
From: Tracy Breakell
Sent: 28 August 2014 14:14
To: Neil Milligan
Cc: Ged Curran; Legal Services; Cllr Edward Foley; Cllr John Sargeant; Cllr Peter Southgate; Stephen Hammond MP; Daniel Perfect; Sue Howson
Subject: Urgent Screening Opinion - 13/P2192

Dear Mr Milligan,

Please find attached a letter concerning the urgent need for an updated screening opinion for application 13/P2192 as a "subsequent application" to 12/P0418 concerning redevelopment of the Nelson Hospital site.

Given that, in the past, a number of emails to the planning department have gone unanswered, I would be grateful if you would acknowledge receipt of this email and give an indication of whether you intend to prepare a revised screening opinion.

Sincerely,

Tracy Breakell

From: Tracy Breakell
Sent: 29 September 2014 13:46
To: Neil Milligan
Cc: Chief Executive; Legal Services; Councillor Edward Foley; Councillor John Sargeant; Councillor Peter Southgate; Stephen Hammond MP; Daniel Perfect; Sue Howson
Subject: RE: Urgent Screening Opinion - 13/P2192

Dear Mr Milligan,

It has now been over four weeks since I wrote to you concerning the legal requirement for the council to issue a Screening Opinion for planning application 13/P2192.

I have not received any communication about this matter at all - not even to acknowledge receipt of my correspondence.

Please would you respond by Friday 10th October, otherwise I will have no option but to consider legal proceedings.

Sincerely,

Tracy Breakell

From: Neil Milligan
Sent: 30 September 2014 16:04
To: Tracy Breakell
Cc: Chief Executive; Legal Services; Councillor Edward Foley; Councillor John Sargeant; Councillor Peter Southgate; Stephen Hammond MP; Daniel Perfect; Sue Howson
Subject: RE: Urgent Screening Opinion - 13/P2192

Dear Ms Breakell

I refer to your letter and apologise for the delay in getting back to you. This was due to the need to seek legal advice following your letter

For the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 “subsequent application” means an application for approval of a matter where the approval—

(a) is required by or under a condition to which a planning permission is subject; and
(b) must be obtained before all or part of the development permitted by the planning permission may be begun.

The application the subject of this correspondence is for discharge of conditions to which planning permission 12/P0418 is subject and, as that they are pre-commencement conditions, are a “subsequent application” for the purposes of the EIA Regulations 2011. However, they do not require an Environmental Statement in accordance with Regulation 9 as the principal planning permission was accompanied by such statement.

The issues you raise appear to relate to the quality of the Environmental Statement submitted with 12/P0418. This could have been the subject of an application for Judicial Review following the grant of planning permission 12/P0418 but the time has long since passed for such a step

I trust the above is of assistance
Your sincerely

Neil Milligan
Building and Development Control Manager
London Borough of Merton
Civic Centre, London Road, Morden SM4 5DX

From: Tracy Breakell
Sent: 17 October 2014 11:22
To: Neil Milligan
Cc: Chief Executive; Legal Services; Daniel Perfect; Sue Howson; Paul Teverson
Subject: Letter Before Claim - 13/P2192

Dear Mr Milligan,

Please find attached a Letter Before Claim, in accordance with the Judicial Review pre-action protocol, challenging your decision not to adopt a new Screening Opinion for planning application 13/P2192.

I hope that you will reconsider your decision and that we can avoid the need to apply for Judicial Review.

Sincerely,

Tracy Breakell

From: George Chesman
Sent: 22 October 2014 10:22
To: Tracy Breakell
Cc: Neil Milligan
Subject: Re: Nelson Hospital Site SW20 8DB

Dear Ms Breakell

I have been passed a copy of your email dated 17th October to Neil Milligan and have been instructed to deal with this matter. I am taking instructions on your claim and will write to you again as soon as possible.

George Chesman

Locum Solicitor, Litigation & Planning Team
South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: George Chesman
Sent: 31 October 2014 14:43
To: Tracy Breakell
Cc: Neil Milligan
Subject: FW: Re: Nelson Hospital Site SW20 8DB

Dear Ms Breakell

Further to my email dated 22nd October I regret that I am not yet in a position to let you have a substantive response to your letter before claim as I am awaiting instructions from Mr Milligan and other officers who are away from the office this week. I would be grateful if you would confirm that the Council's reply can be delayed until Friday next week, 7th November.

