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LONDON, NW7 2RR

APPELLANT'S OUTLINE SUBMISSIONS ON PROCEDURAL MATTERS

Introduction

1. These Outline Submissions on Procedural Matters are prepared in writing by the Appellant, in accordance with a request contained in the helpful Pre-Inquiry Note dated 18th January 2017.

2. That Pre-Inquiry Note was received following notification of a request for an adjournment made by the Council by letter dated 16th January 2017 (i.e. just about a week before this long-scheduled inquiry was due to begin). The Appellant responded to that request immediately by letter of 17th January 2017.

3. The Council apparently seeks an adjournment on the basis of what it considers to be changes to the scheme and additional information provided by the Appellant.

4. It is deeply regrettable that the Council's letter of request for an adjournment contains a number misleading comments / suggestions and misrepresentations of the facts. These can be explored in more detail as requested; but they are an inauspicious start to an application for an adjournment (albeit symptomatic of the problems the Appellant has faced from the Council throughout the planning application process). As summarised below, the Appellant submits that there is no proper basis for the Council's request.

5. The Pre-Inquiry Note states that the Inquiry will be opened as scheduled, but submissions will be heard from the parties on the adjournment request. A written copy of the submissions has been requested. You have asked the parties to address the stated grounds for an adjournment and to focus on:

a. The changes to the scheme/plan and whether these are such that they significantly change the scheme and are such that the Inspector should, on the basis of *Wheatcroft* principles, not accept the amended plan.

b. If the amended plan is not accepted, whether the Inquiry can proceed on the basis of considering the scheme on the original plan.

c. What the Council has referred to as new or additional information in terms of the amount and nature of that information, explaining the nature of the differences with the information submitted at the time the application was considered.

d. The purpose of the adjournment and how long would be required for it, including what would be the work that would be undertaken during the adjournment.

Factual Context

6. Before turning to respond directly to the adjournment request, it is essential to have an appreciation of the overall factual context in which this request is now made.

7. This is not the time or place to deal with the full catalogue of errors and unreasonable conduct on the part of the Council in the handling of the planning application and the underlying appeal. Suffice it to say that the Appellant has already referred to some of that conduct in its written representations and evidence. Moreover, the Appellant has already notified the Council in writing of its intention to apply for costs[1]. You will therefore have already read about some of the conduct. It is a depressing feature that the Council's mishandling of this planning application and appeal has been one of the most disgraceful I have ever encountered.

8. However, that conduct is now compounded by this latest late application for an adjournment. It is a belated application made against a background where (a) the planning application

[1] See Appellant's Statement of Case.

determination was the subject of inexcusable delay and mishandling; (b) the Council itself is, extroardinarily, seeking to expand its case beyond its original reasons for refusal in direct contradiction of the previous assessments of its own officers; (c) despite this, the Council resisted an inquiry to determine this appeal.

9. I therefore deal with a brief summary of some of the facts. For the avoidance of doubt, this is not intended to be exhaustive by any means. It just provides some basic context for the current application.

10. First and foremost, at its heart, this is and should be have been a very simple planning application indeed. Despite the inability of the Council to agree a Statement of Common Ground timeously, it is after all simply a proposal for (a) an internal access road; (b) a maintenance shed; and (c) some ancillary parking for an already established, lawful use of the main part of the Appeal Site as a cemetery. It defies belief how long it took the Council to consider the application in the first place. But it is not an application, and now an appeal, which should have been dramatically over-complicated in the inexcusable way the Council has in this case. This is a theme to which I will return during the inquiry itself.

11. Secondly, it is right to point out that the first Council officers did at least originally correctly direct themselves on the uncontroversial principle of what was proposed. In accordance with best practice, the Appellant preceded its planning application by seeking pre-application advice. It had a meeting on site with the Council's tree officer on 10 July 2014 to discuss the optimum location for the access road. This was followed by a pre-application planning meeting on 12 August 2014. In consequence, the Council officers confirmed that the principle of creating a new access road, a maintenance shed and car-parking to serve the lawful use of this cemetery on the appeal site were all accepted. The focus was on providing information on the reasons for the locations for each of these elements within the site with (for example) arboricultural and ecological details[2]. That is, of course, precisely what the Appellant sought to do, having discussed these principal elements on site.

