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Dear Sirs

**CD9/0222/34: Conversion and extension of existing buildings to commercial use, and construction of access drive and car park. Elvaston Castle Country Park, Borrowash Road, Elvaston, DE72 3EP**

I am instructed by the County Council's Planning Service, which is responsible for handling the determination of the above application for planning permission, to write to you regarding your letter of 21 April.

It is appreciated that your letter provides the response on behalf of the Parish Council, which is a statutory consultee in respect of the application. Accordingly, the letter is now included in the documents relating to the application that can be downloaded from the County Council's website, and a copy of this letter is being forwarded for information to the agent acting on behalf of the Council as applicant.

In so far as your letter presents for the County Council's attention as planning authority opinions of and on behalf of the Parish Council on issues of planning and environmental judgement relating to the proposed development that is described by the application, the Service will of course have regard to those opinions in analysing the issues. This analysis will be reflected in the officer report on the application which is to be prepared for presentation to the Council's Regulatory - Planning Committee with a recommendation to it for a decision on the application. The Planning Service will not complete their analysis work in advance of the preparation of the report and will therefore not be offering any substantive comments on the matters of planning judgement in the meantime.

However, your letter includes some submissions that contend that there would be unlawfulness in any determination of the application in this case, and /or the related EIA process, and raises some points concerning factual accuracy. This letter is therefore addressing these submissions and points.

For ease of comprehension, the sub-headings by numerals below correspond to the numbered paragraphs in your letter which my comments immediately beneath are particularly intended to address.

## **2 and 5**

As to the issue you appear to raise of whether or not the application is adequate in respect of how it might “*address the enabling development as proposed to ensure the viability of the asset*”, this type of issue would be examined by the Planning Service before reporting to committee.

The application clearly does not incorporate various elements of possible development relating to Elvaston Castle Country Park that are under the Masterplan published in 2018. However, the County Council as planning authority has no power to control what development is described in any application for planning permission that is submitted to it (whether or not, as in this matter, the application has been made to the County Council on behalf of the County Council as an intending developer, as stipulated by regulation 3 of the Town and Country Planning General Regulations 1992).

## **3 & 4**

The ecclesiastical property containing St Bartholemew’s Parish Church and its churchyard/graveyard by the County Council’s Country Park land is not part of the County Park, and is outside the current application site, but its proximity to the Country Park land under the application site that surrounds it is self-evident. This church property is however within the overall area of the Elvaston Castle Grade II\* registered historic park and garden, as shown on the official plan reproduction at page 5 of the Heritage Statement /Report (as at 20 December 2021), and it is addressed as a specific area under section 17 in that statement.

There is no statutory consultation requirement in respect of the PCC, however the Planning Service has directly notified the application to those who appear to be interested parties through ownership of adjoining and adjacent properties, including the Diocesan office.

## **6 & 7**

The siting of the proposed car parking and access route to it and the stated reasoning you refer to would appear to be points for the consideration of the County Council in the determination of the application. There is therefore no need for any comment to be conveyed now from the Council as planning authority regarding these points.

## **8**

Whilst your reporting under this paragraph on survey conclusions has been noted, the Planning Service has not been provided with any documentation of the surveys to which you refer. I suggest therefore that the Parish Council or yourselves arrange for all that documentation that you would regard as relevant to be sent as soon as possible to: the

Planning Service, County Hall, Matlock, Derbyshire DE4 3AG or by email to [planningrepresentations@derbyshire.gov.uk](mailto:planningrepresentations@derbyshire.gov.uk) .

## **9 to 16**

Any weighing by the planning authority, as referred at paragraph 208 of the NPPF, of any such benefits for heritage assets as are there mentioned against any such disbenefits as are there mentioned, would need to reflect whatever relevant information might be available to it regarding the nature of such benefits, and disbenefits. Consideration of any alternative means of delivering such beneficial outcomes could be relevant to such an exercise, as the Historic England Guidance reflects.

'Enabling development' is not a statutory concept, so there does not appear to be any provision by which any deficiency there might be regarding material available to a planning authority in respect of how a development might be accredited as 'enabling development', would either relieve it from being required to determine, or preclude it from determining, any valid application for permission in respect of that development.

## **12**

There has not so far been any report received by any committee of the County Council regarding the development under this application. Presumably, your reference to a committee report is meant to be a further reference to the September 2020 report to the Cabinet on the Masterplan.

## **12 & 13**

The Council as planning authority will of course, in any report on the application, endeavour to ensure the accuracy of any financial information which it might contain.

## **17 to 19**

Whilst the County Council as planning authority is aware of the NPPG paragraphs on 'Viability and decision taking', including Paragraph: 010 Reference ID: 10-010-20180724, it is not clear how these paragraphs could relate to the application in this case, as you seem to contend. Nor is it clear how the provision of an economic viability assessment by the applicant might assist in the determination of the application (except perhaps if an assessment was specifically commissioned in respect of the applicant's references to the development proposed in the application being "enabling development" with regard to the security of heritage asset conservation).