Yours sincerely

George Chesman

Locum Solicitor, Litigation & Planning Team
South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: George Chesman
Sent: 04 November 2014 15:11
To: Tracy Breakell
Cc: Neil Milligan
Subject: FW: Re: Nelson Hospital Site SW20 8DB

Dear Ms Breakell

Further to my email dated 31st October I have now taken instructions in this matter and can confirm that the Council will review the position regarding the need for a screening opinion in respect of planning application 13/P2192. It will accordingly not necessarily act as indicated in Mr Milligan's email to you dated 30th September and that communication should not be taken as indicating the Council's definitive position.

As a separate matter it does not seem to me that Mr Milligan's email should be taken as a formal decision of the Council but rather is an expression of a likely course of action. However, in view of the paragraph above this should not now arise as an issue.

I have attempted to contact you by phone today but could not get through. I would nevertheless be grateful if you would telephone me on mobile number below.

Yours sincerely

George Chesman

Locum Solicitor, Litigation & Planning Team
South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY

DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 05 November 2014 13:07
To: George Chesman
Subject: RE: Re: Nelson Hospital Site SW20 8DB

Dear Mr Chesman,

Thank you for updating me on the telephone earlier today. Following our conversation, I would like to clarify one particular point before your meeting with planning officers tomorrow.

If/when a new Screening Opinion is adopted for planning application 13/P2192, potential environmental effects must be considered for the entire "project" - this means that the impacts from all development described in the original application 12/P0418 (i.e. the Local Care Centre, the assisted living development, proposed changes to the public realm, and any associated works) must be considered. Under the EIA regulations it is not permitted to split the project into separate parts (sometimes referred to as "salami-slicing").

Also, I understand that an application is expected very soon for redevelopment of the public realm area "The Rush" which forms part of this project. A Screening Opinion will be required for this application too.

I look forward to hearing how matters progress.

Sincerely,

Tracy Breakell

From: George Chesman
Sent: 12 November 2014 10:06
To: Tracy Breakell
Subject: RE: Re: Nelson Hospital Site SW20 8DB

Dear Ms Breakell

Thank you for your email.

As indicated in our telephone conversation I am taking instructions regarding the Council's future action in this matter and will write to you again in due course. In the meantime as I currently understand the position application 13/P2192 was lodged on 04.09.13 to discharge some 18 conditions since when there have been detailed approvals in respect of five conditions these all being about a year ago. I am currently seeking instructions on whether there have been any further approvals that have not as yet been noted on Planning Explorer.

Regarding the observation in the second paragraph of your email I am aware of the legal cases in respect of an Environmental Statement being in more than one document but in the context of Reg. 9, this regulation applies to a "subsequent application" which in substance relates to pre-commencement conditions. The wording of Reg. 9 seems to me to relate to individual applications for discharge of conditions and if this is so are not the relevant factors for consideration in a screening opinion not such as are relevant to the application itself rather than all other aspects of the development in question? To give a simple example in this matter, on 19.11.13 the Council discharged Condition 22 relating to the arrangements for secure cycle provision. Looking at this example in isolation it does not seem to me that all aspects of the development would be relevant to screening in considering cycle storage arrangements. However, I would be grateful for your view on this point.

George Chesman

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Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 13 November 2014 14:52
To: George Chesman
Subject: RE: Re: Nelson Hospital Site SW20 8DB

Dear Mr Chesman,

Thank you for confirming your current position regarding this matter.

Planning Explorer lists application 13/P2192 as the following:

