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**COUNCIL'S INITIAL RESPONSE TO FURTHER  
EVIDENCE SUBMITTED BY APPELLANT**

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**Introduction**

1. On day 6 of the inquiry, the Appellant applied to adjourn the inquiry to allow for further information to be submitted. This was on a narrow basis. It was said that:
  - (1) The Appellant, Mr Rudkin, had been listening to the inquiry and was surprised that drainage was such an issue.
  - (2) This was because he believed there was a “*drainage pipe*” which had been installed in the 1960s to drain the cricket pitch to the river.
2. Despite any clear explanation as to why this had not been raised earlier, and a clear warning from the Council that this was unreasonable and would lead to an application for costs, the Inspector granted permission for the adjournment and for the Appellant to put in revised information in relation to this drainage pipe option.
3. The new information now submitted comprises:
  - (1) An updated Sustainable Drainage Assessment from GeoSmart
  - (2) A survey of Blackgreen Wood by MRP Planning
  - (3) A Sustainable Drainage Strategy Update from MRP Planning; and
  - (4) A Drainage Ditch Survey by SDP.
4. That information fails to identify any drainage pipe of the kind which Mr Rudkin believed to exist, or any evidence of a drainage system associated with a cricket pitch. Instead, it attempts to set out an entirely new drainage strategy for the site. Although MRP claim

that this would involve the restoration of an existing (if unused) ditch system this appears to be entirely based on the survey work by SDP which shows nothing of the kind. It is noted that the proposed route involves significant parcels of third party land, use of highway ditches and culverts, and goes through significant parcels of Ancient Woodland. It also appears to involve interfering with potential sensitive ecological receptors like ponds.

### **Council's response**

5. The Council considers that the new proposed drainage option constitutes a substantial amendment to the Scheme proposals. As has been canvassed at the appeal, a sustainable drainage strategy is something which an applicant is required to provide on an outline application for major development. It follows that the addition of an entirely new and untested mechanism cannot be fairly considered without undergoing full consultation on the new information – including with all the statutory consultees who may be affected which would include National Highways, Natural England, the Environment Agency, as well as lead local flood authority, ecology, arboricultural and highways consultees. That consultation would have to be carried out by PINS as the Council is no longer the decision-maker on the appeal.
6. As such, the Council considers that admitting the new information would be unfair as per ***R(Holborn Studios Ltd) v Hackney LBC*** [2017] EWHC 2823 (Admin).
7. It should be noted, that this issue is entirely of the Appellant's own making. The Council gave the Appellant every opportunity to undertake further work to address LLFA's concerns about the drainage option put forwards, as the following chronology shows<sup>1</sup>
  - 17/10/2022 - Agent notified that LLFA responses are delayed (expected to last for at least 6 months) due to resourcing issues and offering the applicant the alternative of using the LPA's appointed drainage consultant to provide advice (subject to a fee)

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<sup>1</sup> By way of background, at the time the application was validated, the LLFA were not able to respond to planning application consultations within the relevant timescales due to resourcing issues. Consequently St Albans appointed drainage consultants (RAB) to provide flood risk / drainage advice. This was an optional service with the fee to be paid by the applicant. The alternative was to wait a potentially significantly greater time for a response from the LLFA. In this case, the agent / applicant chose not to use the RAB service, opting instead to wait for a response from the LLFA.