12. Thirdly, in accordance with that advice, the Appellant submitted its planning application accompanied by the necessary details and information. It was submitted as long ago as

[2] See Pre-Application Planning Advice dated 15 Sep 2014 – Exhibit WE2.

December 2014. It was supported by a full range of materials. These included (amongst other things) (a) a tree survey and arboriculutural assessment by Arbol Euro Ltd; (b) engineering details of the proposed construction of the access road, with details of the proposed cell web construction; and (c) ecological assessments by Arbtech Consulting Ltd with Phase 1 and Phase 2 habitat assessments by Malford Environmental – these included, for example, bat surveys and badger surveys.

13. Fourthly, the application was apparently then advertised by the Council and consultation responses received. However, despite repeated requests, the Appellant was never provided with full copies of all of the consultation responses received by the Council. Initial responses were provided to the Appellant in February 2015, although they were never uploaded onto the Council's accessible planning file. The Appellant then responded directly to the issues raised in those responses by email to the Council's case officer on 2 February 2015. As to any subsequent responses, it is extraordinary that was only able to obtain full copies after the event by making a formal freedom of information request under the FOI/EIR legislation.

14. Fifthly, the Council conspicuously and consistently failed to deal with the planning application in any reasonable timescale at all. It had to be repeatedly chased on progress by the Appellant's agent[3]. The Appellant's planning agent had to make repeated requests for feedback and progress from the case officer.

15. To give you a flavour:

    a. the Case Officer failed to provide a substantive reply to the provision of further information provided on 2 February 2015 despite repeated chasings; by email of 23 February 2015 the Case Officer said she was waiting for her colleagues comments on trees and would revert once these were received – no such comments on trees were ever provided to the Appellant;
    b. it was not until 12 April 2015 (over 4 months after the application had been lodged) that the Case Officer carried out a site visit;
    c. it was not until 12 May 2015 that the Case Officer then sought to provide a substantive response to the email of 2 February 2015; this email simply dealt

[3] See Appellant's Statement of Case, paragraph 15.

with ecology and said that provision for enforceable management would have to be made if a positive recommendation were to be secured – it raised a question as to removal of trees used by bats and details of the badger and reptile mitigation strategies for which further information was sought;

d. in response the Appellant's Planning Agent responded promptly on 18 May 2015; he pointed out that no trees potentially used by bats were to be removed; as to ecological mitigation strategies, he pointed out that it was anticipated these would have been matters for conditions and could be dealt with as such given the lateness of the requests, but he would provide further details of further mitigation as now requested; he pointed out that no information had been provided on trees at all and that a date needed to be set for determination of the application and information provided as to when that would be;

e. following emails in May and June 2015, the Appellant provided details of the ecological management proposals as requested. A Reptile Mitigation Plan and a Badger Mitigation Plan were submitted on 12 June 2015, along with an outline for a management plan of the site. During this period, the Appellant repeatedly sought details of any tree concerns in light of the information submitted with the application. Beyond unparticularised assertions that insufficient information had been given and of landscaping concerns from replanting, no details of the concerns were provided. During this period, the Appellant even sought a meeting with the Council's landscape officer and offered to pay for such a meeting. That invitation was never taken up. Colvin and Moggridge provided a further response in response to the Council's unparticularised concerns about trees on 8 June 2015.

f. The Council then continued in its failure to engage and deal with the planning application, suddenly issuing a decision refusing the planning application on 14 August 2015. Despite the Appellant's previous requests, no details of any outstanding concerns were raised with the Appellant. The reasons for refusal identified two issues only, (1) asserted inadequate information about effects on protected species and (2) effect on trees. In relation to the first, the notice makes clear that the officer had failed to take into account the further

information provided. In relation to the second, it had been and remained the case that no details of these concerns were ever provided.

g. It emerged that the decision had been taken under delegated powers. The Appellant was not provided with any copy of the delegated officer's report. This was not provided until after the event. This report expressly confirms that the Council officers had appraised and assessed the proposal in terms of Green Belt policy and its effect on openness, but they (rightly) accepted the principle of all the elements proposed. The objections were limited to alleged inadequacies in the ecological information provided on protected species and the effect of the specific proposals on trees. There are glaring inaccuracies in both.