APPLICATION FOR DISCHARGE OF CONDITIONS 4 (MATERIALS), 5 (SITE SURFACING), 6 (BOUNDARY WALLS), 7 (FLOOR LEVELS), 8 (REFUSE STORAGE), 9 (KITCHEN VENTILATION), 13 (PLANTING SCHEME), 15 (ARBORICULTURAL METHOD STATEMENT), 18 (VEHICLE ACCESS), 22 (CYCLE PARKING), 23 (CONSTRUCTION METHOD STATEMENT), 24 (PARKING MANAGEMENT STRATEGY), 26 (ARCHAEOLOGY), 30 (CONTAMINATION), 34 (NOISE REPORT), 42 (EMISSIONS - SUB STATION), 44 (SUSTAINABLE DRAINAGE) AND 50 (BLAKESLEY WALK FOOTWAY WORKS) **ATTACHED TO LBM PLANNING APPLICATION 12/P0418** DATED 18/12/2012 RELATING TO THE PROPOSED REDEVELOPMENT OF THE NELSON HOSPITAL SITE, INCLUDING FORMER NURSES HOME AND ASSOCIATED CAR PARKING AREA COMPRISING:- SITE 1) CONSTRUCTION OF A NEW TWO/THREE STOREY (5600M2) LOCAL CARE CENTRE, (INCORPORATING RETENTION OF THREE PAVILION BUILDINGS) AND ALTERATIONS TO ACCESS ROUTE WITH 68 CARPARKING SPACES TO THE REAR, ("LCC"). SITE 2) CONSTRUCTION OF A NEW TWO/THREE STOREY ASSISTED LIVING EXTRA CARE DEVELOPMENT (51 RESIDENTIAL UNITS) WITH ASSOCIATED COMMUNAL FACILITIES, DEDICATED VEHICLE ACCESS AND 21 CAR PARKING SPACES, INVOLVING DEMOLITION OF ALL EXISTING BUILDINGS ON THIS PART OF THE SITE, ("ALEC"). SITE 3A) ALTERATIONS, INCLUDING NEW LANDSCAPING TO THE RUSH AND KINGSTON ROAD AND SITE 3B) ALTERATIONS, INCLUDING NEW LANDSCAPING TO BLAKESLEY WALK AND KINGSTON ROAD.

As you mention, this is to discharge 18 conditions, of which 5 are shown on Planning Explorer as having been discharged to date. As such, 13/P2192 is a subsequent "stage" forming part of an overall "multi-stage" consent for development.

My understanding of the EIA screening requirements is that the assessment should be of the "project" or development that was originally applied for, in its entirety, in conjunction with any other "cumulative" environmental effects.

The original application was for a "project" consisting of development of the LCC, assisted-living accommodation, associated car parks and landscaping, and improvements to the public realm, as described above. The subsequent applications are merely the approval/discharge of conditions which are required before all/part of the development can proceed.

A good summary of the position can be seen in the judgement of *Catt v Brighton and Hove City Council* [2013] EWHC 977:

66. Article 1(2) of the EIA Directive defines a "project" as meaning "the execution of construction works or of other installations or schemes" or "other interventions in the

natural surroundings and landscape including those involving the extraction of mineral resources". A broad interpretation should be applied to the scope of the project (see paragraph 1.3 of the European Commission Guidance "Interpretation of definitions of certain project categories of Annex I and II of the EIA Directive", referring to the decision of the European Court of Justice in *Aannamaersbedrijf PK Kraaijeveld BV v Gedeputeerde Staten van Zuid-Holland* (Case C-72/95) [1996] ECR I-5403). In this case the relevant part of the definition in article 1(2) is that relating to works of construction.

67. The starting point for a local planning authority undertaking a screening exercise must be an accurate understanding of the "project" before it. The project should be capable of being clearly defined. Usually there will be no difficulty about this. In most cases the project will be the development described in the application for planning permission, or, if the request for a screening opinion is made before an application for planning permission is submitted, the development described in the request. But there will be cases where the development for which permission is sought is truly part of a larger project, including other development already completed or under construction, or successive sections or phases of a comprehensive scheme.
68. In the screening process the decision-maker must consider nothing less – and nothing more – than the development in its entirety. It must ascertain what the development is, how and when it will be constructed, and how it will be used when complete. It must discern what the physical nature and extent of the development will be, neither aggregating it with other projects that are in reality separate from it nor sub-dividing it into portions that represent less than the totality of what is proposed. It may be necessary for the decision-maker to consider whether, in addition to the proposal that is – or is to be – the subject of an application for planning permission, there is other development forming part of the same project. In this case, for example, there were, in 2012, two applications for development on the site, which together comprised the project that had to be screened.
69. The project itself will not generally include development that was once on the site but has now been removed or whose use has come to an end, or further development that might – or might not – later come forward. When identifying the project it has to screen an authority does not have to resurrect the past or speculate about proposals the future may bring.
70. Equally, as Mrs Townsend acknowledged, the decision-maker's approach to establishing what the project is should not be dictated by the applicant's strategy in promoting his development, whether in a single application or split into two or more separate proposals.
71. The mischief of "salami-slicing" was considered by the European Court of Justice in the case concerning the Madrid urban ring road (*Ecologistas en Accion-CODA v Ayuntamiento de Madrid*(Case C-142/07) [2009] PTSR 458. In its judgment in that case (at paragraph 44) the court emphasized that the purpose of the EIA Directive "cannot be circumvented by the splitting of projects, and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out [EIA] when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) ...".
72. However the project itself is defined, the analysis required in the screening process may have to embrace a wider consideration of environmental effects. Annex IV of the EIA Directive, which explains the information referred to in Article 5, states that the description of the likely significant effects of the proposed project on the environment "should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project". As the European Court of Justice held in *Abraham v Region of Wallonia* (Case C-02/07) [2008] Env LR 32 (in paragraphs 41 to 45), the process of screening must consider not merely the likely effects of the works themselves but also the impacts

