Chartered Town Planning Consultants

framptons

Our Ref: PJF/gp/PF/9922
(Please reply to Banbury office)

peter.frampton@framptons-planning.com

8th November 2017

Ms V Hurrell
Principal Development Management Officer
Peterborough City Council
Planning Services
Town Hall
Bridge Street
Peterborough
PE1 1HF

Dear Ms Hurrell

Planning Application ref: 09/01368/OUT
Great Haddon – Martin and Morley Families

I have been asked to correspond with you on behalf of the Martin and Morley Families following my consideration of the draft S106 Planning Agreement. I have recently been involved in a Planning Agreement on a 6,000 dwelling development in Rugby Borough, which also involved multiple land interests. The planning issues are similar to Great Haddon.

I have advised my Clients that I am not in a position to recommend that they become a signatory to the Planning Obligations as presently drafted for three fundamental reasons – which are interrelated. I have set out below the issues of particular concern below:

1) Clause 2.8 would preclude the landowners from ever allowing development to take place on their land, other than in accordance with a grant of planning permission under reference 09/01368/OUT. This seems to me to be an unduly onerous Obligation particularly as this major development site will take many years to be built out.

2) If, as O & H seem to anticipate, my Clients' land holding is intended to be one of the last stages of development, Clause 2.8 imposes an extraordinary burden upon my Clients that they must ensure '*the development site as a whole remains deliverable and all necessary Development Infrastructure and Other Infrastructure is capable of being delivered and funded within the required timescales*'. This seems to me to represent an open ended commitment to which my Clients cannot reasonably be obligated.

3) I note in the draft reference to rights to enable the Council to procure delivery of all Development Infrastructure (section 4). Such 'step in' rights should be more specific enabling the Council If appropriate to procure the delivery of roads and services by a specific action (date or delivery of houses) to all parts of the Land. Otherwise, my Clients have no assurance

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as to when house building can take place on their land to achieve a comprehensive development.

My Clients do need to be assured by Barratt Homes, who hold an interest in their land, that – subject to the Obligations addressing the matters that I have identified – it will be acknowledged as a Satisfactory Planning Permission.

I understand that the Council wishes to conclude the issuing of planning permission as soon as possible. I am willing to meet you to explore the issues I have identified.

Yours sincerely

Peter J Frampton

This matter is being dealt with by
Paul Hunt

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Lee Gordon
Weightmans Solicitors
Westgate Point
Leeds
LS1 2AX

Our ref: C.10.144759.686.pdh.vt
Your ref:

28 March 2018

Dear Lee

Planning application reference number 09/01368/OUT – land at Great Haddon, Peterborough

I refer to the above planning application and to the various discussions/e-mails exchanged in relation to this scheme and the situation that my clients, BDW Trading Limited and their associated landowner, find themselves in with regards to the scheme.

As you will be aware from our discussions, my clients are a joint landowner with others in relation to part of the application site. My clients have been attempting to negotiate terms with O&H Limited for a collaboration agreement that would enable an agreed position to be reached in connection with the future development of my clients land in order for my clients to implement the outline planning permission, once reserved matters approvals have been obtained. Despite such approaches O&H have not been willing to progress any collaboration arrangements with my client. At present it would appear, therefore, that even if planning permission were to be granted, the site would remain un- implementable until such time as a collaboration agreement is negotiated to agree timescales for infrastructure delivery.
Unfortunately the responses you provided by way of your e-mail to me dated 2 March 2018, with regards to the S106 Agreement, leaves us in no doubt that the Council are not minded to accommodate our concerns with regards to the S106 that would enable us to complete an agreement in the terms of the draft submitted to us.

Since receiving your e-mail we have now also seen the draft planning conditions proposed to be attached to the outline planning permission for the whole site. My clients will review the conditions in detail but clearly at the moment the principal concern lies with condition C5 which precludes development on my clients land until such time as they have entered into a S106 Agreement under the Town and Country Planning Act 1990 in the form of the draft attached which we assume will be that which has already been supplied. We have already made it clear that the terms of the draft are not acceptable to us. I am sure I need not remind either you or your clients of the clear advice set out in paragraph 010 reference ID: 21a-010-20140306 of the NPPG that although government policy does allow for negatively worded conditions that requires a planning obligation to be entered into subsequent to the grant of a planning permission this must only be in exceptional circumstances. Moreover the advice states that it is important that the local planning authority discuss with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of principle terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency. Whilst we have been supplied with a draft S106

Agreement we have made known our concerns that it is not in a form that would be acceptable to us and is not likely to be signed by either my clients or the co-landowner.

In addition it must be stressed that in the absence of a collaboration agreement my clients will have no choice but to consider a separate planning application for their land and to explore the potential for independent development of that land. That in turn will almost certainly give rise to development costs of a scale which will call into question the viability of the scheme with the level of S106 obligations envisaged by the Council. In those circumstances any future viability assessment will have to take account of the development costs arising as a result of the absence of any collaboration arrangements and that in turn may impact on not only the ability of my clients and their co-landowner to enter into an agreement in the terms that the Council are seeking but also with regards to the quantum of obligations that the Council expect to receive.

My client co-owners planning consultant, Framptons, have already written to the Council on more than one occasion setting out their concerns with regards to the S106 obligations that my clients and theirs are expected to meet yet in respect of which they seem unlikely to derive any benefit without any collaboration arrangements with O&H in terms of accessing key infrastructure that O&H are to provide on site. Despite this the Council expect my clients to deliver their contributions towards this infrastructure without any guarantee as to the right to connect and to use the same in conjunction with their proposed development.

