

Your Ref: AE/PLGEN/16
Our Ref: AW/T9K/05187270-00000001

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13 April 2016

Dear Sirs

PROPOSED NEW SADDLEWORTH SCHOOL, HUDDERSFIELD ROAD, DIGGLE

This letter contains submissions which are relevant to the extraordinary meeting of the Council's Planning Committee which is due to take place today, 13 April 2016, at 6pm. We would be grateful if the contents of the letter could be brought to the attention of the members of the committee.

We continue to be instructed by the Save Diggle Action Group ("SDAG") in connection with this matter. We are also now instructed by Keith Lucas MBE, 20 Huddersfield Road, Diggle, Saddleworth, OL3 5NT. We are no longer instructed by Samuel Lloyd.

This letter concerns the extraordinary meeting of the Council's planning committee which is due to take place tonight, 13 April 2016. The purpose of the meeting is to determine for planning applications (the four planning applications which are as follows:

Application A (PA/337931/15)

Application B (LB/337929/15)

Application C (PA/337301/15)

Application D (PA/337930/15)

These concern the proposed new Saddleworth School.

The applications were last considered by the Planning Committee on 25 February 2016. At that time we wrote to the Council (our letter of 25 February 2016, **attached**) setting out our concerns about the legal basis for the recommendations of the Head of Planning and Infrastructure in his committee report. Although at the meeting of members voted to accept the recommendations, and thus to grant planning

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permission in respect of the development, the Council subsequently wrote (letter of Alan Evans to Irwin Mitchell of 9 March 2016, **attached**) to say that in light of our letter it intended to reconsider the applications. This reconsideration is due to take place at tonight's planning committee meeting.

The basis of our previous objection to the development proposals was set out in the opinion of Robert McCracken QC which was attached to our letter of 25 February 2016. This concerned the Council's approach to the consideration of heritage assets and the application of the National Planning Policy Framework (NPPF).

We note that prior to tonight's meeting the Head of Planning and Infrastructure has produced a new report ("the new officer's report"). This was published by the Council on 6 April 2016 and runs to 410 pages. As a result we have only a limited time to consider the report and the submissions in this letter are made on a preliminary basis. Nevertheless we consider that the approach adopted in the new officer's report contains a number of legal flaws.

Heritage

We note that the new officer's report makes a significant change to the Council's advice on heritage assets. The new report now advises members that the demolition of the existing buildings on the WH Shaw site would cause substantial harm to the setting and context of the listed building (as opposed to less than substantial harm in the report of 25 February 2016). Consequently there is a strong legislative presumption against demolition. Similarly, the report now advises that the demolition of the link bridge would result in substantial harm (again as opposed to less than substantial harm previously) to the setting and significance of the listed building.

Despite these changes the officer maintains his recommendation that all four applications should be approved. This is explained in paragraphs 1.21 to 1.22 of the Executive Summary (which concerns the application for the construction of the school (Application C)

"1.21 The historic relationship between the office building and original loom works buildings will be removed as a result of the demolition of the existing factory buildings and construction of the school, resulting in a substantial harm to the setting of the listed office building. There is a strong legislative presumption against harming the setting and context of a Grade II listed building set out in S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Development Plan Policy. Furthermore, paragraph 133 of the NPPF states that where a proposed development will lead to substantial harm to the significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm.

1.22 In this unique instance, the significant benefits that delivery a new, fit for purpose school and the shortage of alternative sites to develop a new school on, amount to substantial public benefits that outweigh the normal presumption against a scheme affecting the setting of a listed building. The proposed development therefore complies with paragraph 133 of the NPPF. Policy therefore indicates that the scheme should be approved in these circumstances".

Notwithstanding the above, in our submission the change in the officer's assessment of the impact of the development on heritage assets has not been applied fully and properly. The consequence is that the underlying basis of the recommendations in the new officer's report is legally flawed and ought to be reconsidered. As to this we refer to two specific concerns:

- 1 Site selection.
- 2 The evaluation of the impact of the development on the green belt.

Site Selection

As to this, in circumstances where there is a strong legislative presumption against development causing harm to heritage assets, the availability of alternative sites on which such harm can be avoided will be a relevant consideration. In this case it would seem that the Council accepts the relevance of alternative sites and places reliance on the site selection process which forms part of the application (see Section 4 of the new officer's report.) However, consideration of the process reveals that the impact of damage to heritage assets was not considered. This is of particular relevance now that the Council has determined – following the conclusion of the site selection process – that development of the proposed site would cause substantial harm.

Green Belt

The proper approach to green belt development is set out in the NPPF in the following paragraphs:

“87 As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88 On considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt ‘very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations”.

The short point is that “any other harm” includes harm to, among other things, heritage assets. In our submission, on a fair reading of the new officer's report there has been a failure to take this into account. This is of particular importance given the officer's reliance on “very special circumstances” for his recommendation that green belt development be authorised.

Further, the issue goes to the Council's consideration of alternative sites. The relevance of alternative sites as they applied to the application of green belt policies is dealt with at paragraphs 12.40 to 12.41 of the New Officer's report.