liable to result from the use and exploitation of the development once constructed. In paragraph 42 of its judgment in that case the court said that the EIA Directive "seeks an overall assessment of the environmental impact of projects or of their modification". In paragraph 43 the court added that it would be "simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works".

- 73 Cumulative effects can include – and often will – the effects of other development on the site or on adjacent land, or both. Guidance on the approach to be taken to the assessment of such impacts is to be found in the European Commission's "Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions". That guidance recognized, in the context of scoping (on page 66), that consideration should be given to "historical or potential future impacts which may affect the assessment", noting that activities carried out "in the past, present and future can all have a bearing on the project being assessed and will influence the time frame set for the EIA". It adds that determining how far back in time the decision-maker must go in gathering the information it requires "will depend on the project and the historical use of the area" (ibid.).

I believe that to assess only that part of the project relating to the particular Condition being discharged would be considered to be "project-splitting" or "salami-slicing" which is not permitted. The Council also has a duty to reconsider the environmental effects of this development due to the defects in the original screening opinion (for 12/P0418), and new information that has come to light since the original screening opinion, as described in my letter of 17th October.

The adoption of a new screening opinion is now a matter of urgency, so I would be grateful if you would elicit from council officers a date by which the Council will make the decision whether or not to re-screen this project.

Sincerely,

Tracy Breakell

From: Tracy Breakell
Sent: 21 November 2014 13:43
To: George Chesman
Subject: RE: Re: Nelson Hospital Site SW20 8DB

Dear Mr Chesman,

As discussed by telephone earlier today, here are the contact details for McCarthy and Stone (developer of the assisted living site) and NHS SW London:

Daniel Perfect, Senior Land Manager
e: daniel.perfect@mccarthyandstone.co.uk
tel: 01932 xxxxxx

Sue Howson, Project Director Nelson Health Centre
e: Sue.Howson@swlondon.nhs.uk
tel: 020 xxxx xxxx

I hope this helps.

Regards,

Tracy Breakell

From: George Chesman
Sent: 21 November 2014 17:18
To: Tracy Breakell
Subject: RE: Re: Nelson Hospital Site SW20 8DB

Dear Ms Breakell

Thank you for this; I am grateful for contact details of the other parties as I propose liaising with them in connection with the issues you have raised as they would be directly affected by any legal challenges to the planning process for the above site.

As indicated in our phone call this morning I am still awaiting instructions on this from the Planning Department and in particular am anxious to ascertain if Planning Explorer accurately reflects the current position on discharge of conditions. I will attempt to keep you informed promptly in connection with this but please do not hesitate to phone if you wish to discuss anything.

Yours sincerely

George Chesman
Locum Solicitor, Litigation & Planning Team
South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 29 November 2014 12:38
To: George Chesman
Cc: Neil Milligan; Chris Lee; Chief Executive; Daniel Perfect; Sue Howson
Subject: Nelson/McCarthy & Stone site - screening opinion

Dear Mr Chesman,

Thank you for discussing the current status of the Nelson/ALEC development with me on Thursday.

I would summarise my concerns and objectives as follows:

1. The EIA Directive's primary concern is with protection of the environment which can impact upon quality of life and health. It prohibits the grant of permission to any development that is likely to have a significant impact upon the environment (i.e. EIA development) without prior assessment of those environmental impacts.
2. I consider that the Nelson/ALEC development is EIA development and is proceeding unlawfully because it has not been screened for EIA properly, nor has it had an environmental assessment.
3. Because the permission granted to this development is split into multiple stages/consents, it is not considered to have been granted full permission to proceed until all of the subsequent stages/consents have been approved. Before they can be approved, the Council needs to determine if it is EIA development and issue a screening opinion to that effect.
4. If it is determined that the development is, in fact, EIA development, then any environmental impacts should be fully assessed and changes made to the development to reduce or mitigate those impacts.

