

Sunday, 5 March 2023

FAO Monitoring Officer,
Royal Borough of Windsor & Maidenhead,
Town Hall,
St. Ives Road,
Maidenhead,
SL6 1RF.

Dear Emma,

Objection/Concerns about Process, Reports and Decision on 22/01354/OUT

Thank you for giving us the opportunity to pause the process in relation to any decision apparently reached at WADM on 1 March 2023 in relation to Application 22/01354/OUT and express our concerns about the process, conduct and issues presented and therefore the soundness and legality of the decision apparently reached.

Issues to clarify at the outset

- I. Can you please confirm that this process will be paused pending a full investigation and that no notice or advice of the decision, apparently reached on the evening of 1 March 2023, will be conveyed to the Applicant?
- II. Can you please also supply us with a roadmap and timeline for the investigation and consideration and reporting back to us?
- III. Can you please clarify what will be available in the public domain and what will remain confidential?
- IV. Can you please guide us to what is in your power to do, with references to any regulations or laws?
- V. We are not experts in the machinations, regulation and laws that govern these situations so, there may be information that we are in possession of which may be relevant to your deliberations, which you may wish to see but that we are not aware should be submitted to you at this stage. **We would welcome the chance to work with you to present all the information and facts in our possession.**

Introduction

We have great concerns about the process, the conduct of officers and the Chair, the information presented to members, the information not presented to members, oral statements by officers and officials and, the analysis and conclusions and recommendations presented to Members to accept.

We also have concerns about the failure of officers and the Chair to support Members in their deliberations and to help them reconcile their the clear great dissonances between their understanding of the issues, their evident and valid concerns, the practicalities of the proposals, and the recommendations that were forcefully made by officers and chair and, effectively foisted upon them.

This is especially in light of other hearings such as 21/02263/FULL - Courtleigh Manor House and Courtleigh House Lady Margaret Road Sunningdale Ascot where Members views were facilitated.

We do not believe that Members made up their own minds based on appropriate evidence but were strongly led to pre-determined conclusions without sufficient reason or conditions to protect existing residents from harm.

We set out our ideas below based on the three criteria that you kindly asked us to speak to namely;

1. Where the council hasn't followed its own processes/procedures
2. Member/Officer misconduct
3. Inclusion of irrelevant factors in the decision-making process/omission of relevant factors.

Our request

Based on our observations and appropriate evidence, we request that;

- A. The outcome of the meeting on 1 March 2023 is cancelled and a fresh meeting is convened to consider the application with the following safeguards in place;
- B. Evidence is reviewed, re-evaluated and reconsidered and that you consider involving Members and experts in the oversight of the gathering, collation, analysis and processing of the evidence to ensure it's validity, appropriateness and integrity
- C. Clear guidance and methodologies are published well in advance of the meeting which
 - a. Set out clearly what should be considered and what are relevant issues for Outline Applications - as per NPPG Paragraph: 035 Reference ID: 14-035-20140306
 - b. What reports from the Applicant will be considered and what Reserve Matters to be opined on in this meeting, application and hearing they relate to
 - c. How evidence is to be processed
- D. The evidence include a full, detailed, and open review of Access including emergency access, traffic volumes (including out-of-town SEN pupils) and impact on road safety and air pollution.
 - a. Set out the planning balance warts and all, openly and fairly, to help Members satisfy themselves that a sound decision has been made
- E. Members are briefed appropriately and at length including a site visit
- F. The Chair acts appropriately and impartially
- G. Members are facilitated to write the conditions they think relevant whether a rejection or consent
- H. Longer term, that the process for Outline Planning Applications be improved with regard to clarity, published methodology, and plan for adequate periods of notice.