“12.40 Nevertheless, it is considered that very special circumstances exist that clearly outweigh the harm to the Green Belt by reason of inappropriateness, in that there is an acknowledged and significant need for a replacement, higher quality Saddleworth School with associated sports facilities and a lack of alternative sites that could be used to provide this pressing need.

12.41 Specifically, a robust assessment sites took Green Belt issues into account in the site selection process and it was concluded that the most suitable site for the location of the new school was the application site. The full details of this assessment are set out in Section 4 of this report”.

While it is not accepted that there was a “robust assessment of alternative sites”, the failure to take into account “any other harm” means that the basis of the assessment was flawed.

Ecology

In addition to the above there is one other matter which we wish to raise. This concerns the approach of the new Officer's Report to ecology considerations in the demolition application (Application A).

At page 55 of the new officer's report the consultation response of Greater Manchester Ecology Unit (GMEU) is reported. Although GMEU says that they have no objection to the application on the grounds of impacts on bats they go on to say:

“From the survey results provided it would seem that small numbers of common species of bats in parts of the building complex for (likely) occasional roosting. Before any work can commence that

may disturb bats a licence may be required from natural England. The three tests set out in the Habitats Directive and the Conservation of Habitats and Species Regulations 2010 (as amended) must be satisfied before planning permission is granted”.

The three tests are:

- o That the work is for the purpose of preserving public health or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance of the environment.
- o There is no satisfactory alternative.
- o The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

In its evaluation of the Ecology in Application A (at paragraphs 10.244 – 10.253) the new officer's report does not address these tests.

Conclusion

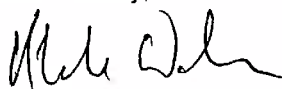
In summary, we submit that the basis of the Head of Planning and Infrastructure's recommendations to members is legally flawed. In the circumstances we submit that the applications ought to be refused.

In the event that the Council proceeds to grant planning permission in respect of this development, we are instructed to seek judicial review. In doing so we are instructed to seek interim relief to prevent demolition taking place pending the outcome of our substantive claim.

In the event that authorisation for demolition is approved by members at tonight's meeting we ask for an assurance from the Council that this authorisation will not be issued for a period of 14 days to enable an application for interim relief to be made. In any such application we reserve the right to rely on the contents of this letter.

A copy of this letter will be served on the developers in all four applications. In the event that authorisation for demolition is granted we ask that they provide a response to this letter confirming that they will not proceed with development – and in particular with any demolition activities - pending our client's application for interim relief.

Yours faithfully,



IRWIN MITCHELL LLP

Enc

Your Ref: DN/337134/15 and LB/337133/15
Our Ref: JXN/AW/DG/05187270-00000001

**FOR THE ATTENTION OF STEPHEN IRVINE
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25 February 2016

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VERY URGENT

**THIS LETTER CONCERNS THE EXTRAORDINARY MEETING OF THE PLANNING COMMITTEE AT
6.00 PM ON 25 FEBRUARY 2016.**

Dear Sirs

PROPOSED NEW SADDLEWORTH SCHOOL, HUDDERSFIELD ROAD, DIGGLE

We act for the Save Diggle Action Group ("SDAG") on whose behalf we have previously corresponded with the Council. We also act for Mr Samuel Lloyd, Hillside Cottage, Nicker Brow, Dobcross, Saddle. We are instructed by both clients in connection with the development of the proposed new Saddleworth School.

We understand that an extraordinary meeting of the Council's Planning Committee is due to take place tonight at 6.00 pm. We further understand that the purpose of the meeting is to determine four applications in connection with the proposed new Saddleworth School.

These are:

- 1 Application A (PA/337931/15) – an application to demolish the existing buildings on the WH Shaw site, Huddersfield Road, Diggle.
- 2 Application B (LB/337929/15) – a listed building consent application to demolish the link bridge attached to the Grade II listed office building and clock tower on the WH Shaw site.
- 3 Application C (PA/337301/15) – an application to build a new secondary school and associated facilities.
- 4 Application D (PA/337930/15) – an application to provide a paternal drop-off facility and residential car parking associated with the school development, on land of Huddersfield Road.

This letter concerns Application A.

The document pack for tonight's meeting includes a report from the Head of Planning and Infrastructure ("the officer's report") which provides detailed advice in respect of each of the above applications and recommends that consent is authorised in each case. Having regard to the contents of the report it is our view that if the committee were to resolve to grant authorisation for the demolition of buildings on the WH Shaw site on the basis of the advice of its officer, it would be acting unlawfully. As to this we refer to the opinion of Robert McCracken QC which is **attached** to this letter.

Further, insofar as Applications B to D are bound up with the demolition of the buildings on the WH Shaw site, we take the view that as matters stand these applications cannot at the present time be determined. To the extent that the reasoning in the other applications is based on that in Application A we consider that any authority granted in Applications B to D would be also unlawful. Save for that, at the present time we take no view as to the lawfulness of the underlying reasoning for the individual recommendations.