- 19/10/2022 – Agent confirms that the applicant has chosen not to use the optional service.
- 12/01/2023 – Email from case officer updating agent of progress and flagging that response from LLFA is still outstanding (and EOT request).
- 16/02/2023 - LLFA consultation response received.
- 15/03/2023 - Email from case officer asking if the applicant wishes to address the LLFA objection during the course of the application (and EOT request).
- 15/03/2023 – Email from agent confirming they will be submitting information as a response to LLFA’s comments. No EOT agreement – agent to contact case officer once they know when additional drainage evidence will be available.
- 12/04/2023 – Agent confirmed verbally (during site visit) that additional drainage evidence would be available imminently (expected within two weeks).
- 04/05/2023 – Case officer email to follow up on progress with on additional drainage information
- 04/05/2023 – Following response from agent: *“Hopefully, the next couple of weeks: the topographical has been done and the soakaway tests and now it's with the SuDS specialist who has emailed to say he hopes to start looking at this today or tomorrow.”*
- 28/06/2023 – Case officer email requesting timescale for providing updated drainage information.
- 29/06/2023 – Following response from agent: *“Sadly the reports are taking longer than expected...In terms of the additional drainage information, we're still liaising with consultants on the best way forward for an Outline scheme in which the number of dwellings and the layout can change. I'll be in touch as soon as I have clarity.”*
- 07/07/2023 – Email from agent: *“We now have a strategy to progress the Sustainable Drainage Assessment, too, and I will get the results and updated SDA to you as quickly as possible.”*
- 14/07/2023 – Email from case officer seeking EOT to allow for technical issues (highways and flooding) to continue to be resolved.

- 14/07/2023 – Email from agent – will discuss with client – asks for proposed date.
- 14/07/2023 – Email from case officer: *“Can you give any indication of the likely date of receipt of drainage information? This would be useful to help work out a potential EOT date.”*
- 19/07/2023 – Email from case officer: *“In the absence of a timeline for receipt of the additional drainage information, and taking into account that reconsultation will need to be carried out after the information is provided and a suitable committee date thereafter targeted, may I suggest an EOT date of 20th December 2023. This falls two days after the final scheduled planning committee meeting of this year.”*
- 19/07/2023 – Email from agent – will pass suggested EOT date to client. No indication given of date for submission of drainage evidence.
- 10/08/2023 – Email from case officer seeking update on suggested EOT and drainage evidence.
- 11/08/2023 – Email from agent – hopes to have a definitive answer on both w/c 21/08/2023.
- 04/09/2023 – Email from agent – agrees to EOT (20/12/2023), noting HCC Ecology consultation response. No update on drainage.
- 15/12/2023 – Email from case officer seeking to engage due to forthcoming end of EOT period. In relation to drainage: *“I haven’t received the further information / comment you had expressed a desire to submit regarding flood risk / drainage or ecology in response to concerns raised by the LLFA and HCC Ecology. Taking this into account, I would be happy to agree a further EOT but would need, as part of this, to set a deadline for receipt of any further information such that I will have a reasonable prospect of receiving a consultation response from relevant consultees and being able to prepare my report to committee within the agreed timeframe.”*
- 18/12/2023 – Email from agent: *“We have also reviewed their demands for additional information in respect of drainage and ecology and consider them to be disproportionate for the scale and nature of this Outline application which conforms to national and local*

requirements. We will not be withdrawing the scheme and we do not agree to any further extension of time.”

- 18/12/2023 – Email from case officer: “Can I assume from this that you do not intend, any longer, to submit further drainage and ecology information?”
- 18/12/2023 – Email from agent: “the extent and amount of information submitted are considered proportionate and sufficient for this outline application. We had considered undertaking additional work but following a review of: the evidence that had been submitted; the nature of HCC's requests; and the recent clarification provided by the Government, it is considered that no further information is necessary at this Outline stage. Suitable, frequently-used Conditions and the necessary requirements of a Reserved Matters application should provide all the comfort the Council needs to make a Decision on the principle of the application.”
- 31/01/2024 – Notification of intention to submit appeal received.

8. In the circumstances, the Council submits that:

- (1) The new information should not be accepted. It is unfair to allow the Appellant to reformulate its case so late especially when it has been given every opportunity to do so at the application stage and where it has offered simply no excuse as to why this work wasn't done earlier.
- (2) If the information were to be accepted, it could only be fairly dealt with following a full consultation by PINS.
- (3) If that route were chosen, the Council will need at least four weeks to consider the outcomes of any consultation (which it would be for PINS to set the length of) before submitting revised evidence in the form of a supplemental proof. The Council would then seek to recall Ms Waters.
- (4) In any event, the Council puts the Appellant on notice of its intention to apply for all of its costs in relation to the sustainable drainage issue. This will be the subject of separate submissions in due course.