We have also discussed with the Council seeking to ensure that the planning permission and the associated S106 take account of the need for collaboration between the parties to ensure a comprehensive development. The Council have made it clear that they are unwilling to become involved, through the planning process, with that exercise and therefore to ensure that a comprehensive form of development is achieved. The requirement to enter into a S106 that delivers on key infrastructure but without any associated benefits or rights to connect to services, thereby enabling our clients land to be developed is clearly unacceptable. The Council must therefore accept its share of responsibility in terms of its failure to secure the necessary S106 obligations that would otherwise arising from the development as a whole and the associated delivery of key infrastructure.

As advised the draft outline planning permission conditions need to be reviewed in full to assess the implications of the same for development of my clients land. It would appear, however, that there are likely to be a number of key issues of concern in terms of the future delivery of housing on my clients land if we were to seek to rely on the outline planning permission. That in turn adds weight to the possible need for a separate full or outline planning permission on our clients land in order to take forward the possibility of future development. The Council must understand and appreciate the implications of this and recognise that it does not follow that my clients will enter into a S106 planning obligation in order to satisfy condition C5 or to rely on the outline planning permission presented to us in its current form.

Yours sincerely

Paul Hunt

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Our Ref: PJF/fa/PF/9922
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13th February 2018

Mr Lee Collins
Peterborough City Council
Town Hall,
Bridge Street,
Peterborough,
PE1 1HF

Dear Mr Collins,

TOWN AND COUNTRY PLANNING ACT 1990
MARTIN AND MORLEY FAMILIES
LAND AT GREAT HADDON
PLANNING APPLICATION REF: 09/01368/OUT

I refer to your correspondence dated 27th November 2017 and to the recent conversation between Alistair Brodie and Vicky Hurrell. I have considered the proposed revisions to the Planning Obligations, (circulated on the 6th February 2018) and the draft planning conditions. I have discussed my considerations with the Martin and Morley Families.

The latest re-draft of the Section 106 still provides no comfort to the Martin and Morley Families. In short form the Families are being asked:

1. To enter a planning obligation where their land interest is to be burdened with a disproportionate amount of infrastructure costs compared to other land owners.

2. If such payments are made pursuant to the Obligations, no provision is made for the delivery of access and services to my Client's land, or the timing of delivery.

It appears to me from your correspondence that you believe arrangements for the delivery of services, and access between the various land interests is a matter which should be addressed outwith the planning process. I understand your position to be that it is not the function of the planning authority to be engaged with, or mediate on property interests as between individual landowners. Whilst I understand the point, with respect, that is exactly what the planning system should do, where it seeks to achieve comprehensive development. Furthermore, your authority has already engaged in the process of balancing the interests of separate private landowners through the "balancing arrangements" which has been embodied in the proposed partitioned Section 106 Agreements, which result in my Clients being asked to contribute twice

the level of Section 106 contributions compared to O&H Properties Ltd. I would also comment that the calculation upon which this balancing arrangement is based, has been accepted by Peterborough City Council on the basis of figures and calculations tabled by other landowners and without any input from either our promoters (being Barratt David Wilson) or indeed, from our Clients.

To have adopted this approach, which clearly has a direct impact upon the interests of private landowners, but then stops short of securing structures through the planning process which ensure that services and road connections of sufficient capacity are made available at a predetermined and early stage in the development process, so that all landowners can bring forward their land without hindrance or interference from third parties, appears to me to be iniquitous.

The Framework emphasises that 'Plans should be deliverable'. As 'costs' require careful attention in 'plan-making and decision-taking', the reference to 'Plans' should not be read as being simply confined to the plan making process. As such I remain firmly of the opinion that it would not be expedient or prudent for the Martin and Morley Families to participate in the Planning Obligations as drafted to date.

In my submission the inability of my Clients to enter the planning obligation on account of the unfairness to their interests, means that the site-wide planning obligations will have to be borne by a reduced amount of capital generating development. Hitherto, the assumption has been that my Clients would be signatories to the partitioned Planning Obligations and hence their proposed contributions would have been factored into an overall development appraisal. Given that such an approach requires my Clients to accept Section 106 contributions which, per dwelling are double that sought from O&H Properties, meaning that my Clients would be expected to contribute 20% of the total Section 106 contributions for the scheme, such an assumption cannot be relied upon.

It seems to me that a planning mechanism should be established within the planning process as an integral component of a comprehensive development scheme to ensure the delivery of residential development on my Client's land. Such a provision is a reasonable and equitable expectation when the terms of Planning Obligations require substantial financial contributions to be made.

Viability of this scheme, in the absence of Martin and Morley engagement with the Planning Obligations, is a material consideration on which the Planning Committee should have due regard to when determining the merits of this application. I hence request that you bring this correspondence to the attention of the Planning Committee when the application (09/01368/OUT) is reported for determination.

