

20 December 2013

By Hand

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Our ref C2/GALLIMOM/3819522
Matter ref U0475/00015**For the attention of Christine Symes**

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**APPEAL BY HELIOSLOUGH LTD****LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER COLNE VALLEY,
HERTFORDSHIRE****APPLICATION: REF 5/09/0708**

We refer to your letter to CgMs dated 20 December 2012. That letter stated that the Secretary of State is minded to approve our client's proposal pursuant to the above appeal. The letter invited our client to provide a planning obligation under S106 of the Town and Country Planning Act 1990 which binds all those with an interest in the site. The letter stated that the Secretary of State is prepared to consider a planning obligation given by unilateral undertaking. The Secretary of State drew attention to the fact that a duly certified, signed and dated planning obligation must comply with the relevant statutory provisions of S106 and S106A of the Town and Country Planning Act 1990 and the CIL Regulations 2010 as amended. The letter indicated that the Secretary of State proposed to allow until 28 February for the submission of a suitable planning obligation and that he intended to proceed to a final decision as soon as possible. The letter noted it was not an invitation to any party to seek to reopen any of the other issues. This letter confirms the position in relation to the outstanding S106 planning obligation and does not contain any representations in relation to the appeal.

Following your letter of 20 December 2012, there was subsequent correspondence between the parties interested in the appeal and CLG. On 15 August the Secretary of State wrote stating that he was giving a further period of time until 15 November for submission of the planning obligation. At the request of Hertfordshire County Council ("HCC") that period was extended to 20 December in CLG's letter dated 8 November.

The Secretary of State has already received a planning obligation which binds all of the appeal site, save for part of Area 1 which is in the ownership of HCC (see paragraph 41 of the CLG letter of 20 December 2012). That undertaking was completed on 17 December 2009 and has been accepted by the Secretary of State. The Secretary of State has stated that the provisions in the existing undertaking are relevant and necessary to the proposed development and comply with the statutory tests in the CIL Regulations (see again paragraph 41). Accordingly what is required to trigger the grant of planning permission is a completed undertaking securing the same obligations in relation to the part of Area 1 owned by HCC, duly executed by HCC.

On 9 December HCC's Cabinet resolved to enter into the required planning obligation. The necessary planning obligation, in the form of a unilateral undertaking, was completed on 20 December and a certified copy is enclosed with this letter.

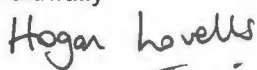
We point out the following:

1. The planning obligations contained in the undertaking are all in favour of and enforceable by St Albans City and District Council ("SADC"). The obligations mirror those in favour of SADC and HCC respectively in the existing undertaking dated 17 December 2009.
2. As has previously been explained in our submissions to CLG, HCC cannot as a matter of law contract with itself. Accordingly the obligations in the existing undertaking which were given for the benefit of HCC are given for the benefit of SADC in the new undertaking (see the explanation in Recital 1.8 in relation to these "HCC Obligations" as defined). However (as is explained in Recital 1.9) clause 14 addresses this issue further by requiring a successor in title to HCC's land to enter into an undertaking in favour of HCC in relation to the HCC Obligations, so that these obligations can be enforced by HCC after it has disposed of its interest in Area 1.
3. There are various minor drafting differences between the existing undertaking and the new undertaking. The only material difference between the undertakings relates to the mechanism for payment of the contributions. HCC does not favour the requirement in the existing undertaking for the enforcing authority to serve, before the contribution is paid, an undertaking specifying the purpose for which the contribution will be used and requiring unexpended sums to be repaid after 5 years. However the relevant contribution clauses in the new undertaking state specifically that each contribution is to be spent for the specified purpose, thus making clear the purpose for which each contribution is to be applied by the collecting authority. These drafting differences between the two undertakings are not significant in terms of the liability to pay and the ability of the authorities to collect the relevant contributions.
4. The enclosed new undertaking satisfies the requirement set out in paragraph 45 of CLG's letter of 20 December 2012 such that all of the appeal site is now bound by appropriate planning obligations. If for any reason the Secretary of State is not minded to accept the new undertaking planning permission can properly be granted on the basis of condition 33 in accordance with our previous extensive submissions on that approach. The robustness of condition 33 has been further re-enforced by the draft guidance on the use of planning conditions issued by CLG on 29 August - see 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?".

The Secretary of State issued his minded to grant letter on 20 December 2012, a year ago. The submission of the new undertaking, executed by HCC, satisfies the single outstanding issue identified by the Secretary of State in relation to our client's appeal. The 20 December letter stated very clearly (at paragraph 46) that the Secretary of State does not intend to reopen any other issues and that he intends to proceed to a final decision as soon as possible. Accordingly we urge the Secretary of State now to issue his decision letter and to grant planning permission.

Please acknowledge safe receipt of this letter and the enclosed undertaking.

Yours faithfully



Hogan Lovells International LLP

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