

**Response to CLG's letter dated 14 March 2014 addressing the National Planning Guidance published on 6 March 2014 (Note 2 of 3)**

This note responds to CLG's letter dated 14 March 2014 inviting comments on the National Planning Guidance which was issued on 6 March. This note is the second of three separate notes being submitted to CLG in response to its letter dated 14 March 2014. Note 1 addresses representations on Hertfordshire County Council's Undertaking dated 19 December 2013 and Note 3 addresses representations on material changes in circumstances since the Secretary of State's minded to grant letter of 20 December 2012.

We do not consider that the new Planning Guidance published on 6 March 2014, nor the list of cancelled guidance, have any relevance to the consideration of the appeal, save for the issue addressed below in relation to the use of conditions, the guidance on which is set out at paragraph 21a-010-2014036.

1. In our letter to CLG of 20 December 2013 we referred at point number 4 to the then draft guidance on the use of planning conditions issued by CLG on 29 August 2013 and the section titled "Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?". Our letter of 20 December stated that if for any reason the Secretary of State is not minded to accept the Undertaking, planning permission can properly be granted on the basis of condition 33 in accordance with our previous extensive submissions on that approach.

2. The text of the draft guidance has now been carried through into the final guidance issued on 6 March. The Guidance states as follows:

*"In exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the six tests must also be met."*

3. The Guidance goes on to state that *"The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met in the interest of transparency."*

4. Addressing these points in turn:

(i) It is clear that this proposal is a "complex and strategically important development". The complexity of the scheme is demonstrated by the history of the planning application. Its strategic importance is recognised in the Secretary of State's minded to grant letter of 20 December 2012.

(ii) There is clear evidence that the delivery of the development would otherwise be at serious risk. If a negatively worded condition was not imposed, in circumstances where the Undertaking is not found to be satisfactory, then planning permission would not be issued and the development would not proceed.

(iii) The position in this case goes beyond the requirement in the Guidance that heads of terms or principal terms of the planning obligation need to be agreed before planning permission is granted. In this case, a planning obligation (the 2009 Obligation) has already been entered into by the majority of the landowners and therefore the detailed terms of the Section 106 obligation which is required are already fully identified.

5. Accordingly, if for any reason the Secretary of State is not minded to accept the Undertaking the new Guidance provides a robust and sound basis upon which to grant planning permission with the inclusion of condition 33 in accordance with our previous extensive submissions on that approach and in accordance with the further submissions contained in this note.

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