16. Sixthly, as the Appellant was unsurprisingly preparing to appeal, it was obviously a complete surprise to receive nearly two months after the decision the email from Mr Henry purporting to introduce a new objection in principle on Green Belt grounds. This purports to contradict the delegated officers' report and all pre-application advice. It is self-evidently misconceived in its own terms in suggesting that the previous officers had not carried out a Green Belt assessment.

17. Seventhly, the Appellant responded to this latest suggestion by letter dated 13 November 2015 pointing out (a) the obvious misconceptions and flaws in relation to the GB (bearing in mind the common ground to date); and (b) the basic problems in the two reasons for refusal and the Council's consideration of the case given that alleged inadequacies in information were not raised in advance. Mr Henry did not respond until Christmas Eve (ie well over a month later). Although maintaining his stance on Green Belt and repeating a number of obvious errors in this regard, he did at least provide some clarification of the Council's latest stance to the effect that:

a. he confirmed that reason for refusal 1 related to protected species, but bats were not being raised;
b. notwithstanding his views on appropriate development, the provision of the access road to allow hearses and heavier machinery to enter and circulate

through the site was accepted to be a special exception, as well as the demands placed by the scarcity of burial and/or cremation plots;

c. the concern effectively related to the level of car-parking being provided and if the amount of car-parking and associated hardstanding were substantially reduced, the case for the principle of a shed (maintenance building) would be strong.er

18. Eighthly, the Appellant submitted an appeal in response to the Council's position. The Appellant's Statement of Case makes clear to the Council why the stated reasons for refusal are not justified, as well as the attempt to add a new Green Belt objection. I do not rehearse these here. But it will be seen that the Appellant expressly raised the inappropriateness of the reasons for refusal given the Council's lack of engagement in the planning application. In response to reason for refusal (1), see eg paragraphs 29-36 – the Appellant wanted to agree as much technical information as possible and pointed out that the Appellant would not only defend the material that had been submitted, but would provide further information as required. In response to reason for refusal (2), see eg paragraphs 37-43 where, again, the Appellant stated it wanted to agree as much technical information as possible with the Council given the previous lack of engagement by the Council and absence of information about their concerns. In response to the new objection, the Appellant referred to its understanding of Mr Henry's latest letter and the issue that remained in dispute regarding the extent of car-parking. It was pointed out (amongst other things) that this was an entirely new point, but one which could have been dealt with in the application process and (if necessary) dealt with by condition reducing the car-parking to that which the Council considered acceptable: see eg paragraphs 44-45. In view of the problems the Appellant had faced with the Council's lack of engagement on the application, failure to disclose concerns and now a new point of objection being taken, an inquiry was requested. The Appellant set out its intention to apply for costs in light of the Council's conduct.

19. Ninthly, despite all this context, absurdly the Council contended that the appeal should be dealt with by written representations. It seems obvious that this was done in an effort to minimise its costs exposure for its past unreasonable conduct. But that is not a proper basis for making such a request. It is unfortunate to say the least that such a request was based on patently misleading information provided by the Council to PINS: see eg the Council's Appeal Questionnaire in which it (a) suggested the case be dealt with by written

representations; (b) submitted the site could be seen from public viewpoints and there was no need to enter the site to assess the impact of the proposal; (c) it was not in the Green Belt; (d) no part of the site was subject to a TPO; and (e) there were no protected species likely to be affected by the proposal. In light of that misleading response, it may not be surprising that PINS initially decided to hold a hearing. But the Council's conduct in this regard has only led to considerable further delay.