The NPPF provision to which these NPPG paragraphs are cross-referred is NPPF Paragraph 57, which is concerned with planning obligations and the tests under regulation 122 of the CIL Regulations. Whilst the next paragraph in the NPPF paragraph 58, might also appear to be a national policy driver for the guidance under these paragraphs, it is only concerned with circumstances in which "up-to-date policies have set out the contributions expected from development".

In summary I cannot see where there is any legal requirement, nor any expectation contained in national policy or guidance, for any specific type of viability assessment to be provided in a case such as this. If you can identify such a requirement or expectation, please can you refer me to it specifically.

#### **20 to 26**

The 2018 Masterplan was produced by the Council solely as the owner and operator of the Country Park; it is not any part of the local development framework, nor is it any kind of planning authority document, nor was it supporting any actual planning application proposal. There was therefore no basis at the time of its production for requiring any environmental assessment screening or statement in respect of it.

I am not able to comment here on your observations in these paragraphs concerning the need to avoid 'project splitting' for EIA, leading to your submission under para. 26. that the development under the current application is an integral part of an inevitably more substantial development which should be considered for the purposes of EIA in its entirety. This submission will however be addressed before any report to committee on the development covered by the current application is finalised by the Planning Service.

#### **14, & 27 to 29**

Since SDDC is the planning authority faced with determining the Persimmon Homes sports ground application DMPA/2019/111912, the County Council is, obviously, not directly concerned to address any issue as to whether the development under that application would be functionally dependent on the construction of the roundabout element of the development proposed under the current application before the County Council nor any other issue of EIA in relation to the determination of that application.

However, none of the development under this current Elvaston Castle application proposal (including the roundabout), nor any of the other development outlined in the Masterplan, appears to be functionally dependent on the construction of the development proposed in the sports ground application or anything similar. It is not made so by any potential for the roundabout construction to be partly funded by any financial contribution from the intending sports ground developer (e.g. if required by planning obligation).

Re. 28, it is not clear how the same ownership of the majority of land could be an issue that should have been addressed in the Design and Access Statement, since it would not generally be a substantive planning consideration. The only possible relevance of this factor that I can conceive in principle would be as regards whether respective development proposals were so interdependent as to require EIA as one project, but it would be only one of a number of possible factors in respect of such a question.

#### **31 to 33.**

A corresponding listed building consent application has in fact been submitted for listed building consent, to South Derbyshire District Council. This application, reference number DMPA/2022/0318, has been validated and the documentation relating to it can be viewed

from the SDDC website, and via this link: <https://southderbyshirepr.force.com/s/planning-application/a0b8d000001VpfzAAC/dmpa20220318?tabset-ba98d=2>

### **34 to 38, 47, & generally**

With regard to the process of EIA, the Planning Service on behalf of the Council as planning authority is as usual considering the issue of the sufficiency of the Environment Statement documentation which has accompanied the application to date, having regard to the advice and representations received from statutory consultees and others, including the representations in your letter. If it finds that there are any deficiencies in the statement in relation to the requirements of the 2017 Regulations, the agent for the County Council as applicant will be notified accordingly, and you would then be informed accordingly.

### **40 to 42**

The County Council's ongoing arrangements provide an extensive separation of its functions as planning authority in determination of applications (including the associated Environmental Impact Assessment function) from its functions as an intending developer and applicant for planning permission, as well as ensuring objectivity in the determination of applications. In particular:

- The Council's Regulatory Planning Committee is established as provided by with Article 9 in its adopted Constitution under the Local Government Act 2000, with responsibility (inter alia) for carrying out "*non-executive functions relating to town and country planning and development control as set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000*". By Article 9, no members of the Council's Cabinet can also be a member of the committee.
- As provided by Article 9 of the Constitution all serving members of the committee are required to abide by the 'Code of Good Planning Practice' at Appendix 20 to the Constitution ("the Code") and to have undertaken training in accordance with the Code. The Constitution including its appendices is accessible from the County Council website, and via this link: <https://democracy.derbyshire.gov.uk/ieListDocuments.aspx?CId=218&MId=335&Ver=4&Info=1>
- As stated in the introduction to the Code, it "*sets out the behaviour and practices the County Council expects should be observed in deciding applications made for planning permission and for associated planning approvals. It includes the normal process for those applications which are reported to the Council's Regulatory Planning Committee, so that the Council's expectations and practices for both Members and Council Officers can be clear to all. These determinations can often be highly controversial. This Code of Practice is designed to be fair both to applicants and to other people to ensure that the Council makes impartial decisions in the interests of the community at large.*"