Issues and areas of concern

1. Processes/procedures

- 1.1. **Issues to be considered in this specific Outline Application were not explicitly declared** to the understanding of residents or Members
 - 1.1.1. Issues to be considered in this any subsequent Reserve Matters Application were not explicitly declared to the understanding of residents or Members so that they could clearly articulate between the presented Outline Application (and any other issues to be considered per NPPG) and the scope of any future Reserve Matters Application
 - 1.1.2. This hampers the ability of interested parties to make appropriate comments
 - 1.1.3. This hampers the ability of Members to reach appropriate conclusions
- 1.2. **Insufficient briefings were offered to residents and Members** given the complexity of the case, with 17 major reports submitted by the Application for consideration (see NPPG <https://www.gov.uk/guidance/making-an-application#Outline-planning-applications> Paragraph: 035 Reference ID: 14-035-20140306 Revision date: 06 03 2014), and the profound impact that proposals would have on tens of thousands of residents and environment in Windsor and RBWM
 - 1.2.1. Cllr Da Costa personally spent three weeks reviewing data and trying to get information from officers to help him understand the issues clearly. Explanations finally received from the Head of Planning just days before the 1 March 2023 was profoundly different from that received previously from other officers which formed the base premise of the reports sent to Members. Cllr Wisdom Da Costa has still not received information and explanations which he has requested a week before the Panel to help him come to a fuller conclusion.
- 1.3. **Officers repeatedly refused to participate in briefing meetings for residents** which would have helped identify and resolve problems before coming to Panel
- 1.4. **No site visit was offered to Members** to help evidence statements or allay any evident and appropriate concerns, *“site visits should be encouraged and experiences taken into account, rather than relying exclusively on reports submitted by the applicant, which are biased”* as the *“‘context’ of proposals is very important and cannot be adequately described in words”*
- 1.5. **No clear methodology was set out, unlike other local planning authorities**, to guide Members, residents and even applicants, in how complex Outline Applications and pursuant Reserve Matters Applications are to be dealt with and what issues they would cover. This would limit the confusion in the minds of Members, residents and Applicants in how to proceed and what representations would be considered appropriate.
- 1.6. **Insufficient notice was given to Members and Residents** on the timing of this complex application – 1 week is insufficient to consider the weight and complexity of the information even without the unclear delineation and disclosure of appropriate and relevant matters
- 1.7. **The reports presented were not balanced in their consideration and failed to indicate harmful factors**, so failed to allow Members or residents to weigh up a Planning Balance before arriving at a sound conclusion.
- 1.8. **The report is deficient in its critical thinking** and inappropriately considers the potential of harm e.g. it considers that SP2, NR2, & NR3 are complied with given proposed additions yet fail to consider the harmful impact on SP2, NR2, & NR3 of

removing the original site which is a natural, 50 acre Blue and Green Infrastructure, Carbon absorption and Biodiversity enhancing site as a food producing ecosystem. The only way to achieve net gain in Climate Mitigation, Biodiversity or ecosystem value, Blue & Green Infrastructure is to add a replacement site of greater value which is technically possible for Climate Mitigation, and Blue & Green Infrastructure, but neither likely or were such proposals presented by the Applicant. Given any sequential analysis of the area, enhancement of **local** Biodiversity or ecosystem value is highly unlikely to be possible.

- 1.9. **No Highways Officers were present.** Given the pivotal impact of the size and suitability of the Dedworth Road, vehicles accessing the site and, the volume of traffic, a number of Highways Officers should have been present to discuss the significant issues.
- 1.10. **No clarity on final decision.** No one is clear as to what was finally approved as conditions were not explicitly read out before a vote was taken.

2. Member/Officer misconduct

2.1. The Chair and officers engaged in Coercive behaviour, whether deliberate or accidentally, which both predetermines the outcome and harmed the mental health of participants.

- 2.1.1. *“Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”*
- 2.1.2. Coercive behaviour *“works to limit their human rights by depriving them of their liberty and reducing their ability for action.”*
<https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/#:~:text=Coercive%20control%20creates%20invisible%20chains,reducing%20their%20ability%20for%20action>
- 2.1.3. *“Coercive control has a damaging effect on mental health and emotional and physical wellbeing. It can diminish one’s sense of self-worth, and they may even become dependent on their abuser, due to the freedom and independent thought being taken from them. Coercive control can cause PTSD.* Rose Winter.
- 2.1.4. We contend that the coercive behaviours inflicted upon Members have put the mental health of Members, and by extension of residents, at risk.
 - 2.1.4.1. *It was noted that Cllr. Davey was left muttering in a state of distress and taking a long time to deliver his vote.*
 - 2.1.4.2. Cllr. Carole Da Costa also notes that, *“the process on Wednesday night made me feel members were bullied/ coerced into changing their mind rather than being convinced by the evidence being presented. Having survived a 25 year coercive bullying and controlling relationship I have had counselling and learned techniques to resist such behaviours.”*
- 2.1.5. Remember that Members are given very little training, certainly insufficient to dealing with complex, detailed proposals which will have such a profound impact on the area so, they can be easily the sort of coercive behaviour on display by the Chair and officers
 - 2.1.5.1.

