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Ms Christine Symes

Planning Casework

Department for Communities and Local Government

Zone 1/H1

Eland House

Bressenden Place

London SW1E 5DU

Dear Madam

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 (RADLETT)**

APPLICATION REF 5/09/07/08

APP/B1930/A/09/2109433

I refer to your letter of 19 February 2014 in which you invited comments on a S106 Obligation dated 19 December 2013 (“the Undertaking”) submitted by the Appellants in relation to this matter.

The Council has the following comments on the Undertaking:

1. Clause 4 provides for the payment of monies to St Albans City and District Council (“the Council”) to be spent by the Council on lorry routing measures. These are a series of measures related to the highway and are, usually, dealt with by the County Council (“HCC”). The Council does not have the expertise to approve or put in place the relevant measures. The protection given to the Council is by way of clause 4.1(b) which indicates that “reasonable assistance” with regard to the introduction of the measures shall be provided by HCC. This provision would enable HCC to refuse to take steps that, for example, led to the incurring of costs by it in the design and implementation of those measures. The Council has no powers to carry out the works in question. In the Council’s view, this aspect of the Undertaking needs to be considered further – at present it places a series of obligations on the Council which the Council cannot carry into effect and, ultimately, HCC are able to refuse to assist the Council on. Moreover, there is no financial provision relating to costs that may be incurred by the Council in carrying the works into effect (while there was a fairly inconsequential one in the obligation entered into in 2009 (“the 2009

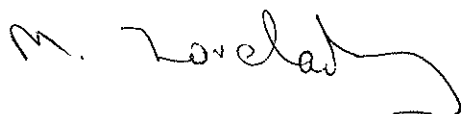


Obligation") at clause 15.13, this is not carried over into the Undertaking). The Council's costs of administering the obligation should be covered by the Appellant. The Appellant appears to expect, by entering into both the 2009 Obligation and the Undertaking, that the matters contained in clause 4 (and clauses 6, 7 and 8 which are dealt with further below) will be addressed by the County Council primarily. However, there is no clause within the Undertaking which connects the County Council's obligations in the 2009 obligation to those contained in the Undertaking and the Undertaking must, in the absence of such a provision, be capable of operating independently of the 2009 Obligation. Alternatively, there should be some provision within both the Undertaking and the 2009 Obligation which sets out the interrelationship between the 2009 Obligation and the Undertaking.

2. Clause 5.1 requires, in summary, the implementation of a scheme relating to lorries exiting the site. The detailed attributes of the scheme are not specified. There is no provision within the obligation indicating how the scheme is to be agreed, by whom and in what circumstances it may or may not be amended. For example, such schemes are often accompanied by a clause to the effect that the scheme shall be carried into effect in perpetuity and not changed without the agreement of the Council or some other third parties. Without more, the scheme may be capable of being cancelled by agreement between the parties. It appears to the Council that the scheme should be specified as continuing in perpetuity thereafter unless varied by the Council.
3. The points made in respect of clause 4 also apply in respect of clauses 6, 7 and 8.
4. Clause 12.1 has now changed from the 2009 obligation so that it does not relate to the works on area 2. The Council considers that HCC should be equally subject to this provision.
5. Clause 13.1 is a broader provision than that included in the 2009 Obligation but the points made in respect of clause 4 are reiterated.
6. Clause 14.2 should refer to a planning obligation made under section 106 of the Town and Country Planning Act 1990.
7. There is no indexation in respect of a number of clauses which were included in clause 15.12 of the 2009 Obligation. It is imperative that such a provision be included, otherwise there is no mechanism for addressing rising costs over time.
8. Clause 15.9 refers to the fact that only "contracting parties" may enforce the undertaking. "Contracting parties" is not defined and given that it is a unilateral undertaking, this point should be made clearer since, strictly, the Council is not a contracting party.

In the circumstances, the Council contend that the submitted Undertaking is unsatisfactory and the Secretary of State is respectfully requested to refer the matter back to the Appellants so that the points raised by the Council can be rectified.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Lovelady', with a long, sweeping flourish extending to the right.

M Lovelady LL.B. (Solicitor)
Head of Legal, Democratic and Regulatory Services