Yours sincerely

Peter J Frampton

Chartered Town Planning Consultants

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Our Ref: PJF/nss/PF/9922
(Please reply to Banbury office)

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12th March 2018

Mr S Machen
Corporate Director Growth and Regeneration
Peterborough City Council
Town Hall
Bridge Street
Peterborough
PE1 1HF

Dear Mr Machen

TOWN AND COUNTRY PLANNING ACT 1990
MARTIN AND MORLEY FAMILIES
LAND AT GREAT HADDON
PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE
13TH MARCH 2018

As you may be aware from my correspondence to Mr Collins dated the 13th February 2018 (attached for convenience) I act for the Martin and Morley Families who hold a significant land interest in the land identified as a SUE at Great Haddon Peterborough.

I note that there is an Agenda Item (Item 6) at the Committee on the 13th March 2018 for an update on the Local Plan. It may be the case that Members will seek an update on the progress of the above planning application for Great Haddon (09/01368/OUT), particularly on the position of interested parties, including my Clients on the proposed Planning Obligations and planning conditions.

I request that you bring to the attention of the Planning Committee the following points:

1. **The Martin and Morley Families consider the provision of the following draft Planning Condition is not reasonable. The condition reads as follows:**

   'The development herby permitted should not be commenced on any part of the land shown coloured green on Plan A attached to this permission [Parcel 1, or "ownership phase B"] until all parties with any legal or equitable interest in that parcel have entered into a deed of planning obligation under section 106 of the Town and Country Planning Act 1990 substantially in the form of the deed attached and marked 'Parcel 1 Deed of Planning Obligation' subject to such minor amendments or variations as may be agreed with the Local Planning Authority.'

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Accordingly, as landowners and joint applicants in respect of the "B Land", (as that expression is defined in the draft s106 agreement) please be advised that my Clients do not consent to the imposition of this pre-commencement planning condition (section 100ZA TCPA 1990)

2. **The Martin and Morley Families have no intention of entering a Planning Obligation in the form that is presently drafted - which burdens their land, (whenever the same might happen to be developed and under what circumstances), with disproportionate infrastructure costs, and makes no provision for the delivery of infrastructure to enable the development of their land to take place even when payments are made. This situation is iniquitous.**

   The landowners stance and for the like reasons, is supported by their co-owners David Wilson Homes Limited, who have confirmed, via their solicitors, that they do not require our Clients to sign the s106 agreement in the form as presently drafted. If the local planning authority therefore proceed to issue the proposed planning permission it is respectfully pointed out that their duty is first to consider whether the development upon the other landowners land will prove viable, (and hence deliverable), without receipt of the currently anticipated planning contributions deriving from our clients' land, perceived to be some 20% of the total envisaged contributions.

3. **The LPA is required to take into account in the determination of an application for planning permission any representations made by an owner of land (Town and Country Planning (Development Management Procedure) Order 2015 (Article 33)). If the Planning Committee grants planning permission notwithstanding the stated position of the Martin and Morley Families, the Committee will need to be satisfied that the remaining land within the application site can support the provisions of the Obligations and be a viable and deliverable development (Framework 173).**

4. **The position of the Martin and Morley Families as expressed above is a 'material consideration' (Section 70 (2)) to the determination of the planning application and is duly a matter which should accordingly be formally reported to the Planning Committee - as a changed circumstance to when the resolution to grant planning permission was first made. I hence formally request that this correspondence is presented to the Planning Committee at the time when the above application is determined.**

As stated above I have copied this correspondence to Mr L Collins who I understand is dealing with the planning application.

Yours sincerely

Peter J Frampton

Encl: Letter to Mr Collins 13th February 2018

Cc: Mr L Collins

11 APR 2018

Geoffrey Leaver SOLICITORS

Peterborough City Council
Growth and Regeneration Directorate
Town Hall
Bridge Street
Peterborough
PE1 1HF

Attention:
Lee Collins
Development Management Manager
and
Vicky Hurrell
Principal Development Management Officer

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10th April 2018

Geoffrey Leaver Solicitors is a trading name of Geoffrey Leaver Solicitors LLP which is a limited liability partnership registered in England & Wales under partnership no. OC329227

A list of the members/partners of the LLP is displayed at the above address

Our ref: DAB/GP/044551.0001
Your ref: LC/EJT

Dear Sirs,

Re: Planning Application ref: 09/01368/OUT
Great Haddon – David Wilson Homes Limited (and others) and Messrs Martin

We are instructed to act on behalf of Messrs. Martin who are the co-owners jointly with David Wilson Homes Limited (**DWH**) of that part of the land, comprised within the development sought by the above planning application, which you have described in the prospective draft section 106 agreements as the "B Land" and in the proposed planning conditions as the land shown coloured green on plan number PSTO21 – S106 – 011 A. For convenience we will refer to our clients' land as "**the B Land**".

The application for this development was submitted to the Council in December 2009 and DWH was a co-applicant with O&H Properties Limited and Marlborough Oasis Limited. The development proposal was subjected to a viability assessment. In consequence it was agreed that the site could only support an initial affordable housing provision of 7.5%, (subject to an escalator condition), to be considered to be viable and hence deliverable as an acceptable form of development.

The Planning and Environmental Protection Committee ("**the Committee**") resolved to approve the application on 19 March 2013, subject to certain pre-conditions; in particular, the approval of the conditions to be attached to the

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planning permission and the satisfactory completion of a section 106 agreement. The reasons expressed to justify the resolution to grant planning permission included; "*subject to the completion of the section 106 agreement, it was considered that the development would make sufficient contribution towards the infrastructure requirements arising from it*". It was therefore said to accord with policies CS12 and CS13 of the adopted Core Strategy.