20. Tenthly, the Appellant's clear misgivings about the Council's continuing conduct and deciding the appeal by way of hearing immediately came to be realised. After PINS decided on the hearing procedure, the Council then sought to file hearing statements which (a) sought to rely on criticisms of detail of the application which have never previously been expressed or articulated; (b) sought to expand the case beyond even the latest objection raised by Mr Henry; and (c) once again raised issues which should never have been raised and in defiance of the Appellant's basic requests to agree technical information.

21. Eleventhly, the Appellant then had to write again to PINS to point out these points. By letter dated 12 July 2016 PINS recognised the force of the point referring to the fact that the LPA had submitted "detailed statements" since PINS had last considered the correct procedure for the appeal and noting that the evidence might benefit from cross-examination. It therefore ordered an inquiry. The inquiry date was set long in advance for today's date.

22. Twelthly, in accordance with the programme for the inquiry, a timetable was set for agreeing a statement of common ground to be submitted with proofs of evidence on 27 December 2016. The actual date for filing proofs of evidence was slightly adjusted by one day in advance by PINS to reflect the Christmas period. However, by way of answer to the Council's many inaccuracies in its latest letter making the request for the adjournment, you are invited to read Clyde & Co's letter of response dated 17 January 2017 in full. However, there are three glaring features which merit particular attention:

    a. The Council's demonstrably unreasonable conduct regarding the Statement of Common Ground (and the content of that draft document).

    b. The Council's misleading representations about the principle of the minor amendments to the proposal.

c. The Council's failure to alert anyone to what it says was non-receipt of the Appellant's evidence until 6 January 2017.

23. Taking these points the Council's approach to the Statement of Common Ground has been appalling. A first draft Statement of Common Ground was submitted with the original appeal at the very outset. The Council never once responded to this document even when a hearing was scheduled. Following the change of format to an inquiry, the obligation to agree a statement of common ground for submission with proofs of evidence came into play. In the absence of any response to the draft that had been submitted with the appeal originally, the Appellant tried once again.

24. Montagu Evans submitted an updated draft to the Council on 11 November 2016. In writing, Montagu Evans, they also raised the issue of the proposed amendments to the scheme directly with the Council and the intention to consult on these changes. As will be seen from the materials provided (a) the draft SOCG refers expressly to the further invertebrate and botanical surveys of 2016; (b) in proposing the amendments, Montagu Evans also informed the Council directly of the updated tree survey in light of the passage of time. No response was received either to the SOCG or the principle of the amendments, or the information on further survey works. However, it cannot properly be in dispute that the Council knew of the existence of the further survey material and the proposed amendments well in advance of submitting any proofs of evidence.

25. In the absence of any response, Montagu Evans provided the Council on 25 November 2016 with the proposed amendments themselves. Once again a response was sought, but was met with a blank.

26. On 15 December 2016 Montagu Evans provided the Council with the circular letter for the consultation on the amendments. Once again, no response was received.

27. On 19 December 2016 Montagu Evans chased for a response on the SOCG and the amendments.

28. This eventually led to a response from Mr Linford on 20 December 2016. In respect of the SOCG, he said he would provide comments "in due course". Given the requirement for the SOCG to be agreed by exchange of proofs of evidence on 28 December, this was obviously unsatisfactory. No issues were raised on its contents. As to the amendments, no objection at all was made to the principle of such amendments, consultation or any of the content of the material provided, let alone the principle of further survey work having been carried out. Mr Linford simply asked to be provided with any consultation responses, confirming he himself had not had any public response. As to whether the amendments addressed the Council's substantive concerns, Mr Linford contended that they did not. But the terms of that response are revealing in themselves in showing an unreasonable approach to policy: 'For us, any development in the Green Belt are harmful, contrary to the NPPF and harmful to biodiversity and ecology'. That is obviously not a sustainable position to hold and shows an obstructive approach that has characterised the Council's whole attitude.

