

# RICHARD BUXTON

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Attn Dave Flower

Your ref: F/TH/10/1061

Our ref: OLD1-002/PS

**Also by e-mail: dave.flower@pins.gsi.gov.uk , teamp13@pins.gsi.gov.uk**

15 February 2012

Dear Sirs

**Appeal ref.: APP/Z2260/A/11/2163595NWF**  
**Arlington House & 1-50 Arlington Square, Margate, no. F/TH/10/1061**

We are instructed by the Rule 6(6) party in the above appeal; Louise Oldfield. We write further to your e-mail to Ms Oldfield of yesterday.

We have considered the progress of the appeal and, in particular, that the inquiry is scheduled to commence on 13 March 2012 for five days. For the reasons set out below there is a need to adjourn the appeal to a date that permits the Inspector to consider all matters that will be relevant to the appeal and also to allow the appeal to proceed in a fair and equitable manner.

## **Reasons to adjourn the appeal**

### **1. Anticipated determination by English Heritage in relation to Arlington House, Arlington Square and associated carparks**

The Inspectorate is aware, or should be via correspondence with Thanet District Council, that English Heritage is considering whether or not to list Arlington House, Arlington Square and associated car parks, in view of its special architectural or historic interest. However, it is uncertain whether English Heritage will conclude its report or recommendations to the Secretary of State by 13 March 2012. The timing is tight. English Heritage sought consultation responses on a factual assessment of Arlington House as recent as 17 January 2012. The consultation responses were due in by 7 February 2012. As we understand matters, English Heritage will then have to review the consultation responses and prepare a report in the light of this and other relevant information.

What is clear to us is that the decision of English Heritage will be a material planning consideration that the Inspector will have to take into account and should reasonably



consider evidence on at the inquiry. It would be placing the Inspector and the parties at a distinct disadvantage to seek to conclude the appeal without the determination and relevant representations upon this.

## **2. Participation in the appeal**

The Inspectorate will recognise that our client is at a distinct financial disadvantage in appearing at the inquiry compared to the other parties and that there is inequality of arms. This is particularly so in the light of your comments that the Council is now no longer objecting to the appeal proposal and will be presenting evidence supporting the development and providing reasons for such support.

You will be aware that the Inspectorate and the Council are required to provide procedures that enable early and effective public participation in environmental matters. We are however instructed that the provision of information relating to the appeal has been inadequate and has hindered our client's efforts to prepare representations and evidence for the inquiry. By way of illustration the correspondence files made available at the library by the Council have been found to be incomplete, maintained in no particular order and simply thrown loose into a cardboard box.

We are instructed that documents that were previously read and within the documentation were found to be no longer available. While documentation that should have been maintained in the documentation was missing e.g. the Kent County Council (KCC) approved public realm scheme document: *Margate Seafront and Station Approach Scheme Development & Stakeholder Engagement Report* (March 2011).

Similarly, there is reference in an email of 27 April 2011, 16:38 from the Appellant's correspondence file to meetings that took place in the week commencing 11 April 2011 between the appellant, KCC and the Council regarding highways matters and which lists a series of documents which are currently not available to the public but should be. These include:

- Technical Note
- King Sturge Letter
- Drawing 002 Rev D
- Drawing 006 (illustrative only)
- Drawing 007 Sheet 1
- Drawing 007 Sheet 2
- Drawing 007 Sheet 3
- Drawing 007 Sheet 4

We would be grateful if these documents could be provided by the Inspectorate and/or the Council and/or the Appellant by return.

We would also be grateful if the Council and/or the Appellant could provide details of all the details referred to in the 27 April 2011 e-mail including; the dates and times of the meetings, the agendas, attendance records, minutes, and all follow up correspondence arising from the meetings.

Further, we are instructed that there has now appeared an e-mail from Tom Darcy of Jacobs, Principal Landscape Architect commissioned by KCC of 19 April 2011, 9:03 to the Appellant and the Council headed: *Margate Seafront Public Real Docs 1 of 3*. However, documents 2 and 3 are not within the public file and we would be grateful if the Inspectorate and/or the Council and/or the Appellant could provide these by return.

We are instructed that the *Draft Thanet Air Quality Action Plan (2011)* has not been included in public files or been referred to by either the Appellant or the Council. This is despite the Council's environmental health officer, Amanda Berry, referring to it in her e-mail to the Council's Planning Officer of 5 May 2011 and noting the possibility that the development would 'negate efforts to reduce pollution levels set out in the Council's draft Action Plan.

If the inquiry proceeds on 13 March 2012 the difficulty in ensuring access to all the relevant documentation to date will place our client at a material disadvantage at the appeal.

### **3. Environmental Impact Assessment**

We have noted the EIA screening opinion of November 2009 adopted by the Council. We are of the view that this is inadequate and reaches the wrong conclusion. The proposed development does require EIA in view of the likely significant effects on the environment arising out of the project. This is particularly so in the light of the Council's draft Air Quality Action plan.

Please confirm that the Inspectorate has undertaken a further comprehensive EIA screening assessment of the proposal as required under the Directive and we would be grateful if you could provide a copy of this. The Inspectorate will be aware that there is an obligation to review the application of the EIA Directive in multi-stage consent procedures such as this. If EIA screening has been carried out and it has concluded that EIA is not required we would wish to review that decision in accordance with the requirements set out in the Court of Justice in *Case C-75/08 R (Mellor) v Secretary of State* [2009].

In the light of the above, please confirm that the inquiry listed for 13 March 2012 is to be vacated and re-listed for a date that permits the above matters to be addressed and that the appeal proceeds in a fair and equitable manner for all the parties.

We look forward to hearing from you.

Yours faithfully



Richard Buxton

cc (by e-mail) Jackie Doll for the Council, Jackie.Doll@thanet.gov.uk  
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