At the Committee meeting held on 20th January 2015 it was reported that further viability assessments had been undertaken and it was agreed that a fixed rate of affordable housing (at 16%) should be provided in lieu of an escalator condition. It was said that even if a trigger mechanism were to be agreed there was a real risk that values were unlikely to generate a significant uplift in the affordable housing provision and that any increases in sales values were likely to be matched and in some cases outstripped by build cost inflation. "*This presented a risk to both Council and the applicants in terms of overall lack of delivery of affordable housing and also the uncertainty over levels of future provision in any one development area and phase*"

It is therefore clear that, throughout the application process, the viability for the scheme as a whole is and was a point in question.

As you are aware, the form of the proposed planning agreements have been through many iterations since 2013. At the Committee meeting on 25th July 2017, members were asked to agree a partitioned form of s106 agreement. To this end officers, with counsel's advice, set out that they would only support that approach if it could be demonstrated that sufficient funding would be available in the s106 "pot" at the key stages of the development. It was suggested that this might be achieved if O&H and Marlborough signed the partitioned s106 agreements at the same time, but the Council would still require a letter of comfort from "Barratt Homes" (DWH) in order to demonstrate that the infrastructure costs could be met.

Matthew King on behalf of Barratt Homes spoke at the meeting and suggested that, at that time, "*all parties were now collaborating on the Yaxley Loop and the Secondary School*" and that "*progress has been sustained over the past week and all parties were now in a position to agree terms*". It is however now clear from the letter sent to the Council's solicitors on behalf of DWH by its solicitors, Shakespeare Martineau, on 28th March 2018 that, although DWH have been attempting to negotiate terms for a collaboration agreement, O&H do not appear to have been willing to progress such an agreement. As such, Shakespeare Martineau say that, "*even if planning permission is granted, the site would remain un-implementable until such time as a collaboration agreement is negotiated to agree timescales for infrastructure delivery*", and we have no reason to question that logic.

What is more, it is being proposed, through the imposition of the prospective B Land s106 agreement, (which had not been drafted at the time of the July 2017 Committee meeting), that the B Land is required to contribute a significantly disproportionate part of the total cost of on and off site infrastructure, utilities and services for the development as a whole. That, in itself, is not fundamentally objectionable to the B Land owners, but in the absence of a collaboration agreement between the site owners as a whole, what is clearly objectionable is that the B Land owners will not have the rights to benefit and make use of the infrastructure, utilities and services to which they have contributed.

The latest schedule of costing for infrastructure, utilities and services apportioned between the respective landowners, dated 14th February 2018, is attached. It will be observed that the costs, together with the required s106 contributions have increased substantially beyond those envisaged at the time of the resolution to grant. This, we would suggest, is another factor that points to the viability of the scheme and hence the deliverability of housing.

Both Shakespeare Martineau, solicitors for DWH and Framptons Planning Consultants on behalf of our clients, have made clear by their letters to you dated respectively 8th November 2017, 13th February 2018 and 12th March 2018 (Framptons) and 28th March 2018 (Shakespeare Martineau), (copies attached for ease of reference), their objection to the imposition of the proposed planning condition C5 which requires the owners of the B Land to enter into a form of section 106 agreement, that is unacceptable to them, before development commences upon the B Land.

The reasons why such proposals are unacceptable can be summarised by the fact that the landowners would be required, if they consented to such section 106 agreement, to contribute a disproportionate amount to the cost of site-wide infrastructure, services and planning obligations, (absent an appropriate collaboration agreement), without deriving any benefit from the ability to use the infrastructure, utilities and services to which they have contributed and the B Land will be tied to those obligations regardless of the timing of any further planning application to develop their land and without reference to the cost of providing infrastructure, utilities and services to serve that development.

As such the landowners object to planning conditions C5 and C9, (amongst others) and to the form of the proposed s106 agreement as partitioned and applicable to the B Land. The objection to the imposition of these conditions and the ensuing s106 obligations is a material representation made by these landowners.

In short, there are several material considerations that have arisen since the last Committee meeting of 25th July 2017 and, as you will have seen, both owners

of the B Land have requested that these matters are drawn to the attention of the Committee.

The material considerations which have now arisen can be summarised as follows:

1. The lack of landowner consent both to planning conditions and proposed section 106 agreements;

2. Planning obligations are not secured over the whole site. This is exacerbated by the partitioning of the section 106 obligations according to each site owner, but without any overarching conditions and planning obligations to ensure the comprehensive development and the timing of development;

3. There can be no guarantee that prospective planning contributions will come forward from the B Land, which might therefore mean a considerable deficiency to the overall contributions required to ensure the infrastructure requirements of the development are met;

4. The increased infrastructure obligations; (up from £75m reported to July 2017 Committee to £102.4m) including in particular the additional obligation to provide a bridge over the East Coast main rail line (site wide contribution - £8m and O&H additional contribution - £10m).

5. As a consequence of the above considerations, the viability and hence the deliverability of the development scheme is questionable without the B Land contributions, which the B landowners are not willing to provide on such unequal terms;

6. The requirement that local authorities are to ensure an adequate supply of housing over the Plan period and the current national housing shortage, as advised by recent Ministerial Papers as well as planning practice guidance on viability, (paragraph: 016 Reference ID: 10-0160-20140306)), do not justify granting planning permission where deliverability is in question;

7. You should also consider that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. (NPPG paragraph 005 Reference ID: 21a – 005-20140306). Such Guidance also emphasises the need for the Authority to discuss with the applicant the appropriateness of using a condition, in this case, such as proposed condition C5 and suggests that the heads of terms or principal terms, (of any intended planning obligation), **need to be agreed** prior to planning permission being granted to ensure the test

> of necessity is met and in the interests of transparency, (paragraph 010 Reference ID: 21a-010-20140306).