29. In the event, there were only two responses to the public consultation, both of which were simply seeking information which was provided.

30. Proofs of evidence were provided to PINS in accordance with the agreed timetable. The Appellant provided them both electronically and in hard copy. When PINS raised a question about accessing the electronic copies, the Appellant sought to provide them in different format but the need for this was superseded by PINS receiving hard copies which they then sent out.

31. The Council now state that they did not receive the hard copies from PINS. The Appellant cannot comment further on that. However, that cannot be a good excuse for the timing of this adjournment request. That is because of the basic expectations on parties to act reasonably. The Council knew of the submission date for proofs of evidence and would therefore have known to have expected copies from PINS from 28 December 2016. If, as the Council say, they did not receive copies (whether electronically or by post), it was obviously incumbent on them to say so as quickly as possible. Moreover, it is important to point out that they could have done this either with PINS or the Appellant. There is simply no excuse for sitting back in such circumstances. In the event, the first that any mention was made of this was in passing in an email on 6 January 2017 from the Council when comments were for the very first time provided on the draft Statement of Common Ground. The comments that were

received were extremely unhelpful in form, being comments without any suggested text. That is a process that has continued to date. That in itself is not an acceptable way of conducting such a process.

32. In light of that factual context, I can turn to deal with the points in issue relatively briefly. The facts already provide many of the answers.

The changes to the scheme/plan

33. A good preliminary starting point for all of the issues raised (and many of the points on the substantive appeal) ought to be paragraph 186 of the NPPF:

> *"Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."*

34. It is ironic that this principle is said to be reflected in Barnet's own Core Strategy (see Policy CS NPPF). It is difficult to think of a more pertinent case to illustrate the flouting of this principle.

35. The principle is a sound one, reflected in many other statements of practice and guidance (see eg NPPG). The planning process is not meant to be an obstacle course. It is meant to be a positive and proactive process for dealing with development proposals, particularly those which are seeking to realise the efficient use of land for a valued and recognised beneficial community infrastructure need, namely the lawful use of the land as a cemetery.

36. However, with that principle in mind, it is relevant to consider the nature of the proposed changes to the scheme that the Appellant has put forward. They are self-evidently either minor and inconsequential or, where more significant, amount to a <u>reduction</u> in the form of the development proposed. In particular:

a. The amended plans correct a very minor cartographical error that the Appellant has spotted (but no one else has, or has expressed any concern about) regarding the red line in the location of the roundabout access from the existing Westminster cemetery. The red-line shown on the plan did not exactly reflect the extent of the intended red-line as expressed in the application (and confirmed in the fact that Westminster Council were identified in the application) and it has been amended to draw the red line accurately against the boundary. Self-evidently this would ordinarily be treated as a non-material amendment to any planning application. Moreover, it is plain that no one is prejudiced by it and no one has suggested that they are.

b. In this area, the Appellant has also taken the opportunity to amend the precise alignment of the access road entrance from the roundabout in light of the updated tree survey that it informed the Council it had carried out. By moving the access in this location by a very small amount, it reduces the potential impact on a Grade A tree. Again, no-one can conceivably have been prejudiced by any such amendment.

c. Finally, the car-park area has been reduced in size. This is a direct response to what the Council purportedly expressed as a concern about the size of the car-parking and responds to the concern about consequential tree loss. As a reduction in the amount of development, it self-evidently would fall squarely within the *Wheatcroft* principles (discussed further below).

37. In relation to the car-parking, it is pertinent to turn back to questions of principle, it is clear that the planning application process is intended to be a dialogue. Where development is proposed, but which the Council consider needs amendment to make it acceptable, they ought to explain this in the application process. The history above demonstrates that in respect of car-parking for the scheme, there was never any issue at all as to the principle of providing such car-parking for the cemetery. It is only in consequence of the Council's attempts after the event to raise an issue relating to Green Belt that the issue of the amount of car-parking was ever raised.

