

BY EMAIL

East Herts District Council
Planning Service
Wallfields, Pegs Lane
Hertford SG13 8EQ

Our Ref 109914567.10\488\666388.7000

DDI +44 20 7490 6241

FAO: Jenny Pierce/Adam Halford

E richard.ford@pinsentmasons.com

27 February 2023

Dear Sir/Madam

APPLICATION: 3/19/1045/OUT (OUTLINE)
DEVELOPMENT: RESIDENTIAL LED MIXED USE DEVELOPMENT COMPRISING UP TO 8,500 RESIDENTIAL HOMES (VILLAGES 1-6 OF GILSTON GARDEN TOWN TOWN)
SITE: LAND NORTH OF STORT VALLEY AND THE A414, GILSTON

1. We act for Mr Roger Beaumont and Mrs Mary Pope. Our clients own the majority of the land required for the Eastern Stort Crossing which is proposed to be compulsorily acquired to unlock the development of the Gilston Garden Town, including Villages 1-6, which is the subject of the Application detailed above.
2. Our clients have previously objected to the Application. We write with further objections to the Application having reviewed the lengthy Report to Committee and Appendices, amounting to hundreds of pages ("the Report").
3. Members are urged to defer determination of the Application for the reasons set out below.
4. Please can a copy of this letter be sent to the Planning Committee.
5. This letter will be referred to in relation to future legal proceedings if the Application is permitted.
6. In relation to the Application and the Report, there are a number of grounds of objection and prospective challenge as set out below:
 - 6.1 The objections of my clients over several rounds of consultation are not fully reported, nor dealt with adequately, or at all, in the Report. This is a failure to have regard to material planning considerations raised in those objections.
 - 6.2 The relevance or otherwise of the Housing Infrastructure Grant ("the HIG") is clearly not properly or transparently dealt with in the Report. Members are plainly not rationally able to disregard the HIG as a material planning consideration given how the HIG is described in the Report, its relevance to viability and timing, and to the range of policy non-compliances attributed to viability in the Report.
 - 6.3 Villages 1 to 7 and the Sustainable Transport Corridor ("STC") which enables the delivery of Villages 1 to 7 (i.e. the STC components within Villages 1 to 7, the CSC, the

Pinsent Masons LLP

30 Crown Place London EC2A 4ES United Kingdom

T +44 (0)20 7418 7000 F +44 (0)20 7418 7050 DX 157620 Broadgate

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ESC and the North to Harlow Centre STC) are a single EIA project with inter-related direct, indirect and cumulative environmental effects, affected by the deliverability and viability of each other. In this respect:

- 6.3.1 the ongoing updates to the Village 7 Application are not adequately considered in the updates to the Environmental Statement (“ES”), nor otherwise, in relation to the Villages 1 to 6 Applications;
- 6.3.2 the CSC and ESC planning permissions are under challenge for, inter alia, failure to lawfully assess the environmental impacts and for failure to lawfully link to the Villages 1 to 7 Applications. The ES of the Application for Villages 1 to 6 is consequently deficient and not a sound basis for determination of the Application at this time whilst the lawfulness of the decisions in relation to the CSC and ESC are under challenge; and
- 6.3.3 the Harlow North to Centre STC (“HNC STC”) is under challenge for not being subject to an EIA, this component of the STC to unlock and serve Villages 1 to 7 being EIA “salami sliced” out of the EIA for the Villages 1 to 7, CSC and ESC, despite the key purpose of the HNC STC being to enable Villages 1 to 7 delivery as is set out in the Report. Again, the ES of the Application for Villages 1 to 6 is also consequently deficient and not a sound basis for determination of the Application at this time whilst the challenge is ongoing.

In short, the EIA of the Application for Villages 1 to 6 is deficient as it does not assess the environmental effects of the wider project of which the Application for Villages 1 to 6 is an integral part.

- 6.4 The proposed determination of the Application for Villages 1 to 6 is clearly premature vis-à-vis the linked Taylor Wimpey application for Village 7 (reference 3/19/21124/OUT). Villages 1 to 7 are part of a single Local Plan allocation and are a single EIA project. There is a co-dependency of infrastructure upon which all of the Gilston Villages 1 to 7 rely. The viability of the delivery of such infrastructure requires overarching holistic assessment. These matters have not been comprehensively assessed. It is not sufficient to assess the environmental effects of Village 7 as separate cumulative development and this is contrary to the EIA Scoping Opinion Request and Opinion. It is clearly part and parcel of a single EIA project and the fact that it is being promoted under the cover of a separate application/different landowner/developer is not determinative for the purposes of project classification for EIA purposes (see R (*Wingfield*) v *Canterbury City Council and another* [2019] EWHC 1975 (Admin), [2020] JPL 154).
- 6.5 In EIA terms, there is a whole range of required EIA mitigations set out in statutory consultee responses where it is not possible from the Report to discern if they are agreed or proposed to be secured.
- 6.6 In relation to the assessment of ancient woodland and ancient or veteran trees, there is inadequate and only partial assessment against para 180 NPPF.
- 6.7 In terms of landscape and visual EIA assessment, it is clear (e.g. from the EHDC Landscape Officer assessment) that the LVIA is not sufficiently precise to form an adequate assessment of landscape and visual EIA assessment due to a range of Application development uncertainties driven by a desire for parameter flexibility.
- 6.8 In heritage impact assessment terms, there is an erroneous baseline for assessing heritage harm of the Applications set out in the Report. The heritage impact assessment needs to be undertaken against current conditions rather than the harm that has been accepted as part of the allocation. In addition, the objections of Historic England and other heritage objectors are supported.