- The Code affirms, at paragraph 1.5: *“Planning applications submitted by the County Council for its own development will be treated in the same way as those by others in terms of the assessment of the proposal in relation to the policies of the development plan and other material planning considerations.”*
- The divisional structure of the County Council’s Department of Place includes a division known as the Planning Service under the management of a senior planning officer known as the Head of Planning Services (currently David Arnold, MRTPI).
- The Service covers the handling or commissioning of all ‘development control’ application matters which the Council is responsible for determining as local planning authority. This includes including all relevant steps for the interrelated EIA process as required by regulation 26 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, as well for any assessment required for Habitats Regulations assessment, and the preparation of such reports as are required to enable the committee to decide on those planning applications that have not been delegated to the Head of Planning Services to determine.
- The Scheme of Delegations within Appendix 1 under the Council’s Constitution records the types of applications that are specifically delegated for the Head of Planning Services to determine, as follows:
  1. *To determine applications for:*
    - (a) *planning permission for County Matter development;*
    - (b) *planning permission for development which the Authority itself proposes to carry out; and*
    - (c) *for replacement conditions to regulate permissions for existing Mineral Working Sites as provided for in the Environment Act 1995 at Schedule 13 (initial review) and Schedule 14 (periodic review), where the proposal under the application is considered by the Head of Planning Services to be (1) in accordance with the Development Plan and any relevant supplementary planning documents and emerging Development Plan policy (2) unaffected by any significant objection\* to the application.*

*\* In this specific delegation “significant objection” means: an objection, which is on at least one relevant planning ground which is not capable of being overcome by amendment and/or the imposition of appropriate conditions and/or planning obligations].*
- The Code also provides at 1.9: *“The role of the Head of Planning Services and planning case officers in producing any report on an application for a Committee decision is to provide the Committee Members with sufficient professional and impartial advice and information and assistance to enable them to make a well informed and reasoned decision on the application which is in the public interest”.*

- The Code goes on to provide at 1.10: “*The County Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers in the Authority attending to planning matters are expected to act in accordance with the RTPI Code of Practice whether or not they are RTPI members. Members of the Council should respect those professional responsibilities at all times*”.
- For those applications to be decided on by the committee itself, the Service is thus responsible for handling or commissioning all the work in preparation for that decision-making by the committee, including that which is required for the production of such reports by the EIA steps contained in the EIA Regulations at regulation 26.
- This work is handled or commissioned by officers of the Service who have appropriate understanding of EIA. They are able to obtain specialist professional assistance when needed from practitioners such as qualified ecologists, archaeologists, heritage and landscape professionals. The selection and engagement of such practitioners is either through external sources or through the County Councils own specialist Conservation, Heritage and Design Service. This selection and engagement is under the control of the Service in all cases. This arrangement is understood to be effective to avoid any involvement in the planning authority EIA work by practitioners who are or have been working on the matter on behalf of the Council as applicant or intending developer.

These arrangements as I have outlined above are considered to be effective to ensure that there is the appropriate functional separation between the Council as applicant and the Council as decision-maker as required by regulation 64(2) as well as being effective at promoting the objectivity required by regulation 64(1). They are also considered also to be sufficient in respect of regulation 10 of the 1992 Regulations, by which no determination of an application to which regulation 3 applies can be made by any committee which is responsible (partly or wholly) for management of the land and buildings concerned, or any officer whose responsibilities include any aspect of that management

The judgment of Holgate J in *London Historic Parks and Gardens Trust v Secretary of State for Housing Communities and Local Government* [2020] EWHC 2580 (Admin) is nevertheless currently receiving our attention generally as regards its contribution to the general issue of what may be required for demonstrating compliance with regulation 64.

Notwithstanding the general issue, it is clear from the application and EIA documentation in this case that the County Council as applicant and intending developer has subsequent to the Cabinet meeting in September 2020 brought forward the proposal through an external professional agent who has engaged external specialist consultants (apart from the engagement of highways authority officers in respect of the proposed roundabout and access drive and the assessment of alternatives document at Appendix 4.1 to the Environmental Statement). This arrangement is considered to further ensure

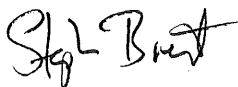
effective functional separation in this case as between the Council as applicant and intending developer, and the Council as planning authority.

**42 & 43**

There is no 'interplay' such as your client appears to perceive which involves the Planning Service. Excepting such vague and unspecified assertions as you convey in these paragraphs, neither I nor the Planning Service know of any active promotion of the project by councillors beyond the consideration of the September 2020 Cabinet report to which you refer, nor of any promotion by officers "across various committees", nor of any statements by local councillors or by any members of the Regulatory Planning Committee concerning the viability of the proposal. We are also otherwise unaware of any private meetings between action group members and Cabinet members.

The work of the Service towards the determining of this application would not anyhow be liable to be affected by any promotional activity or any statements by members regarding the project. However, to enable me to appreciate how any reports of statements or promotional activities which the Parish Council may know of might possibly have generated concerns as to the ability of the Council to act fairly as decision maker for this application, I should be grateful if you could provide me as soon as possible with whatever more specific details the Parish Council may have of such statements and activities.

Yours faithfully,



Stephen Brent  
Senior Solicitor, Legal and Democratic Services