ACUMEN BUSINESS LAW

Resources
Kings House
Grand Avenue
Hove
BN3 2LS

Date 05 October 2012
Your Ref
Our Ref ASH01/LAN002-0001
Direct Line 01273 447 067
Mobile 07854 545 233
Email oliver.asha@acumenbusinesslaw.co.uk

FAO – Hilary Woodward

Dear Sirs

Re: Proposed claim for judicial review: Decision to grant planning permission at the Former Ice Rink Site, Queen Square Brighton on 27 June 2012

We write with reference to your letter of 24 September 2012, responding to our letter before claim of 10 September 2012; again this letter has been settled with the assistance of planning counsel. In short, your response fails to engage with the proposed grounds or to consider any practical way forward. Our clients urge you to reconsider your position to avoid the expense of unnecessary litigation and continued uncertainty for all involved, including the applicant and developer.

The flaws in the Planning Committee's resolution to grant planning permission of 27 June 2012 identified in our 10 September letter remain unanswered by your response. A misdirection in law by your Democratic Services Officer caused the Committee's re-resolution to grant permission. Your letter makes no mention of the misdirection, it simply asserts that the re-resolution was "an informed, unbiased, and unfettered judgment on planning merits"; however, for the reasons set out in detail in our letter, it cannot so be characterised. The judgment on planning merits was the earlier resolution (and that was to refuse permission). Furthermore, your response does not engage with the material considerations that our clients say were not considered, properly or at all, by the Committee. These were in particular the impacts upon (i) the ancient Wych Elm, (ii) the churchyard as open space and (iii) residential amenity. To this may be added an important factor necessarily excluded from the Committee's attention when re-resolving the matter: reason 3 (the adverse impact on views of the sea from St Nicholas' Church) which, having been formally proposed and seconded, was improperly left in abeyance.

The proposed grounds set out in our letter before claim are based upon careful

consideration of what happened at the Committee hearing, including the webcast and the typed minutes. These documents provide no assistance to the Council (as you appear to suggest they may), but instead they demonstrate how seriously things went wrong at the meeting. Indeed they provide ample evidence for a Permission Judge to conclude that there is an arguable case that the Council has acted unlawfully, and to grant our clients permission to proceed with their claim.

You suggest that you would resist a judicial review claim for lack of promptitude in bringing the claim. This misunderstands the position in law. A claimant can challenge a grant of planning permission that is based upon an unlawful resolution. This is because, until a grant of permission is actually made (which happens when the formal notice to that effect is issued by the Council to the applicant), a resolution to grant permission has no final legal effect. In fact, the Council is under a duty to rectify any flaws in a resolution, and may lawfully reconsider the decision for that purpose (see R (Burkett) v Hammersmith LBC [2002] UKHL 23 per Lord Steyn at para.39).

Our clients may therefore bring their claim at the point the Council formally issues the grant of planning permission notice to the applicant, and then (with due promptitude) within the 3 months permitted under the Civil Procedure Rules, Part 54. Please send a copy of the formal permission notice as soon as it is issued.

There is no doubt that it open to you, and would be lawful, to take the matter back to the Planning Committee at any time prior to the formal grant of permission (see Burkett, see also King's Cross Railway Lands Group v Camden LBC [2007] EWHC 1515 (Admin)). The unjust and unsatisfactory manner in which the Council dealt with this matter on 27 June, and subsequently in relation to their complaints, has caused considerable anger and dissatisfaction amongst local residents. It has left them with the lasting impression that in its desire to maximise its capital receipt by disposing of the site with planning permission, the Council has ridden rough-shod over their legitimate concerns about the development in its current form. The Council leadership's protestations that it is powerless to intervene are disingenuous and ignore the legal position.

It is accepted by our clients that a full and fresh consideration of the application by the Planning Committee, taking into account all relevant matters, including those identified above, and giving an opportunity for full participation by all interested parties, would resolve the current unlawfulness. It would also satisfy their continuing disquiet. Our clients strongly urge the members of the Planning Committee to restore their reputations by insisting that the application is brought back before them so that it can be re-considered in a proper and just manner, whatever the final result. To do so would be entirely lawful; only a lack of political will prevents it.

On the other hand, if you proceed to grant planning permission on the basis of the unlawful re-resolution of 27 June 2012, our clients will be entitled to challenge the decision and have a solid basis in law for doing so. Our clients will seek from you their costs to date and any further costs of proceedings before the High Court.
We note that the applicant has not responded to our 10 September letter. Whether or not this indicates an acceptance of the strength of the proposed grounds, it is plainly not in the interests of the applicant, the developer or their funders to incur, at risk, the considerable effort and expense necessary to implement the development on the basis of an unlawful planning permission which is subject to

challenge and continued legal uncertainty until at least 3 months after it is formally granted planning permission by the Council - whenever that may be.

We very much hope that the Council will see the force behind our clients' grievance and have the common sense to reconsider its position.

Yours sincerely

ACUMEN BUSINESS LAW

Cc: Development Control Hove Town Hall Norton Road Hove BN3 3BQ planning.applications@brighton-hove.gov.uk

Cc: Legal Services Brighton & Hove City Council Kings House Grand Avenue Hove BN3 2LS legal.services@brighton-hove.gov.uk

Cc: Ms C Vaughan Acting Chief Executive Brighton & Hove City Council Kings House Grand Avenue Hove BN3 2LS catherine.vaughan@brighton-hove.gov.uk