Without prejudice to paragraph numbered 7 above and for the avoidance of doubt, the B Land owners do not have a particular quarrel with the proposed distribution of planning contributions in the manner proposed, but do object to being tied to those obligations without the corresponding rights to the benefits to be derived from making those contributions **and** the lack of direction as to timing of delivery.

As you will have seen from Shakespeare Martineau's letter dated 28th March 2018, DWH are willing to enter into an appropriate collaboration agreement that would resolve these issues. It is accepted that the Council is not able to impose a pre-commencement condition on the grant of permission to the effect that the parties are required to enter into an appropriate collaboration agreement, but that would be something that could and indeed we suggest should, have been included in the drafting of the partitioned s106 agreements and you will see later in this letter that this is a proposal that we suggest is not too late to make.

It is still open to the Authority to include an overarching planning condition, either in addition to or by way of amendment to that proposed at C9, (say C9A to which we will refer at the end of this letter), to the effect that:

> no development shall take place upon any part of the site until a strategy for the delivery of infrastructure, utilities and services, including the timing of delivery to all parcels of land, has been agreed between all landowners and has been submitted to and approved by the Council and that the development shall be carried out in accordance with such strategy;

the condition would then go on to detail the specific matters that require approval for each parcel as identified in your proposed condition C9.

The reason for the imposition of condition C9 is said to be; *to secure the comprehensive and co-ordinated development of each part of the site*. What condition C9 does not do is secure the overall development of the site, nor does it ensure a co-ordinated approach to such development. Suggested condition C9A would overcome that problem.

In response to Frampton's letter, on 27th November you stated that there was a need *to ensure the comprehensive development of the site by securing the apportioned infrastructure tariff payments in the event a new stand-alone planning application is submitted on the B Land*, but of course condition C5 will not guarantee those tariff payments from the B Land nor the comprehensive development of the site. If no such application is forthcoming the other parts of the development area must bear such additional costs, which

of course are disproportionate to the area of the B Land. In such circumstances the Committee should, at this juncture, consider whether the O Land and the M Land parts of the development are likely to be viable without any contributions from the B Land.

In any event, as of course you are aware, any standalone application on the B Land must be considered upon its own merits and if the Committee has come to the conclusion that permission in accordance with the 2009 application should be granted on the strength of the contributions to be derived from the partitioned s106 agreements in respect of the O Land and the M Land alone, then it is unlikely the Authority will be able to rely, as a reason for refusal of the standalone application, upon an unwillingness on the part of the B Land owners, (who in turn will have to provide their own infrastructure and services provision), to contribute to the wider scheme.

From a conversation with Alistair Brodie of Bletsoes, chartered surveyors and land agents, it is understood that officers of the Council propose to issue planning permission pursuant to the 2009 application just as soon as the final form of the section 106 agreements for the "O Land" and the "M Land" have been settled and those agreements have been signed. The position in connection with the B Land is said to be that commencement of development upon the B Land will be constrained until the B Land owners enter into a section 106 agreement in a format which will require the owners of the B land to commit to the structure and obligations negotiated by the Council with O&H Properties Limited and Marlborough Oasis Limited, and in relation to which you have already been notified that such terms are unacceptable to the B Land owners.

When asked whether the various letters on behalf of our clients and DWH, as referred to above, had been referred to members of the planning committee it is understood that the reply was they were being dealt with at high officer level along with advice from the council's solicitors and that officers had consulted with two senior members of the committee.

It appears therefore that you do not propose to refer the matter back to the Planning and Environmental Protection Committee for consideration of the application in the light of the current situation, nor that all members of the Planning and Environmental Protection Committee have been consulted and been given the opportunity to consider the application with the material considerations set out above specifically in mind, such that both individually and collectively the members can arrive at the appropriate balancing exercise in making their decision upon the application in such changed circumstances.

The representations by DWH and Messrs Martin, relating to the imposition of the proposed planning conditions C5 and C9 and the proposed terms of the s106 agreement in relation to the B Land, must be taken into account in

determining the application. See Frampton's letter to Simon Machen, Corporate Director dated 13th February 2018 and Article 33 Town & Country (Development Management Procedure) Order 2015.

In addition, s70(2) Town & Country Planning Act 1990 requires a planning authority, in dealing with an application, to have regard (amongst other things), to all material considerations.

The Court of Appeal said, (in the case of R (Kides) v South Cambs DC 2002 EWCA Civ 1370), that; "*dealing with*" includes anything done by or on behalf of the planning authority which bears in any way and whether directly or indirectly, on the application in question. Thus it extends beyond "*considering*" so as to include administrative acts by the authority's delegated officers.

Further, that a consideration is "*material*" in the context of s70(2), if it is relevant to the question whether the application should be granted or refused. It must be a factor which has some weight in the decision-making process, although plainly it may not be determinative.