The purpose of this letter is therefore to invite the Council either to adjourn tonight's meeting or alternatively to resolve to defer determination of all four applications pending consideration of the contents of this letter and the provision of a detailed reply.

In the event that the Council is not prepared to take this course of action and in the event that the Council proceeds to determine Application A and to authorise demolition, we are instructed to seek judicial review. In doing so we are instructed to seek interim relief to prevent demolition taking place pending the outcome of our substantive claim.

We would be grateful if you would indicate as a matter of urgency, and in any event by no later than 5.00 pm today whether the Council is prepared to defer determination of these applications.

In the event that authorisation for demolition is approved by members at tonight's meeting we ask for an assurance from the Council that this authorisation will not be issued for a period of 14 days to enable an application for interim relief to be made. In any such application we reserve the right to rely on the contents of this letter.

A copy of this letter will be served on the developers in all four applications. In the event that authorisation for demolition is granted we ask that provide a response to this letter confirming that they will not proceed with development – and in particular with any demolition activities - pending our client's application for interim relief.

Yours faithfully



IRWIN MITCHELL LLP

Enc

Proposed Saddleworth School at Diggle: Opinion

1. I have made a preliminary examination of the approach which officers are inviting councillors to take to the applications in respect of the Dobcross Loom Works site.
2. The Council appears likely to fall into error if they follow the advice of officers. They would be applying the wrong test in terms of government policy set out in NPPF if they approve application A (demolition of 5 buildings.)
3. Officers acknowledge the contribution of the group of buildings as a whole to the setting of the listed office building at [10.45] noting inter alia that they provide

'an important visual context.....the understanding of the architectural relationship between the works and the offices would be lost...

elements of the factory are prominent, such as the water tower . chimney and stone walls they form a positive setting..which enhances the historical appreciation of the role of the anal and factory...'

4. The approach to the balancing exercise varies according to whether or not the harm is substantial (see NPPF [132] vs [134]) They say, applying the laxer test of NPPF 134 (see OR [10.60] and [10.61]) that the less than substantial harm is outweighed by planning benefits.

5 Officers say characterise the harm as 'less than substantial' to the listed building since '*the listed building [other than the link] is not touched*'. This involves a fundamental error of misunderstanding as to Government policy in that substantial harm to a listed building may be caused by harm through development to its setting NPPF 132 states:

'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. **Significance can be harmed or lost through** alteration or destruction of the heritage asset or **development within its setting**. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. **Substantial harm to** or loss of **a grade II listed building**, park or garden **should be exceptional**. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.'

- 6 There are further justiciable errors in OR [10.62] and [10.63] They treat school walls as if they were no different from industrial building walls. This ignores the major difference in fenestration and materials. They also inconsistently with OR [10.44-10.46] irrationally treat the loss of the nearby buildings as a *neutral impact on setting*.

7. The strong terms of OR [12.304] re application C (new school) do not overcome the problem caused by the fundamental error of understanding of Government policy and failure to apply the right test (and comply with the duties imposed by statutory the Listed Buildings Act 1990). Nor does the reference re application C at [12.161] to NPPF 133 overcome the error and confusion re application A.

8. The courts have shown themselves willing to intervene to ensure that the statutorily required special consideration is given to the protection of listed buildings and their settings as in the Court of Appeal decision of Barnwell v East Northamptonshire DC [2014] EWCA Civ 137 and the High Court decision in Forge Field v Sevenoaks DC [2015] EWHC Admin 1895. The High Court observed in North Norfolk District Council v SSCLG [2014] EWHC 279 (Admin)

'..... the question should not be addressed as a simple balancing exercise but whether there is justification for overriding the presumption in favour of preservation'

this is in marked contrast to the starting point in the OR at [10.47] where the officers underline that 'a balanced judgment' must be made on the basis of NPPF 135 (which is dealing with unlisted buildings/non designated assets).

ROBERT McCracken QC

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24th February 2016

Date: 9th March 2016
Our ref: AE/PLGEN/16
Your ref: JXN/AW/DG/05187270-00000001



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BY POST AND EMAIL: Alastair.Wallace@irwinmitchell.com
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Dear Sirs

Proposed New Saddleworth School, Huddersfield Road, Diggle

I write with reference to your letter of 25 February concerning the four planning applications relating to the proposed new Saddleworth School, Huddersfield Road, Diggle (PA/337931/15, LB/337929/15, PA/337301/15 and PA/337930/15).

The Council has now had the opportunity to consider your letter in more detail and has decided that it would be appropriate for the applications to be reconsidered by the Planning Committee. I can therefore confirm the following:

1. No planning decision notices will be issued as a result of the resolutions of the Planning Committee on 25 February
2. The four planning applications will be reconsidered at a future meeting of the Planning Committee to be arranged in due course

Please acknowledge receipt of this letter.

Yours faithfully

A handwritten signature in black ink that reads "Alan Evans".

For Director of Legal Services

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