents and supporting evidence still awaited. The outstanding material was not made available to Members, or the public (where they, or summaries, are going to be made public) in adequate time before the meetings next week. Properly the information should have been available, reported upon, and the appropriate statutory period allowed for Members and the public to consider the information. Given the public interest in the scheme it is wrong in principle for the information flow to be managed in this way.
- 2 I have sent a separate Freedom of Information Act Request in relation to the financial material on the basis of which the Council is being asked to make a decision about the financial viability condition.
- 3 In the meantime I should note:
 - (a) section 8 of the Committee report, which refers to the provisions of the development agreement on the Works Commencement Date, is incomplete and inaccurate.
 - (b) paragraph 9.6, and Appendix 6, refers to a timeline which suggests "*a delay of five to six years before a start on site*". You will be aware, and Members should be made aware, that there are other potential approaches to the development of the Silver Hill area that could deliver a scheme far quicker. For completeness, those alternatives should also be identified and explained.
 - (c) paragraph 10.7 of the report is inadequate. Effectively it suggests that the Councillors would have to have "*exceptional reasons*" for disagreeing with the Council's financial advisors. That is wrong.

- (d) paragraphs 10.12 – 10.14 purports to summarise points raised in our earlier correspondence. They do so inaccurately.
 - (e) paragraphs 11.14 – 11.15 refers to section 233 TCPA and best consideration issues. The paragraphs only address (and then inadequately) one part of the analysis required by section 233.
 - (f) sections 12 and 13 of the report respond, in part, to our argument that the compulsory purchase and appropriation powers cannot, properly, be used to support an unlawfully procured development agreement. It does not address the legal context within which the Councillors should be taking their decision to acquire and appropriate land.
 - (g) throughout the report there are repeated prejudicial references to the risk of litigation and/or damages. They appear designed to influence Members. In fact, paragraph 14.3 properly notes that there is "*no obvious basis on which the Council has acted in breach of its obligations under the development agreement.*" If correct, the agreement can be terminated without risk. That should be made abundantly clear to Members.
 - (h) in paragraph 17.11 reference is made to the pooling of more than five planning obligation receipts for a specific project being "*unlawful*". As the Council themselves noted when dealing with the 2014 variation application, that is not the legal consequence of the language in CIL regulation 122 and 123.
- 4 Depending on the information ultimately disclosed and the decisions reached next week, I expect to be instructed to:
- (a) apply to quash any decision that the financial viability condition has been satisfied, and to seek an injunction preventing the Council from expressing satisfaction;
 - (b) apply for a declaration that the Works Commencement Date has not occurred;
 - (c) apply to quash any decision by the Council to implement the Compulsory Purchase Order and/or to confirm the appropriation of land, and to seek an injunction to prevent steps being taken to implement those decisions;
 - (d) make an application for disclosure of the information on the basis of which the Council has made their decisions, to the extent that the information is not already in the public domain.
- 5 Finally, I note the warning in paragraph 3.3, indicating that Members should not disclose or discuss the information in the exempt appendices with any other person. I have advised Councillor Gottlieb that, as a matter of public policy, the Courts are unlikely to enforce a private law confidentiality provision to prevent Councillors taking expert and/or legal advice on their responsibilities.
- 6 In the High Court case you eventually accepted that the information supporting the applications/submissions could, on condition, properly be disclosed. I hope that you will accept that the same approach can be adopted this time.

Please acknowledge receipt of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Ashworth'. The signature is written in a cursive style with a prominent initial 'S' and a long horizontal stroke.

Stephen Ashworth
Partner
Dentons UKMEA LLP