It is appreciated that this does not necessarily mean that each time a new material consideration arises after the initial "in principle" resolution, the planning application has to be referred back to the planning committee. It is accepted that the duty will be discharged if, at the date of issue of the decision, the Authority has considered all material considerations affecting the application and has done so with the application in mind. However, where the delegated officer who is to sign a decision notice is aware of a material consideration or material considerations, not previously considered by the planning committee, the authority of the delegated officer must surely be such as to require him to refer the matter back to the committee as a whole for reconsideration in the light of the those material considerations. If he fails to do so, the Authority may be in breach of its statutory duty.

The Kides case is authority for the proposition that it is not for the delegated officer to decide what is a material consideration within the meaning of s70(2). Hence it is no defence, (to a claim that an Authority has breached its s70(2) duty), for the Authority to assert that, in issuing its decision notice, the delegated officer did not consider the factors to be material, nor, we respectfully suggest, if those factors have not been fully taken into account by all members of the planning committee with the application specifically in mind and being able to consider the same in the light of the material considerations. This would ensure that the decision-making process is demonstrated to be transparent.

In the light of the above and having regard to the objections raised by the B Land owners, it would be appreciated if you would please confirm that, before making a final decision upon the 2009 planning application, you will refer the

matter back to the Planning and Environmental Protection Committee and at the same time draw the members' attention to this letter and to the letters from Framptons and Shakespeare Martineau to which we have referred above.

In closing we would say that it is fully appreciated that this application has been dragging on for a very long time and it seems that none of the landowners wish the application to be refused and, to that extent the principle of the partitioned s106 agreements is agreed, but as yet those draft agreements have not gone far enough to the point where, on the one hand, the Council can be confident the scheme will be viable (absent the contributions from the B Land) and hence deliverable and the landowners can be assured that they will receive the appropriate rights to use infrastructure, utilities and services to which they have contributed.

Whilst we are loathe to suggest a further formal extension of time in which to seek to conclude a collaboration agreement on acceptable terms, that might result in the whole issue being resolved to everyone's satisfaction, particularly if pressure is brought to bear by the Council upon all landowners and it is made very clear that this will be the final extension that will be permitted and it is limited to say a maximum of three months. As an alternative will you please consider the addition of the planning condition (C9A) to which we have referred above.

Yours faithfully

DAVID BARTON
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Chartered Town Planning Consultants

framptons

Our Ref: PJF/gp/PF/9922
(Please reply to Banbury office)

peter.frampton@framptons-planning.com

8th November 2017

Ms V Hurrell
Principal Development Management Officer
Peterborough City Council
Planning Services
Town Hall
Bridge Street
Peterborough
PE1 1HF

Dear Ms Hurrell

Planning Application ref: 09/01368/OUT
Great Haddon – Martin and Morley Families

I have been asked to correspond with you on behalf of the Martin and Morley Families following my consideration of the draft S106 Planning Agreement. I have recently been involved in a Planning Agreement on a 6,000 dwelling development in Rugby Borough, which also involved multiple land interests. The planning issues are similar to Great Haddon.

I have advised my Clients that I am not in a position to recommend that they become a signatory to the Planning Obligations as presently drafted for three fundamental reasons – which are interrelated. I have set out below the issues of particular concern below:

1) Clause 2.8 would preclude the landowners from ever allowing development to take place on their land, other than in accordance with a grant of planning permission under reference 09/01368/OUT. This seems to me to be an unduly onerous Obligation particularly as this major development site will take many years to be built out.

2) If, as O & H seem to anticipate, my Clients' land holding is intended to be one of the last stages of development, Clause 2.8 imposes an extraordinary burden upon my Clients that they must ensure '*the development site as a whole remains deliverable and all necessary Development Infrastructure and Other Infrastructure is capable of being delivered and funded within the required timescales*'. This seems to me to represent an open ended commitment to which my Clients cannot reasonably be obligated.

3) I note in the draft reference to rights to enable the Council to procure delivery of all Development Infrastructure (section 4). Such 'step in' rights should be more specific enabling the Council If appropriate to procure the delivery of roads and services by a specific action (date or delivery of houses) to all parts of the Land. Otherwise, my Clients have no assurance

as to when house building can take place on their land to achieve a comprehensive development.

My Clients do need to be assured by Barratt Homes, who hold an interest in their land, that – subject to the Obligations addressing the matters that I have identified – it will be acknowledged as a Satisfactory Planning Permission.

I understand that the Council wishes to conclude the issuing of planning permission as soon as possible. I am willing to meet you to explore the issues I have identified.

Yours sincerely

Peter J Frampton

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13th February 2018

Mr Lee Collins
Peterborough City Council
Town Hall,
Bridge Street,
Peterborough,
PE1 1HF

Dear Mr Collins,

TOWN AND COUNTRY PLANNING ACT 1990
MARTIN AND MORLEY FAMILIES
LAND AT GREAT HADDON
PLANNING APPLICATION REF: 09/01368/OUT

I refer to your correspondence dated 27th November 2017 and to the recent conversation between Alistair Brodie and Vicky Hurrell. I have considered the proposed revisions to the Planning Obligations, (circulated on the 6th February 2018) and the draft planning conditions. I have discussed my considerations with the Martin and Morley Families.

The latest re-draft of the Section 106 still provides no comfort to the Martin and Morley Families. In short form the Families are being asked:

1. To enter a planning obligation where their land interest is to be burdened with a disproportionate amount of infrastructure costs compared to other land owners.

2. If such payments are made pursuant to the Obligations, no provision is made for the delivery of access and services to my Client's land, or the timing of delivery.