Over the past few months I have been trying to get the Council to address this, but to no avail. Unfortunately, the longer the Council delays, the further the development progresses - to the point where I have been forced to pursue legal action. As we discussed, the long delays mean that I may now have to seek an injunction to halt further work on site until this issue has been resolved. Even without a specific request for an injunction, it may be that a court would require work/permission to be suspended in order to comply with the EIA Directive.

Under Article 10 EC [Article 4(3) TEU] the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of the EIA Directive.

See judgement of the European Court of Justice in *Wells* (C201-02) [2004]:

64. As to that submission, it is clear from settled case-law that under the principle of cooperation in good faith laid down in Article 10 EC the Member States are required to nullify the unlawful consequences of a breach of Community law (see, in particular, Case 6/60 *Humblet* [1960] ECR 559, at 569, and Joined Cases C-6/90 and C-9/90 *Francoovich and Others* [1991] ECR I-5357, paragraph 36). Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (see, to this effect, Case C-8/88 *Germany v Commission* [1990] ECR I-2321, paragraph 13).
65. Thus, it is for the competent authorities of a Member State to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment (see, to this effect, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 61, and *WWF and Others*, cited above, paragraph 70). Such particular measures include, subject to the limits laid down by the principle of procedural autonomy of the Member States, the **revocation or suspension of a consent** already granted, in order to carry out an assessment of the environmental effects of the project in question as provided for by Directive 85/337.
66. The Member State is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment.

We also discussed new applications that have recently been submitted for the Nelson site. These are:

14/P4189 (submitted 20/11/14) to discharge conditions 18, 46 and 49
14/P4191/new (not dated) requesting non-material amendments
14/P4301/new (not dated) to discharge conditions 24, 25 and 47

I suspect that approval of these applications without an adopted screening opinion would also be considered unlawful.

If the Council was to expedite adoption of a positive screening opinion and preparation of an environmental assessment then it should be possible to avoid judicial proceedings. The Council has had ample time to consider this matter since my original request for screening on 28 August.

I cannot wait indefinitely for action by the Council - if I do not receive a response confirming the Council's decision by the end of next Friday (5th December) then I will issue another Letter Before Claim with a view to submitting a request for judicial review to the Courts within the following 6 week time frame.

Sincerely,

Tracy Breakell

From: Tracy Breakell
Sent: 08 December 2014 11:01
To: George Chesman
Cc: Chief Executive; Neil Milligan; Daniel Perfect; Sue Howson; Paul Teverson
Subject: Letter Before Claim - Nelson/McCarthyStone site

Dear Mr Chesman,

Please find attached a Letter Before Claim following the judicial review pre-action protocol. As the Council has failed to respond to my last email requesting an indication of how they intend to proceed on this matter, I am now challenging the Council's failure to adopt a screening opinion for planning application 13/P2192. Other subsequent applications will also be included in the challenge should their 3-week time limit for adoption of a screening opinion be passed (see letter for full details).

I intend to request an injunction suspending all further work on the site that may impact upon the environment until a screening opinion or environmental impact assessment has been issued.

If you require any further information, please do feel free to contact me.

Sincerely,

Tracy Breakell

From: George Chesman
Sent: 16 December 2014 13:59
To: Tracy Breakell
Cc: Chief Executive; Neil Milligan; Daniel Perfect; Sue Howson; Paul Teverson
Subject: RE: Letter Before Claim - Nelson/McCarthyStone site

Dear Ms Breakell

Thank you for this email dated 8th December and its enclosure and your earlier email dated 29th November. I am sorry for the delay in acknowledging them. I am taking instructions on the issues raised and will let you have a response to your letter before claim as soon as possible.

Yours sincerely

George Chesman
Locum Solicitor, Litigation & Planning Team
South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 23 December 2014 11:26
To: George Chesman
Cc: Chief Executive; Neil Milligan; Daniel Perfect; Sue Howson; Paul Teverson
Subject: RE: Letter Before Claim - Nelson/McCarthyStone site

Dear Mr Chesman,

This is just a short email to remind you that the deadline for receipt of the Council's response passed yesterday. Please could you ensure that the Council responds before Christmas - in the meantime I will continue to prepare my submission for Court.