38. As pointed out in the Appellant's statement of case, even if this had been a concern at the time of the planning application, it is not one which should have led to rejection of the scheme. A reduction in the amount of car-parking (if required by the Council) could have been dealt with by a condition requiring the amount to be reduced to a particular area. The Appellant pointed this out. The Appellant has now gone further by proposing to reduce the car-parking proposed as shown in the amended plans. This, of course, should have been welcomed by the Council as consistent with Mr Henry's email if the Council had been acting reasonably.

39. The principle of accepting amendments to a scheme on appeal are well-established and covered by Paragraph 3.1 and Annexe M of the PINS Procedural Guidance. Whilst generally appeals are to be determined on the basis of the plans that were dealt with by the Council, that is predicated on the principle expressed in paragraph 1.3.1 of the Guidance that the local planning authority is required to have constructive discussions with an appellant and to give the opportunity to amend the application before it is decided to avoid the need for the appeal (see also Annexe M.1.1). That was self-evidently not open to the Appellant on this appeal in respect of the car-parking given that no issue of reduction being needed was ever raised. However, paragraph 3.1 makes clear that applications for amendments at appeal are to determined on their own merits.

40. In relation to Annexe M, the principles there effectively reflect the principles expressed in *Wheatcroft v Secretary of State for the Environment* [1982] JPL 37 (as identified in Annexe M.2.2): "the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation".

41. In *Wheatcroft* itself, Forbes J decided that conditions can be imposed upon a grant of planning permission which cut down, or reduce the development for which permission was sought, as the effect of the conditional planning permission was not to allow development which is in substance not that which was applied for: see pp 239 and 241. Although this principle has now been drawn wider (so as to allow amendments which do not simply cut down the form of development), that general principle is now well-established. A reduction in the amount of development will not generally prejudice anyone as those who have

objections to the development would be expected to have objected to the greater already if they had any material objections at all.

42. The principle underlying *Wheatcroft* has been articulated in subsequent cases. As noted by Ouseley J, it is plainly in the public interest that proposed developments should be improved by amendments in accordance with the principles. If the law were too quick to compel applicants to go through all the formal stages of a fresh application, it would inevitably deter developers from being receptive to sensible proposals for change. As Lord Keith observed in *Inverclyde District Council v Lord Advocate and Others* (1981) 43 P.&C.R.375:

> "This is not a field in which technical rules would be appropriate; the planning authority must simply deal with the application procedurally in a way just to the applicant in all the circumstances. There was no good reason why amendment of the application should not be permitted at any stage if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided on".

43. The important thing is to protect the interests of the public in dealing with such amendment. That is met by considering questions of any prejudice and it is, of course, always addressed if there has been consultation on amendments.

44. In light of those principles, there is no rational or coherent basis which the Council can suggest for refusing to accept the amendments proposed given that:

    a. The amendments to the red line and alignment of the access road are very minor indeed and no has even identified even any theoretical prejudice. These would have been non-material amendments anyway.
    b. The amendments to the car-parking are reductions in the proposed development and therefore unobjectionable on the basis of standard *Wheatcroft* principles.
    c. In any event, the whole issue is academic given that even though it was not necessary, the Appellant has in fact carried out consultation on all the amendments anyway and the consultation responses have been received.

45. For any or all of these reasons, the Appellant submits that there is no proper basis for resisting the amendments to the scheme. The Council's letter in this regard is disingenuous to say the least. The Council were well aware of the proposed amendments and proposed consultation before they were undertaken. They raised no objections to the principle of the

amendments or the consultation. The suggestion now made that the consultation has been inadequate is fanciful in the extreme, was never raised at the time, and is clearly opportunistic and has nothing to do with any real concern in this regard. But it also fails to deal with the fact that such consultation would not have been necessary in any event under basic *Wheatcroft* principles.

If the amended plan is not accepted, can the Inquiry proceed?