It appears to me from your correspondence that you believe arrangements for the delivery of services, and access between the various land interests is a matter which should be addressed outwith the planning process. I understand your position to be that it is not the function of the planning authority to be engaged with, or mediate on property interests as between individual landowners. Whilst I understand the point, with respect, that is exactly what the planning system should do, where it seeks to achieve comprehensive development. Furthermore, your authority has already engaged in the process of balancing the interests of separate private landowners through the "balancing arrangements" which has been embodied in the proposed partitioned Section 106 Agreements, which result in my Clients being asked to contribute twice

the level of Section 106 contributions compared to O&H Properties Ltd. I would also comment that the calculation upon which this balancing arrangement is based, has been accepted by Peterborough City Council on the basis of figures and calculations tabled by other landowners and without any input from either our promoters (being Barratt David Wilson) or indeed, from our Clients.

To have adopted this approach, which clearly has a direct impact upon the interests of private landowners, but then stops short of securing structures through the planning process which ensure that services and road connections of sufficient capacity are made available at a predetermined and early stage in the development process, so that all landowners can bring forward their land without hindrance or interference from third parties, appears to me to be iniquitous.

The Framework emphasises that 'Plans should be deliverable'. As 'costs' require careful attention in 'plan-making and decision-taking', the reference to 'Plans' should not be read as being simply confined to the plan making process. As such I remain firmly of the opinion that it would not be expedient or prudent for the Martin and Morley Families to participate in the Planning Obligations as drafted to date.

In my submission the inability of my Clients to enter the planning obligation on account of the unfairness to their interests, means that the site-wide planning obligations will have to be borne by a reduced amount of capital generating development. Hitherto, the assumption has been that my Clients would be signatories to the partitioned Planning Obligations and hence their proposed contributions would have been factored into an overall development appraisal. Given that such an approach requires my Clients to accept Section 106 contributions which, per dwelling are double that sought from O&H Properties, meaning that my Clients would be expected to contribute 20% of the total Section 106 contributions for the scheme, such an assumption cannot be relied upon.

It seems to me that a planning mechanism should be established within the planning process as an integral component of a comprehensive development scheme to ensure the delivery of residential development on my Client's land. Such a provision is a reasonable and equitable expectation when the terms of Planning Obligations require substantial financial contributions to be made.

Viability of this scheme, in the absence of Martin and Morley engagement with the Planning Obligations, is a material consideration on which the Planning Committee should have due regard to when determining the merits of this application. I hence request that you bring this correspondence to the attention of the Planning Committee when the application (09/01368/OUT) is reported for determination.

Yours sincerely

Peter J Frampton

Chartered Town Planning Consultants

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Our Ref: PJF/nss/PF/9922
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12th March 2018

Mr S Machen
Corporate Director Growth and Regeneration
Peterborough City Council
Town Hall
Bridge Street
Peterborough
PE1 1HF

Dear Mr Machen

TOWN AND COUNTRY PLANNING ACT 1990
MARTIN AND MORLEY FAMILIES
LAND AT GREAT HADDON
PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE
13TH MARCH 2018

As you may be aware from my correspondence to Mr Collins dated the 13th February 2018 (attached for convenience) I act for the Martin and Morley Families who hold a significant land interest in the land identified as a SUE at Great Haddon Peterborough.

I note that there is an Agenda Item (Item 6) at the Committee on the 13th March 2018 for an update on the Local Plan. It may be the case that Members will seek an update on the progress of the above planning application for Great Haddon (09/01368/OUT), particularly on the position of interested parties, including my Clients on the proposed Planning Obligations and planning conditions.

I request that you bring to the attention of the Planning Committee the following points:

1. **The Martin and Morley Families consider the provision of the following draft Planning Condition is not reasonable. The condition reads as follows:**

   'The development herby permitted should not be commenced on any part of the land shown coloured green on Plan A attached to this permission [Parcel 1, or "ownership phase B"] until all parties with any legal or equitable interest in that parcel have entered into a deed of planning obligation under section 106 of the Town and Country Planning Act 1990 substantially in the form of the deed attached and marked 'Parcel 1 Deed of Planning Obligation' subject to such minor amendments or variations as may be agreed with the Local Planning Authority.'

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Accordingly, as landowners and joint applicants in respect of the "B Land", (as that expression is defined in the draft s106 agreement) please be advised that my Clients do not consent to the imposition of this pre-commencement planning condition (section 100ZA TCPA 1990)

2. The Martin and Morley Families have no intention of entering a Planning Obligation in the form that is presently drafted - which burdens their land, (whenever the same might happen to be developed and under what circumstances), with disproportionate infrastructure costs, and makes no provision for the delivery of infrastructure to enable the development of their land to take place even when payments are made. This situation is iniquitous.

   The landowners stance and for the like reasons, is supported by their co-owners David Wilson Homes Limited, who have confirmed, via their solicitors, that they do not require our Clients to sign the s106 agreement in the form as presently drafted. If the local planning authority therefore proceed to issue the proposed planning permission it is respectfully pointed out that their duty is first to consider whether the development upon the other landowners land will prove viable, (and hence deliverable), without receipt of the currently anticipated planning contributions deriving from our clients' land, perceived to be some 20% of the total envisaged contributions.