Many thanks,
Tracy Breakell

From: George Chesman
Sent: 23 December 2014 19:46
To: Tracy Breakell
Cc: Chief Executive; Neil Milligan; Daniel Perfect; Sue Howson; Paul Teverson
Subject: RE: Letter Before Claim - Nelson/McCarthyStone site

Dear Ms Breakell

Thank you for your email. I am sorry that I have not yet sent a response to your letter before claim but I am still seeking some further instructions from Council officers. I hope that I will be able to deal with this without too much further delay but it is unlikely that it will be prior to Christmas by reason of a number of members of staff being on leave.

Yours sincerely

George Chesman
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Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 05 January 2015 12:02
To: George Chesman
Subject: Urgent - Nelson/application 14/P4189
Importance: High

Dear Mr Chesman,

It has come to my attention that one of the applications listed in my Letter Before Claim has recently been granted permission by the Council. Planning Explorer is listing application 14/P4189 as "Final Decision: Grant Discharge of Conditions 29-12-2014", although the online file does not contain a decision notice/letter of any sort.

As a matter of urgency, I would be grateful if you would confirm whether permission has, in fact, been granted for this application, and supply me with a copy of the decision notice/letter - this is required for submission to the Court with the judicial review claim form. I will, of course, be requesting the Court to revoke the grant of permission for 14/P4189.

Please note that I am still awaiting a response to the Letter Before Claim.

Many thanks,

Tracy Breakell

From: George Chesman
Sent: 12 January 2015 16:45

To: Tracy Breakell
Cc: Neil Milligan; Jonathan Lewis
Subject: RE: Judicial Review Claim - Nelson/McCarthyStone site

Dear Ms Breakell

Thank you for your email and for letting me have a draft to your application in advance of lodging it at Court. I much regret not having responded to your letter before claim but am unwilling to do so unless it is comprehensive and I am still awaiting some information from the Council's Planning Department. If you have commenced proceedings before I have let you have a formal letter in response then it is likely that the content will be contained in the Council's Acknowledgment of Service. Subject to taking final instructions I anticipate that the Council will oppose your claim.

Yours sincerely

George Chesman
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South London Legal partnership
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Ref CS LEG GRC 511/470

From: George Chesman
Sent: 16 January 2015 15:21
To: Tracy Breakell
Cc: Neil Milligan; Jonathan Lewis
Subject: FW: Judicial Review Claim - Nelson/McCarthyStone site

Dear Ms Breakell

Further to my email dated 12th January I am sorry that I have not yet responded to your letter before claim although I would point out that since its receipt the matter has changed to some degree in that the draft claim refers to some new issues. I hope to be able to let you have a comprehensive response by the end of next week at the latest.

Yours sincerely

George Chesman
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South London Legal partnership
Gifford House 67c St Helier Avenue Morden SM4 6HY
DX: 167030 Morden 3

Ref CS LEG GRC 511/470

From: Tracy Breakell
Sent: 21 January 2015 13:41
To: George Chesman
Cc: Neil Milligan; Jonathan Lewis
Subject: RE: Judicial Review Claim - Nelson/McCarthyStone site

Dear Mr Chesman,

Thank you for the update.

I am a little confused about what you consider to be new issues - the central issue underlying everything is the failure of the council to adopt a screening opinion for subsequent planning applications to application 12/P0418, as required by the EIA Regulations. My grounds of challenge are the same in both the Letter Before Claim and the draft Judicial Review Claim Form, i.e. the failure to adopt a screening opinion for application 13/P2192 (and any other subsequent applications).

The lawfulness of all permissions/decisions (such as the discharge of conditions) is tied to the presence/absence of a valid screening opinion and therefore must, inevitably, form part of the challenge.

In the continuing absence of a valid screening opinion, any further/future decisions by the council to discharge conditions that allow the development to proceed will also be unlawful as a result - whether each new decision is referred to in my claim or not.

I look forward to receiving your response.

Sincerely,

Tracy Breakell

From: Tracy Breakell
Sent: 04 February 2015 12:50
To: George Chesman
Cc: Neil Milligan; Jonathan Lewis
Subject: Nelson LCC/McCarthy&Stone development

Dear Mr Chesman,

This is just a brief email to let you know that I will be submitting the Judicial Review claim form and associated documents to the court on Friday. Should the council decide that they are going to adopt a new screening opinion, then you should let me know by no later than 6pm tomorrow.

Sincerely,

Tracy Breakell