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Your Ref:
Our Ref: JH/RS

Date:
15th August 2016

The Rt Hon Sajid Javid MP
Secretary of State for Communities and Local Government
Department for Communities and Local Government
3rd Floor
Fry Building
2 Marsham Street
London
SW1P 4DP

Dear Secretary of State,

Land north of Birchen Lane, Haywards Heath, West Sussex
File Ref: APP/D3830/W/15/3137838

I am both concerned and surprised by the contents of the Decision Officer's letter of 8th August 2016 outlining the Secretary of State's decision in the above case. My concerns are related to the assertions made in paragraphs 5, 6 and 7 of the letter and the extent to which the conclusions drawn can be sustained and reflect the scope of a S.78 Inquiry. As presently drafted, the letter appears to be drawing conclusions on both the soundness of our District Plan (paragraph 6) the lawfulness of the Lindfield Neighbourhood Plan (paragraph 5) and the scope for objections to Haywards Heath Neighbourhood Plan, which are clearly all matters beyond the scope of this appeal. They certainly do not relate to evidence that was before the Inspector, and the Council has not been given opportunity to respond to the conclusions drawn.

The District Plan will be subject to independent examination by the Secretary of State's Inspector later this year and the Lindfield Neighbourhood Plan is the subject of a legal challenge. The contents of your letter at paragraphs 5 and 6 seems to predetermine and prejudice the decisions of these important independent statutory and legal processes.

The remarks made in the letter are also already being used against the Council in a current S.78 Inquiry by the developer's counsel. Concerns have also been expressed to us about the letter by a number of external parties, including senior politicians. We are also now having to address multiple inquiries from the local and technical planning and housing press as to how the Council feels about, or is likely to respond to the letter. This all seems unfortunate, unnecessary and avoidable.

Turning to the detail of the letter, specifically, paragraph 6 states:

The Secretary of State has had regard to the emerging Mid Sussex District Plan (DP) (Inspector's Report para 13). However, the Plan is at an early stage with slow and delayed progress; there are unresolved objections; and a lack of consistency with the Framework – in part arising from the slow progress and previous failure to have sufficient regard to the duty to cooperate. Therefore the Secretary of State finds that relatively limited weight should be given to the emerging District Plan.

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I believe there are a number of problems with the conclusions drawn in the paragraph, which can be summarised as follows.

- The conclusions drawn appear to turn unsubstantiated hearsay provided by the appellant in their opening remarks at the Inquiry into fact.
- The conclusions drawn cannot be derived from the Inspector's report para. 13 which simply states: "*The Council expects adoption of the emerging Mid Sussex District Plan (DP) in August 2016. The appellant highlighted delays and the objections. None of the policies in the DP is referred to in the Council's decision notice*" (sic)
- It is not clear that these remarks refer to the then current draft of the District Plan, or indeed which versions of the draft plan is being referenced. The remarks appear interchangeably directed at both the withdrawn 2014 plan and several later versions.
- No evidence was submitted to the Inquiry (or through any official channels to the Secretary of State to our knowledge) relating to objections to the District Plan.
- The use of the present tense, the absence of any temporal context, together with the lack of any clear reference to the relevant versions of the Plan can be seen as suggesting that concerns about the District Plan have still to be resolved by the Council, which is not the case.

In relation to paragraph 5, while it is accepted that the Secretary of State only notes the flaws in the Neighbourhood Plan identified by the Inspector at IR15, this again appears to be an unnecessary remark. The weight given to the Neighbourhood Plan was a matter of common ground with the appellant. In addition, the Inspector's conclusions in paragraph 42 clearly goes beyond his statutory remit, by suggesting that: "*if the Lindfield Neighbourhood Plan is made it would be unlawful*", and based on its current drafting the letter appears to be endorsing and adding weight to this conclusion. As noted above, the Lindfield Plan, which was supported overwhelmingly in a referendum in January 2016, is subject to Judicial Review. The Council is likely to appear in this case and it would be usual for any judgement of this kind to be made by a High Court judge.

In paragraph 7 the letter refers to "*the potential for serious objection*" to the Haywards Heath Neighbourhood Plan which appears as rather a conclusive exaggeration over the Inspector's report paragraph 14 which simply records a view expressed as part of the Inquiry that "*the plan has not yet reached the final consultation stage and that none of the emerging policies should be given weight*". Once again the evidence base for this conclusion is unclear. In addition, the letter states that the Haywards Heath Neighbourhood Plan "*is yet to go through formal examination*". The Plan was actually examined on the 21st July 2016 by an independent examiner. Paragraph 7 should perhaps be qualified in terms of the timing of the S.78 Inquiry or should avoid straying into other administrative processes in this way.

I also note that you have applied the paragraph.14 NPPF 'presumption in favour test'. Is this not really a 'footnote 9' case because of the identified less than substantial harm to the heritage asset? If I am right then the presumption in favour is thus dis-applied and the test should be as set out in para 134 of the NPPF (based on the recent Forest of Dean and Gladman developments High Court case).

The Council will be submitting its District Plan for examination imminently and therefore overall it seems particularly disappointing that elements of the Decision Officer's letter, as drafted, have the potential to provide unsubstantiated arguments for objectors to our Plan to use. The District Council is committed to the achievement of an adopted District Plan and 5-year land supply and is making a housing provision which both meets the latest DCLG household projections and helps meet the needs of our neighbours (with which we have cooperated extensively over the past two years). Through our proposed strategic growth allocation at Burgess Hill, we are proposing to make one of the largest single growth allocations in the South East in a location that is uniquely accessible, sustainable and locally supported. The proposal should also enable us to be a pathfinder for starter homes. We have also sought to realise the Government's wish to encourage neighbourhood plans across the District. We have discussed our growth approach extensively with Government and other parts of DCLG and have understood that our approach is generally understood and supported.

We are in a sensitive location and have to tread a complex path between the interests of our local communities, Government and the big housebuilders. Many of our challenges in making the Plan have related to the capacity and abilities of these major housebuilders to deliver large and sustainable proposals such as Burgess Hill. However, we have received a good deal of support from the HCA and Cabinet Office for which we are grateful.

Given this context and the issues outlined above I hope you will be able to acknowledge that the decision letter could have been more accurately expressed and consider correcting any inaccurate assumptions.

In the light of the interest and concern the letter has generated and the accompanying media attention, the Council would be grateful for an early response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Judy Holmes'. The signature is fluid and cursive, with a large initial 'J' and 'H'.

Judy Holmes
Assistant Chief Executive

