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Mr C Murray
East Hampshire District Council
Penns Place
PETERSFIELD
Hampshire
GU31 4EX

Vail Williams LLP
Meridians House
7 Ocean Way
Ocean Village
Southampton
Hampshire
SO14 3TJ

Tel 023 8082 0900
Fax 023 8082 0950

Info@vailwilliams.com
vailwilliams.com

Dear Chris

Land to the West of Lovedean Lane, Lovedean, Hampshire - Bargate Homes

Further to our recent discussions I write on behalf of Bargate Homes to outline our concerns in respect of the determination of its application on land at Lovedean Lane, Lovedean (ref 54596/001) ('the site'), in particular the consultation process undertaken to obtain residents views on how to accommodate the required residential development of 700 units at Horndean and how it will affect Bargate's application. This is not intended as a complaint aimed at officers, but is submitted to highlight our concerns about whether the Council is adopting due process in policy formulation.

Officers and Councillors alike will be aware of paragraph 47 of the National Planning Policy Framework (NPPF) which requires Councils to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements (plus 5 to 20% depending on past delivery rates).

The consultation events discussed below appear to be an obvious rear-guard action to guard against the requirements of paragraph 47 in the face of insufficient supply and an influx of planning applications. Bargate Homes has submitted a planning application on a site which has been found acceptable by Officers to partially address the housing supply deficit and it is against this background that this letter is written.

Planning Application

As you will be aware, the SHLAA was finalised in March 2013 when officers were positive about the site's development potential. It was on this basis and following the very positive pre-application discussions with senior planning officers, that Bargate elected to submit the planning application at their considerable expense.

The application for the development comprising 40 residential dwellings in Lovedean Lane was submitted in January 2014 after 2 pre application meetings with senior planning officers and two on site public consultation events. As you are aware there have been delays to the determination of the application due to a change in officers and subsequent comments on design from both officers and members, which the applicant has addressed.

Initially Bargate was advised that the application would be heard at the 15 May planning committee, 9 days after the 13 week date with an Officer's recommendation for approval. We subsequently learnt that in

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March 2014 the Council undertook retrospective public consultation into the preferred location of residential development in the Horndean area. In order to allow time to collate and review the results of the consultation, officers were instructed to remove the above application from the committee agenda for consideration on 15 May. Despite Bargate's request for the application to be heard at the next available committee on 5 June, we were advised that it will be considered at committee on 26 June – over 6 weeks after the 13 week date.

Local Interim Planning Statements (LIPS)

The report to Council for consideration at the Council meeting on 19 June includes the draft LIPS for Horndean, Four Marks and Rowlands Castle and the justification for their adoption as policy guidance. These documents are a summary of the consultation events simply concluding most attendees' preference for the location of residential development. They are not planning policy guidance documents and should not be given any weight in the determination of planning applications for the following reasons:

- ◆ There is no statutory basis under which to adopt these documents as material considerations in the determination of planning applications.
- ◆ The documents cannot be formally adopted if they have not been through the statutory process outlined in Section 17 of the Planning and Compulsory Purchase Act 2004 (2004 Act) and the Town and Country Planning (Local Planning) (England) Regulations 2012.
- ◆ The document has not been independently examined by the Planning Inspectorate and therefore cannot be considered "sound" as required by the 2004 Act and the NPPF.
- ◆ If the LIPS are given weight in the determination of an application, the authority will be giving undue credence to the document and thus the Council is exercising a statutory power it does not have (ie. to give weight to unadopted policy) which is not provided for in the 2004 Act.

On the basis of the above it is considered that the LIPS process is flawed and would be vulnerable to Judicial Review. Furthermore, if the LIPS is cited as a material consideration in the determination of the above application, the resultant decision could also be open to Judicial Review.

The officer's report to Council, whilst recommending approval of the documents as a material consideration in determining planning applications, highlights (under "Risks") that Planning Inspectors may well disregard the documents as unadopted policy and base their decisions on the Council's current lack of a 5 year housing land supply, thus rendering them a nullity. It also states that legal views were sought on the LIPS and there is no legal reason why they should not be pursued. Bargate formally requests a copy of the legal advice that the Council is relying on in this instance as this would appear to contradict the assessment of risk given that it would put the Council at risk of incurring costs at appeal.

Having reviewed the draft LIPS Bargate is at a loss to understand why this has delayed the determination of the application, given that we could have predicted the outcome. The committee report into the planning application has been redrafted to include a summary of the consultation event and the LIPS. It is considered that the LIPS should not be afforded any weight in the determination of the application as this would leave the Council's decision open to challenge both through Judicial Review and (if refused) through the appeal process.



Consultation Process

Setting aside the legality of the retrospective consultation exercise it is clear that the methodology of the consultations is fundamentally flawed. Following attendance by our consultants at the Horndean event by Vuepoint Consultants (appointed for consultation purposes – their report on the event is attached) the following points were apparent:

◆ Information

Exhibition boards were designed to provide guidance on the particular options but did not explain the technical nuances of each site in detail or recognise that the Hazelton Farm site is subject to EIA.

◆ Monitoring/Methodology

The methodology behind the consultations is fundamentally flawed. Vuepoint's observations at the consultation event noted that it was unfocussed and overly directed to ensure that the preferred area for development was to the east of Horndean (Hazelton Farm area). Young children were invited to join the site selection process and were given coloured stickers to identify their preferred sites. Attendees were invited to indicate a single preferred site rather than a selection in ascending order, which would have provided a more robust and comprehensive approach to the alternative sites.

◆ Insufficient Staffing Levels

Staffing levels were such that insufficient direction was available for attendees unsure as to the purpose and methodology of site selection. Attendees were consequently unable to make informed selections due to the absence of available technical advice on sustainability or detailed technical analysis in respect to highways, drainage, ecology etc. The only basis upon which attendees could obviously make their representations on was on location.

◆ Absence of Attendee Registration

No attempt was made to register attendees' names or addresses to confirm proof of local residency. Consequently it is not possible for EHDC to give any assurances whatsoever that the process has not been abused by interested parties. Indeed we submit that this factor alone renders the consultation process an invalid basis upon which to base planning guidance.

The above process does not provide a robust evidence base upon which the Council could rely in the determination of future applications. As the LIPS cannot constitute adopted policy, it is unclear what basis the statements will have in the determination of planning applications without leaving the Council's decisions open to challenge. This will defeat the objective of the exercise and applicants will be forced, in many cases, to 'planning by appeal' which is not in the best interests of any of the parties (it delays housing provision and takes decisions away from local control).

In their committee report Officers have concluded that the proposed development is acceptable in planning terms and it has been recommended for approval on this basis. Given the above, and the planning merits of the site (as clearly detailed in the committee report) any refusal based on the LIPS would leave the Council's decision making process vulnerable to challenge.

Given the Authority's lack of a 5 year housing land supply as well as the observations noted above, the delay in determining Bargate's application serves only to frustrate development and thus exacerbate the poor



level of supply of housing land in East Hampshire which is contrary to the advice in the NPPF. Bargate's is the only application currently being considered in Horndean and should therefore be determined forthwith on its merits, particularly given your officer's recommendation for approval.

Bargate Homes would welcome the opportunity to discuss the above with you and Julia Potter to try to ensure a smoother planning application process for the future and restore confidence that the Council is pro-development and would like to work with developers.

Yours sincerely

David Ramsay MRTPI
Associate
Vail Williams LLP
DDI: 023 8082 0903
e-Mail: dramsay@vailwilliams.com