

Treasury Solicitor's Department
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Attn: Joe Sullivan

Your ref. Z1204143/JUS/B5
Our ref. PS/OLD-3

Also by e-mail. joe.sullivan@tsol.gsi.gov.uk

FOR YOUR URGENT ATTENTION

14 September 2012

Dear Sirs

Arlington House, 1-51 Arlington Square, Margate
Appeal No. APP/Z2260/A/11/2163595/NWF

Thank you for your pre-action reply of 3 September 2012. We write in response to that and also in relation to concerns over the approach to the re-listing of the above appeal.

EIA screening direction 18 July 2012

We remain of the view that the screening analysis is inadequate and that, in our view, the proposed development should be subject to EIA. Moreover, the response affirms our concern that there is project-splitting in relation to this proposal and the adjacent activities at Dreamland. It is contrary to EU guidance to simply ignore the potential impacts of the Dreamland proposals when assessing the present application.

Moreover, we are concerned that the Secretary of State is regarding many potential impacts simply as a question of 'planning judgment'. The assessment of EIA under the Directive is not confined to 'planning' matters but encompasses all environmental impacts.

Finally, any judgment that is taken by an EIA screening decision-maker should be based upon a precautionary approach and unless the decision-maker is certain that those impacts will not arise an EIA is required to assess the extent of potential impacts and how they may be prevented or mitigated see e.g. *Loader v Secretary of State* [2012] EWCA Civ 869.

In the circumstances, we are advising our client that the screening direction of 18 July 2012 should be subject to judicial review.

We would be grateful if you could provide a copy of the Inspectorate's procedural desk instructions provided to procedure officers i.e. *Desk Instructions - Environmental Impact Assessment (current version 17 July 2012)*.

Re-listing of inquiry for Arlington House

We are instructed that the Inspectorate has listed the inquiry for the appeal to be heard from 6 November 2012. However, it has failed to correspond with our client and other Rule 6 parties in any meaningful way in finalising the start date.

We note that Osborne Clarke, solicitors for the developer, referred to the re-listing of the inquiry in their letters of 17 August 2012 to you and of 23 August 2012 to the Inspectorate, which stated: "As you are aware it was confirmed on August 1st that Inquiry (sic) for the above appeal has been confirmed to commence on 6th November 2012." This letter was attached to an Inspectorate email of 29 August 2012 forwarded to all parties. This was the first indication the Rule 6 parties had of the inquiry start date. And, although subsequent correspondence from the Inspectorate to our client and others suggests that 6 November 2012 is the inquiry start date this is far from clear; with different Inspectorate customer service staff suggesting different start dates e.g. 15 November 2012 and/or "the case not appearing on the system was because it was deleted from the system by mistake, but that is just a technical thing."

This is highly unsatisfactory and places our client and any other Rule 6 party at a clear disadvantage. This is particularly of concern, when the Inspector has advised the parties that because the Council has now determined that it no longer objects to the appeal proposal and will present evidence supporting the development and reasons for such support, the Rule 6 parties are to take on the planning authority role in presenting its evidence first and opposing the appeal. In these circumstances, the level of correspondence between the Inspectorate and Rule 6 parties should be comparable to that which it would normally undertake with the Council.

Further, we are instructed that Inspectorate officers have appeared to be only willing to communicate with Rule 6 parties by telephone; with the relevant case officer and team apparently changing from one day to the next.

The upshot of the Inspectorate's failure to advise Rule 6 parties of the new inquiry start date and, more recently, an apparent inability to communicate by e-mail and manage this appeal in an efficient manner is resulting in unfairness in the progress of the appeal. Of equal if not more concern we are instructed that important witnesses on behalf of the Rule 6 parties, are unable to attend an inquiry starting 6 November 2012.

In the light of the above we would be grateful if you could take urgent instructions to confirm when the inquiry state date will in fact be and further, to confirm who the designated case officer at the Inspectorate is providing their contact details including an e-mail address.

In order to ensure that our client and others can prepare properly for the appeal we would be grateful if you could respond by 4.00 pm, Tuesday 18 September 2012.

We look forward to hearing from you and also to receiving the document referred to above i.e. the *Desk Instructions - Environmental Impact Assessment (current version 17 July 2012)*.

Yours faithfully

Richard Buxton

cc Thanet DC (Jackie Doll)
Osborne Clarke (Brian Greenwood) for the developer