3. The LPA is required to take into account in the determination of an application for planning permission any representations made by an owner of land (Town and Country Planning (Development Management Procedure) Order 2015 (Article 33)). If the Planning Committee grants planning permission notwithstanding the stated position of the Martin and Morley Families, the Committee will need to be satisfied that the remaining land within the application site can support the provisions of the Obligations and be a viable and deliverable development (Framework 173).

4. The position of the Martin and Morley Families as expressed above is a 'material consideration' (Section 70 (2)) to the determination of the planning application and is duly a matter which should accordingly be formally reported to the Planning Committee - as a changed circumstance to when the resolution to grant planning permission was first made. I hence formally request that this correspondence is presented to the Planning Committee at the time when the above application is determined.

As stated above I have copied this correspondence to Mr L Collins who I understand is dealing with the planning application.

Yours sincerely

Peter J Frampton

Encl: Letter to Mr Collins 13th February 2018

Cc: Mr L Collins

This matter is being dealt with by
Paul Hunt

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T +44 (0)116 366 8000

Lee Gordon
Weightmans Solicitors
Westgate Point
Leeds
LS1 2AX

Our ref: C.10.144759.686.pdh.vt
Your ref:

28 March 2018

Dear Lee

Planning application reference number 09/01368/OUT – land at Great Haddon, Peterborough

I refer to the above planning application and to the various discussions/e-mails exchanged in relation to this scheme and the situation that my clients, BDW Trading Limited and their associated landowner, find themselves in with regards to the scheme.

As you will be aware from our discussions, my clients are a joint landowner with others in relation to part of the application site. My clients have been attempting to negotiate terms with O&H Limited for a collaboration agreement that would enable an agreed position to be reached in connection with the future development of my clients land in order for my clients to implement the outline planning permission, once reserved matters approvals have been obtained. Despite such approaches O&H have not been willing to progress any collaboration arrangements with my client. At present it would appear, therefore, that even if planning permission were to be granted, the site would remain un- implementable until such time as a collaboration agreement is negotiated to agree timescales for infrastructure delivery.
Unfortunately the responses you provided by way of your e-mail to me dated 2 March 2018, with regards to the S106 Agreement, leaves us in no doubt that the Council are not minded to accommodate our concerns with regards to the S106 that would enable us to complete an agreement in the terms of the draft submitted to us.

Since receiving your e-mail we have now also seen the draft planning conditions proposed to be attached to the outline planning permission for the whole site. My clients will review the conditions in detail but clearly at the moment the principal concern lies with condition C5 which precludes development on my clients land until such time as they have entered into a S106 Agreement under the Town and Country Planning Act 1990 in the form of the draft attached which we assume will be that which has already been supplied. We have already made it clear that the terms of the draft are not acceptable to us. I am sure I need not remind either you or your clients of the clear advice set out in paragraph 010 reference ID: 21a-010-20140306 of the NPPG that although government policy does allow for negatively worded conditions that requires a planning obligation to be entered into subsequent to the grant of a planning permission this must only be in exceptional circumstances. Moreover the advice states that it is important that the local planning authority discuss with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of principle terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency. Whilst we have been supplied with a draft S106

Agreement we have made known our concerns that it is not in a form that would be acceptable to us and is not likely to be signed by either my clients or the co-landowner.

In addition it must be stressed that in the absence of a collaboration agreement my clients will have no choice but to consider a separate planning application for their land and to explore the potential for independent development of that land. That in turn will almost certainly give rise to development costs of a scale which will call into question the viability of the scheme with the level of S106 obligations envisaged by the Council. In those circumstances any future viability assessment will have to take account of the development costs arising as a result of the absence of any collaboration arrangements and that in turn may impact on not only the ability of my clients and their co-landowner to enter into an agreement in the terms that the Council are seeking but also with regards to the quantum of obligations that the Council expect to receive.

My client co-owners planning consultant, Framptons, have already written to the Council on more than one occasion setting out their concerns with regards to the S106 obligations that my clients and theirs are expected to meet yet in respect of which they seem unlikely to derive any benefit without any collaboration arrangements with O&H in terms of accessing key infrastructure that O&H are to provide on site. Despite this the Council expect my clients to deliver their contributions towards this infrastructure without any guarantee as to the right to connect and to use the same in conjunction with their proposed development.

We have also discussed with the Council seeking to ensure that the planning permission and the associated S106 take account of the need for collaboration between the parties to ensure a comprehensive development. The Council have made it clear that they are unwilling to become involved, through the planning process, with that exercise and therefore to ensure that a comprehensive form of development is achieved. The requirement to enter into a S106 that delivers on key infrastructure but without any associated benefits or rights to connect to services, thereby enabling our clients land to be developed is clearly unacceptable. The Council must therefore accept its share of responsibility in terms of its failure to secure the necessary S106 obligations that would otherwise arising from the development as a whole and the associated delivery of key infrastructure.

As advised the draft outline planning permission conditions need to be reviewed in full to assess the implications of the same for development of my clients land. It would appear, however, that there are likely to be a number of key issues of concern in terms of the future delivery of housing on my clients land if we were to seek to rely on the outline planning permission. That in turn adds weight to the possible need for a separate full or outline planning permission on our clients land in order to take forward the possibility of future development. The Council must understand and appreciate the implications of this and recognise that it does not follow that my clients will enter into a S106 planning obligation in order to satisfy condition C5 or to rely on the outline planning permission presented to us in its current form.

Yours sincerely

Paul Hunt

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