

**BY EMAIL AND POST : PCC@communities.gsi.gov.uk**

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 5/09/0708  
APP/B1930/A/09/2109433**

I refer to your letter of 1 April 2014 and the attached copies of responses received to the representations made following your letter of 14 March 2014.

The District Council wishes to make representations only in respect of Hogan Lovells International LLP's response to the Council's points regarding the Section 106 Undertaking of 19 December 2013 ("the Undertaking").

Hogan Lovells are wrong to suggest that the District Council has misunderstood the nature of the Undertaking. The essence of the District Council's concern as set out at point 1 of its letter dated 5 March 2014 is that the adequacy of the obligations contained in the Undertaking should be assessed on the basis of what they are designed (apart from the eventuality provided for under clause 14) to deal with, namely, the situation where HCC has not divested itself of ownership. The issues identified in paragraphs 1, 3 and 5 of the District Council's letter of 5 March 2014 (addressing clauses 4, 6, 7, 8 and 13 of the Undertaking) raise the same point; in circumstances where there is no transfer from HCC, the Undertaking places a series of obligations upon the District Council which it is not able properly to deal with and which it will be required to deal with without any financial assistance. That places an unreasonable burden upon the District Council.

The fact that the Undertaking has been drafted on the expectation that HCC will sell its interest is irrelevant to the operative provisions of the Undertaking which have been drafted to deal with the situation if no such sale takes place. It is on this basis that the points made by the District Council at paragraph 1 of its letter holds true.



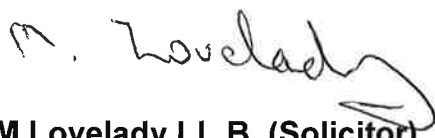
The Undertaking should provide properly for the situation in which the District Council will be required to administer the obligations in respect of part of the site and does not do so.

A second and separate point (and one which was not raised previously) relates to the position if the land the subject of the Undertaking is transferred to a third party pursuant to clause 14. The requirement is simply to require the third party successor to enter into a section 106 which will bind that person to the "HCC Obligations". This does not include the indexation obligations at clause 15.12. The owner of area 1 will not be subject to this provision. Although Hogan Lovells say in their Note 1 (see paragraph 10) that in practice the developer of the SRFI will be required to own all the affected land, the drafting of the section 106 obligations should not be considered on that conditional basis. It is for this reason that the Council indicated in its representations that the appropriateness of the obligations contained in the Undertaking should be considered independently of the 2009 Obligation – their acceptability should be judged on their own merits.

Hogan Lovells also suggest in their note 3 that the National Planning Guidance ("the NPG") provides a basis for justifying a negatively worded condition to enter into a section 106 obligation. The guidance indicates that the imposition of a negatively worded condition would as a generality be unlikely to be appropriate, but that "in exceptional circumstances" it may be appropriate "where there is clear evidence that the delivery of the development would otherwise be at serious risk". Given that there are two section 106 obligations which cover all the relevant parties, if the Secretary of State rejects the obligations it will be because of their failings in a substantive sense (for example on the basis of the matters raised by the Council above and in its letter of 5 March), not because some of the parties are not subject to an obligation. The guidance contained in the NPG could not be used to address such a situation. This would not be an exceptional circumstance within the meaning of the NPG and difficulties over delivery of the scheme would have arisen entirely through the approach taken by the Appellant to the drafting of the section 106 obligations. As a result, the guidance in the NPG does not avoid the need for a properly worded series of obligations.

The District Council does not wish comment further on any of the other responses.

Yours faithfully



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