46. For the reasons dealt with above, the Appellant cannot identify any rational or logical basis in which this situation should arise. However, as a matter of theoretical principle the answer to his would be yes, subject to the fact that the Appellant has prepared the written evidence for the appeal on the basis of the amended plans given the absence of any objection by the Council to the principle of putting forward such amendments. The practical implications of this would need to be addressed (and the costs consequence against the Council) if this course were to be adopted.

The "new and additional" information

47. The Council's attempts to complain about new and additional information are artificial in the extreme in light of the facts stated above. Beyond the amendments (already identified above and foreshadowed in advance of any submission of evidence), the so-called new information which the Council apparently now raises is not properly analysed by them. I deal with it in turn:

    a. First, there is reference to the Appellant's additional survey of trees that has been undertaken by Mr Spooner. However, the Council were informed of the fact of a new survey in November when the proposed amendments were raised. And, moreover, given the passage of time, it is neither surprising nor unusual for an appeal Inspector to be provided with updated survey information. Finally, the new survey in fact effectively confirms the same conclusions that were reached by the previous survey. The inquiry now has two surveys, conducted by two separate tree experts, both of which reach the same conclusions about the acceptability of the appeal scheme. By contrast, despite this application and appeal having been ongoing since December 2014

and the repeated requests to meet and agree technical matters, the Council's witness has neither (a) sought to conduct her own survey; or (b) sought to sit down to agree technical matters with the Appellant's witnesses; or (c) ever raised an objection in principle to a further survey; or (d) sought to explain, if the Council were approaching this in the constructive manner required, why the principle of a new survey is objectionable.

b. Second, as to the further ecological survey material carried out in 2016, the Council's stance is equally unreasonable. In particular: (a) the Botanical and Invertebrate reports were identified in the list of material draft SOCG but no point was ever taken about them until January 2017 – in fact neither botany nor invertebrates has ever formed part of the Council's stated reasons for refusal which were only concerned with information about protected species; (b) given the extraordinary delays in the process of this application and appeal due to the Council's actions, it is neither surprising nor unusual to provide updated surveys for the appeal determination; (c) the Council has never attempted to carry out its own surveys or to engage with the Appellant's witness about such surveys, despite the repeated requests to agree technical matters; and (d) As Mr Farmer confirms, the new surveys confirm what was already demonstrated by the previous ecological survey information before the Council as to the absence of any material effects on biodiversity and, in fact, the biodiversity enhancements that the scheme will deliver.

48. In reality, the so-called new information is merely the sort of information that would have been expected and anticipated as part of the proofs of evidence for an inquiry of this type. The Council's belated objection to it is unreasonable, unfounded and really only disguising the fact that the Council did not raise any issue with non-receipt of the Appellant's evidence until 6 January 2017.

Purpose of Adjournment and Time Taken

49. It is not clear what the purpose of the adjournment would be, nor do the Council state how long would be required for it or what work would be undertaken. The Appellant opposes the principle of an adjournment for the reasons given. But that also has to be seen in the context

of the Council's obstructive approach to date. The Council has steadfastly refused to respond to requests for engagement with expert witnesses to narrow the issues in dispute, so it is not even suggested by the Council that it is proposing to approach the further survey data constructively and to consider whether it satisfies their concerns. To the contrary, in relation to the idea of the proposed amendments, Mr Linford was categoric that any development in the Green Belt would be opposed as being contrary to biodiversity and ecology. In reality, it appears that the adjournment will be used as a basis for the Council to try and bolster its case, regardless of the lack of merit in it, rather than to address the issues in the proactive way required by policy and if an authority were acting reasonably.

50. For these outline reasons, without the benefit of hearing any of the Council's submissions, the Appellant invites acceptance of the amendments and opposes the adjournment sought by the Council. If, contrary to these submissions, any adjournment is entertained, it should be on terms that the Council pay all the costs of and occasioned by that adjournment. That is without prejudice to the Appellant's further application for costs on the appeal itself which will arise in due course.

JAMES STRACHAN QC

39 Essex Chambers

24 January 2017