

UTTLESFORD DISTRICT COUNCIL

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Mrs. Angie Driscoll
Chairman
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12 November 2021

Your ref:

Our ref: PH

Please ask for Mr Peter Holt on 01799 510400
email: PHolt@uttlesford.gov.uk

Dear Angie

RESIDENTS PETITION RELATING TO APPEAL REF: APP/C1570/C/18/3219384 - LAND TO THE NORTH OF BIRCHANGER LANE, BIRCHANGER, BISHOPS STORTFORD CM23 5QA BIRCHANGER - PUBLIC MEETING 5 NOVEMBER 2021

Firstly, thank you for welcoming me at the public meeting on 5 November 2021 and permitting me to set out the Council's position, in relation to the above mentioned appeal.

The Parish Council tabled a petition on the following three points at the meeting on 5 November and whilst each point was discussed in detail in our discussions and questions, I also agreed to write formally to address them in further detail below.

Petition No.1

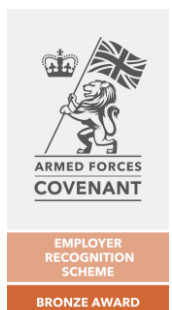
To lodge an appeal with the High Court under s.288 of the Town & Country Planning Act 1990 to seek a judicial review of the decision to grant permanent permission, noting that this does not provide for any change in circumstances

Response

The Council's position on pursuing a statutory challenge is unequivocal as a firm 'no, sorry'. The Council's legal advice clearly sets out there is no lawful basis to challenge the decision of the Planning Inspector to grant planning permission in this appeal, and I to be helpful, I shared that legal advice in advance.

In general terms the threshold to cross to overturn a Planning Inspector's decision on appeal is high and the Council's legal officers cannot find any grounds of challenge in law, policy or fact that would amount to a likely successful challenge.

As mentioned in the meeting, the inspector's conclusion is not a decision which the Council likes, but that is not in and of itself a basis to challenge a decision, as we need to find a legal problem in his decision.



For the purposes of Parish Council's petition, and as I explained in detail at the meeting answering several questions about the Council's position, it remains clear. The Council has been opposed to this development from the outset by taking appropriate enforcement action including, successfully applying for a Court injunction against any further breaches of the Green Belt. The Council's opposition remained resolute through our arguments in the appeal before the Planning Inspector. Our disappointment with the Planning Inspector's decision to grant planning permission, with certain conditions, is acute. However, the Council has accepted the appellants have won their case, and whilst we continue not to like the decision and disagree with it, we are stuck with it in absence of any legal basis to challenge.

You will recall I also made clear in the meeting, as chief executive of the council, I must be mindful of spending tens of thousands of pounds of taxpayer's money for an appeal in the absence of a winning legal strategy or reasonable prospects of success. I am simply not willing to spend this money just out of sadness or anger, and nor am I prepared to raise false hopes amongst local people that such an expensive endeavour might lead to the result that they want, however much sympathy I have with their feelings.

In the meeting, Brian Ross, in the chair, referred to two eminent but unnamed QCs that he had spoken with and could present an arguable or winnable challenge. In context, I agreed to Brian's suggestion, as I was content for the Council's legal officers to speak directly with either or both of the two unnamed QCs.

However, I now understand neither of the QCs suggested (but not named) by Brian are available or willing to speak to or meet directly with the Council's lawyers over prospects of a statutory challenge. I was indeed prepared to remain open minded to whatever additional expert perspective they might have shared, though I understand and appreciate their position. Notwithstanding my willingness to accept the suggestion of such a meeting and my demonstration of open-mindedness to carefully reflecting on what they might have shared, this returns us to the point, and my view, based on a hard-headed professional assessment of this really unfortunate situation therefore remains the same.

Petition No.2

Notwithstanding the above, UDC should provide a clear written assurance to Birchanger Parish Council, that compliance with the conditions attached to the said permission will be closely monitored, and UDC will not hesitate to take effective enforcement action in the event of any non-compliance.

Response

With any conditional planning permission, the onus is on the landowner/developer to ensure the conditions are adhered to. The Council does not actively monitor all sites to ensure conditions are being adhered to and this site is no exception. There is no

evidence to suggest that the Travellers are not going to adhere to the conditions. The Planning Enforcement Team Leader, Ms Marshall as case officer has already been in contact with the agents acting on behalf of the Travellers to remind them of the conditions and their responsibilities to ensure they have been complied with. However, to actively monitor the site is not normal practice for the Enforcement Team and the Council must ensure that no party is being singled out or treated any differently to other parties.

Where the Council is made aware of an alleged breach of planning conditions – for example by neighbours - this matter is investigated by the Council's Planning Enforcement Team. If a breach is confirmed, then it is assessed. If it is necessary the Council will take swift action, but as with any breach of planning control, the goal is to ensure the breach is remedied in a proportionate way and will be taken in line with the guidance set out in the National Planning Policy Guidance and other relevant legislation.

We hope and expect, as we do in all cases, that there will be no breach. If there is, we will very much act appropriately to seek to remedy it.

Petition No.3

UDC should also provide written confirmation to Birchanger Parish Council that great importance is attached to protecting the Green Belt around Birchanger and UDC will do all in its power to keep this land permanently open so as to protect the separate identity of Birchanger and prevent any coalescence with Bishop's Stortford to the south or with Stansted Mountfitchet to the north

Response

Without hesitation I can confirm that UDC remains committed to retaining the open nature of the Green Belt throughout the district. We continue to refuse development within the Green Belt, and our decisions continue to be accepted at appeal. In our recent Green Belt Study, the Green Belt around Birchanger was identified particularly important both in terms of preserving its open nature and preventing coalescence with other settlements. We will continue to do so, specifically on this site.

In allowing the appeal the Inspector was very specific that the nature of the development in a dip on part of the site did not harm the open nature of the Green Belt. This was coupled with the necessary mitigation secured through the conditions. We will continue to be mindful of any drift of development elsewhere on the site and any impact on the Green Belt.

Conclusion

The position of the Council is clear, there are no legal grounds on which to realistically challenge the challenge to the decision of the Planning Inspector, for the

reasons I gave in the meeting and those set out in this letter, so we will not commit sizeable sums of money when this would be an irresponsible use of taxpayer cash.

As mentioned in the meeting the Council has to act reasonably in ensuring the planning conditions are being met. The Council also has to ensure that no one party is being treated any differently to any other parties

We can assure the Community that the Council remains committed to the protection of the Green Belt. This includes the areas around Birchanger, and the allowing of this development on this site does not in any way change that firm commitment. I could not help but be moved by the strength and passion of local opinion I heard at the meeting, which I absolutely accept is genuine and heartfelt. I know that my answers in this letter, as at the meeting, are not going to satisfy everybody's hopes or expectations. I have though done my best to commit positively where I can act, whilst being honest and transparent about those aspects where I cannot see a successful route through.

As I experienced myself when attending your fireworks display before the public meeting – Birchanger is a lovely village with a tight and supportive local community, surrounded by a much-valued greenbelt. Your home is one of which you are rightly proud, and this issue notwithstanding, Birchanger has a bright and independent future.

Yours sincerely

A handwritten signature in black ink that reads "Peter Holt". The signature is written in a cursive, slightly slanted style.

Peter Holt
Chief Executive

Cc Brian Ross
Cllr Caton
Cllr Khan
Cllr Evans
Cllr Merifield
Cllr Lodge
Cllr Lees