- 6.9 The EIA flaws above also contaminate the Council's appropriate assessment which is consequentially also flawed.
- 6.10 In S38(6) Planning and Compulsory Purchase Act 2004 and S70(2) Town and Country Planning Act 1990 terms, the Report does not properly assess the range of non-conformities of the Application with the Local Plan. It is consequentially unclear as to whether the Application is to be regarded as a departure or in conformity with the Local Plan (or an overall assessment of the extent of non-conformities) and how the planning balance should therefore be conducted. The assessment of the planning balance is consequentially flawed. The host of statements relating to the delivery of the strategic site allocation in the Report are consequentially flawed and misleading. Moreover, it is not clearly expressed to what extent there is conformity or otherwise with the NPPF as a material planning consideration. This is a further flaw in the S38(6) and S70(2) planning balance assessment. Furthermore, in terms of the application of the tilted balance, the paragraph 11(d) NPPF assessment in the Report is clearly defective. There is no assessment of whether and to what extent any Local Plan policies are out of date and the extent to which NPPF policy compliance applies or does not. Further still, in relation to a range of infrastructure and provision, it is not clear in the Report where infrastructure and provision is to be secured for delivery or only land safeguarded for delivery in the s106 agreement. There are also various inconsistencies between what is described in the Report as to be secured via the s.106 agreement and the matters described in the s.106 agreement heads of terms, for example, in relation to the minimum amount of employment floorspace to be secured and a range of other matters. The resultant uncertainty results in the benefits and the non-conformities with Local Plan Policy of the scheme being uncertain, with consequential uncertainty in relation to undertaking the planning balance assessment properly. Further, in viability terms, there is no assessment of the risk of non-deliverability of the unviable commitments the developer is reported as committing to, despite the viability appraisal indicating that these commitments are unviable. This risk is not reflected in the planning balance in terms of the benefits that are described as accruing. This is also a clear defect in assessing the planning balance correctly.
- 6.11 In affordable housing terms, the serious non-compliance with both the local plan policy and the applied for position in terms of quantum and mix is not reflected in any update to the socio-economic assessment in the ES. This is a clear defect in the EIA process.
- 6.12 In relation to the draft planning conditions and S106 agreement, it is noted that these are subject to finalisation subject to delegated powers to officers. Our client reserves its position on the draft conditions and the terms of the S106 agreement until a final draft of each is made publicly available.

7. **NEXT STEPS AND DEFERRAL**

- 7.1 For the above reasons, we urge the Council to defer consideration of the above Application in order to address the range of legal issues, deficiencies and objections identified above.
- 7.2 In addition, it is plain that the viability challenges the scheme is facing at a time of construction cost inflation and values depression is a poor time for the Council to achieve the best outcome in planning benefits terms from the Application. The Applicant is clearly not delivering what it promised with the original Application, nor the Local Plan Policy requirements, as it is taking advantage of the economic cycle to obtain planning permission at a time which is optimum for the Applicant to use viability as a reason for policy non-compliance. The "upwards-only" viability review mechanism currently proposed does not apply to matters other than affordable housing so a whole host of other policy-required benefits not proposed to be delivered due to viability challenges will not be subject to such a review mechanism. Combined with the range of legal issues, deficiencies and objections identified above, there is a clearly powerful reason



to defer the Application to further refine the upwards only viability review mechanism to include the range of other benefits the Application is no longer committing to based on current viability assessment. Given the decreasing economic pressure on construction costs and supply chain costs generally, the viability of the Application development may also increase. It would also provide an opportunity for the Application to be determined alongside Village 7, the legal challenges to the CSC ESC and the Harlow North to Centre STC be resolved and a proper EIA basis thereby established for the Application and the issues referred to in this letter dealt with. There are a range of inter-locking reasons to defer this Application.

Yours faithfully

Richard Ford
Partner
for Pinsent Masons LLP