
From: George Chesman
Sent: 05 February 2015 15:23
To: Tracy Breakell
Subject: Former Nelson Hospital London SW20 8AB

Dear Ms Breakell

Further to your email of yesterday's date I am now able to let you have the Council's response to your letter before claim.

Proposed Claimant

1. Tracy Breakell of [REDACTED]

Proposed Defendant

2. Merton London Borough Council ("the Council") of Civic Centre London Road Morden SM4 6HY

Details of Matter Being Challenged

3. An alleged failure by Merton London Borough Council to adopt a screening opinion for planning application 13/P2192 as required by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EA Regulations 2011").

Response to the Proposed Claim

4. The Council resists the proposed claim in its entirety.

Response to Ground 1 of Grounds of Challenge – that the Council failed to adopt a screening opinion for application 13/P2192 (and other subsequent applications)

5. In the event that the Council has failed to adopt a screening opinion for the purposes of application 13/P2192 this application was made to the Council in September 2013 and the time limit for seeking to impugn a failure to comply with the EA Regulations 2011 by Judicial Review has expired.

6. The claim proposed is misconceived as to the requirements of the regulations and is wholly without substance.

The Council adopted a screening opinion in March 2012. The March 2012 screening opinion assessed the likely significant effects of the development. That opinion was concerned with the likely significant effects of the development as a whole and it encompassed the impact of matters arising under conditions, such as refuse collection or footpath arrangements. Regulation 9 does not require further screening opinions be adopted each time the LPA is required to consider an application made pursuant to conditions under a planning permission.

Further, the claim is without any substance or reality. The proposed claim is premised on the contention that "if this project is in fact EIA development, then it would be proceeding unlawfully". Yet the development is not EIA development, as the unchallenged screening opinion makes clear.

There is no infringement of the EIA Directive whose purpose has been entirely fulfilled: the development was screened and it was concluded it was not EIA development. Neither that conclusion nor the grant of planning permission flowing from it was challenged.

Response to Ground 2 of Grounds of Challenge – that the screening opinion for planning application 12/P0418 was defective.

7. The Council adopted a screening opinion for the purposes of application 12/P0418 by letter dated 12th March 2012. It is denied that this screening opinion failed to comply with the requirements of the EA Regulations 2011. In view of the date of the screening opinion the time in which a judicial review in respect of it could have been sought has expired and it is accordingly not proposed to deal in detail with the criticisms made of it in the letter before claim. For the avoidance of doubt the Council does not accept any of these criticisms.

8. It is agreed that a copy of the screening opinion was placed on the Planning Register in July 2014. Regulation 23 of the EA Regulations 2011 does not prescribe a period during which this step must be taken.

Ground 2 is largely a challenge on the merits of the screening decision. Even if the challenge to the March 2012 screening opinion were not obviously well out of time, the proposed grounds largely comprise a series of disputes with the merits of that screening opinion. The High Court will not entertain such disputes in judicial review.

Response to Ground 3 of Grounds of Challenge – that new environmental information has emerged that requires reassessment of the screening opinion.

9. A screening opinion is given by a local planning authority of its own volition under Regulation 4 of the EA Regulations 2011 or following a request or deemed request from an applicant under Regulation 5. That screening opinion or an Environmental Statement is thereafter a consideration in determining a planning application. Once that application has been determined the matter is completed and there is no opportunity thereafter to revise the content of an existing screening opinion or Environmental Statement whether or not new issues have emerged.

10. The Council does not accept that there are any new factors that have arisen in this case, as set out in the letter before claim or otherwise, that were not considered in the preparation of the screening opinion dated 12th March 2012 and in the determination of the application leading to the grant of planning permission 12/P0418 on 18th December 2012. Ground 3 also alleges a number of challenges to the previous screening opinion, which are well out of time. It is understood that, for example, you disagree with the Council's assessment of the construction impacts as being "short term", but such disagreements do not afford a reason why a court would quash a planning decision.

Details of action the Council is expected to take

11. The Council will take any action it is statutorily obliged to take under Regulation 9 or otherwise of the EA Regulations 2011 in respect of any undetermined applications submitted to it for discharge of conditions contained in planning permission ref. No. 12/P2192 and in respect of which any failure would render it liable in application for Judicial Review.

Documents and information requested:

1. It is confirmed that "Planning Explorer comprises the Planning Register;
2. N/A;
3. There are individual paper and electronic files in the custody of development control officers dealing with individual planning applications;
4. An Environmental Statement was not submitted with planning application 12/P0418;
5. Relevant noise measurements were taken prior to the grant of planning permission 12/P0418 on 18th December 2014 but further ones have not been taken since;
6. A number of reports and surveys were undertaken prior to the grant of planning permission 12/P0418 on 18th December 2012 but others have not been undertaken since;
7. The Council has not used a "baseline" number of patients using the former Nelson Hospital when considering these applications.

Other Interested Parties

NHS South West London, 120 The Broadway, Wimbledon, London, SW18 1RH
McCarthy and Stone Retirement Lifestyle Ltd, Emerald House 30-38 High Road, Byfleet.
KT14 7QG.

Further Correspondence

Should be addressed to the South London Legal partnership Gifford House 67c St Helier Avenue Morden SM4 6HY, reference CS LEG GRC 511/470, marked for the attention of George Chesman.

Yours sincerely

George Chesman

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