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City of York Council
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Attn: Michael Slater (copy by email):
(Also copied to D Gould and Sally Cawthorn) (by email only)

Associate: Andrew Kelton
BA (Cantab) MA (UBC Canada)

Your ref 01/01315/OUT
Our ref FPC1-001

Associate: Adrienne Copithorne
BA (Cantab) MA (UC Berkeley)

3 February 2012

Dear Sirs

Land at Germany Beck Site, East of Fordlands Road, Fulford, York;

- (1) We are instructed by Fulford Parish Council in connection with the above application and the reserved matters application lodged 1 February 2012.

EIA issues

- (2) The original outline permission (ref 01/013015/OUT) was accompanied by an Environmental Statement (the 2001 ES) as required under the Environmental Impact Assessment (England and Wales) Regulations 1999 (EIA Regulations 1999). The ES was updated in 2006 (the 2006 ES update) (collectively the environmental information).
- (3) The Secretary of State's decision letter of 9 May 2007 granted outline permission for residential development of approximately 700 dwellings and creation of public open space and community facilities, including local shops, and associated footpaths, cycle ways, roads, engineering works and landscaping on land at Germany Beck east of Fordlands Road, Fulford. It included a means of access in general accordance with the approved Bryan Hall drawing ref: 05/401/TR/009A.
- (4) The decision letter includes 36 "conditions". Many of these are reserved matters which require detail planning of features (landscaping, open space and the Germany Beck Nature Park, highways works and flood mitigation and drainage) that are dependent on further environmental information.
- (5) Under the EIA Regulations 2011, the reserved matters application will be regarded as a 'subsequent application'.
- (6) Under Reg. 8(3) of the EIA Regulations 2011 the Council must decide whether to require the applicant to submit 'further information' to update the applicant's environmental information. If further information is requested, the Council must consult upon and take that information into account when deciding the application.
- (7) Our instructions are that the environmental information currently before the Council is out of date in several material areas, including ecological issues, traffic levels and resulting air emissions, flood risk and heritage issues. In particular:

- (i) The Flood Risk Assessment dates from 2004 and does not assess the proposals against advice in PPS25. It fails to deal with the additional flood defences along the A19 or to take account of revised flood maps for York/Fulford.
 - (ii) The environmental information is out-of-date in respect of traffic movements at the proposed access junction and the Heslington Lane junction and in relation to the traffic movements along the A19.
 - (iii) The environmental information fails to discuss that an AQMA has been declared adjacent to the site so that air emissions data is out of date..
 - (iv) The environmental information is out-of-date in respect of ecological surveys of the site.
 - (v) The environmental information does not report on bats, an EU protected species.
 - (vi) The environmental information fails to discuss the school nature reserve which directly abuts the north boundary of the site and which connects to adjacent water courses.
 - (vii) The environmental information fails to deal with the updated conservation area statement which includes part of the development site
 - (viii) The environmental information does not deal with the fact that the Germany Beck corridor is proposed as a "local Green Corridor" in the York City Council Core Strategy submission draft.
 - (ix) The environmental information does not deal with the recent archaeological understanding of the Battle of Fulford site.
- (8) In the circumstances, please confirm by return that the Council will identify all the further environmental information it requires and that it will require the applicant to provide such information before it validates the reserved matters application. If the Council does not do so please provide reasons for this. Our instructions are that, at a community forum meeting held on 18 January 2012, the Council has stated verbally that it intends to fully comply with the EIA procedures.
- (9) If the Council does not require the provision of further environmental information we will advise our clients that it would be appropriate for us to write to the Secretary of State for a screening/further information direction.
- (10) To the extent the Council determines the anticipated reserved matters application without reference to updated information and under reg 8(2) takes into account out-of-date information, our advice to the Parish Council will be to bring judicial review proceedings on the basis of the failure to consider material information and the consideration of immaterial information in deciding the issues arising under the reserved matters application.

Public participation

We are concerned with public statements made by both the Council and the developer limiting public participation in the decision-making process on the reserved matters application and/or the discharge of conditions. The Council will appreciate that many, if not all, of the reserved matters and conditions arise out of the original environmental assessment carried out under the 1999 EIA regulations, and many deal specifically with mitigation-type measures and impose restrictions on the development and/or conditions intended to mitigate adverse environmental effects arising from the development. In these circumstances, the EIA regime requires that the Council consult on mitigation measures whether through the reserved matters procedures or when deciding condition discharges. The reserved matters/conditions information is "environmental information" provided by the applicant and at subject to the public consultation provisions provided for in the regulations.

As a separate consideration we refer the Council to Warley v Wealden DC ([2011] EWHC 2083 (Admin) which held that “the public, and not only the parties to the particular planning permission concerned, are entitled to know in public documents what planning permission relates to a given development, and what therefore is permitted and what is not”.

We look forward to your response by return and assurance that all issues concerning environmental matters will be fully consulted on before a decision is taken on the reserved matters application.

Yours faithfully

A handwritten signature in black ink that reads "Richard Buxton". The signature is written in a cursive style.

Richard Buxton

cc Persimmon Homes Ltd (Attn A Hopwood)