2.2. Members felt bullied and “steered” by the Chair into making a decision and then harassed to approving officers recommendation. Cllr. Carole Da Costa

- 2.3. **Explanations given by different officers was inconsistent and caused confusion.**
Different officers gave different accounts of the nature of this Outline Application compared to a Reserve Matters Application most citing access only when the NPPG states something quite different. This caused a lot of irreconcilable confusion in the minds of Members and residents
- 2.4. When asked directly by a member about the air quality report commissioned by Oakley Green Residents Association, **Officers misled Members** on the day saying that no Air Quality information had been seen by officers - we now know this not to be the case
- 2.5. **Members Access concerns were inappropriately dismissed by Chair and Officers.**
Concerns about significant risks in relation to Access have been raised by Councillors and residents about Access which were handled dismissively by the officer and not allowed to be examined or questioned.
- 2.6. **Members Dedworth Road traffic concerns were inappropriately dismissed.**
Concerns about existing problems on the narrow Dedworth Road were inappropriately dismissed by officers without even allowing Members to discuss the impact of the range and the large number of vehicles using the site.
- 2.7. **Officers did not facilitate the proper functioning of the Panel.** Officers did not facilitate discussion or effective treatment of Members valid concerns but rather directed to a conclusion.
- 2.8. **Members calls for a site visit were dismissed.** Three different Members called on three occasions for a site visit which would have helped come to a conclusion but they were not allowed valid consideration by the Chair who seemed to dismiss them, “disrespect” Members, or deliberately move on when a vote should have been called for.
- 2.9. **Members calls for a deferment was not facilitated.** Member called for a deferment which but this was not facilitated by either the Chair or officers rather it was obfuscated away.
- 2.10. **Members fatigue was not appropriately accounted for.** Members complained about being tired yet were not accorded any relief such as adjournment or reconvening on another day.
- 2.11. **Officers failed to mention any statutory timelines** which would have empowered members to call for a refusal in lieu of the EA’s objection, or for a site visit or for the report to be re-written or represented.
- 2.12. **The Members appeared to be driven into submission** having started off with valid objections which were not discussed but dismissed, being forcefully guided to approve by Chair and officers, officers emphasised fear of rejection rather than facilitating the appropriate concerns of Members, Councillors had their concerns soundly and often loudly rejected with little right of reply. Members publicly during the meeting or afterwards that they felt bullied and helpless by the conduct of the Chair and officers rather than empowered to make decisions with appropriate conditions
- 2.13. **Members appeared confused** unable to adequately process and resolve the large amount of data, often conflicting information given, the unclear framework for making a decision, the poor responses from officers which were sometimes patently incorrect, whilst being driven to a conclusion they were not ready to arrive at e.g. Cllr Davey’s mutterings and the

- 2.14. The conduct and apparent attitude of the officers was commented upon by residents, *“officers were being particularly obtuse and very unhelpful.”* and **Members felt demeaned, insulted, and ignored by the comments and responses of officers.**
- 2.15. **Officers inappropriately presented facts out of context** and was seen by onlookers as an attempt to manipulate Members. *“Officers repeatedly referred to the Inspector having passed the BLP as if this was justification to approve the planning application without scrutiny or comment.”*
- 2.16. As a consequence, the **officers and Chair seemed predetermined** and not open to questioning, discussion or debate. Cllr Davey said on two occasions that he felt as if he was being given no option other than to vote for the application.

3. Inclusion of irrelevant factors in the decision making process/omission of relevant factors

- 3.1. **The report fails to consider Air Quality information and evidence in the possession of the Planning Authority provided by Bray Parish Council** which the planning department are in possession of and has been previously commented on by the Head of Planning. This data is superior to the applicant’s hypothetical extrapolated modelled data, by virtue of being derived from a real physical measuring device taking live measurements on behalf of the Parish council. Yet it was not treated as evidence by the officers, who repeatedly claimed to have “no evidence” before them to contradict the “expert” report. No attempt was made to identify the inexpert basis of the Bray Parish measurements. This was indicative of, and consistent with the overall tone of predetermination.
- 3.2. **Officers did not inform members of the significance of policy EP 2(3) which** expressly advises members to take into account levels that are “close to” national UK levels. In this case the Bray measurement (39.2) was within 0.2 µg/m³ of the national nitrogen dioxide limit (40). Officers repeatedly deemed this non-evidence for unexplained reasons. EP2(3) states clearly:
“Development proposals should aim to contribute to conserving and enhancing the natural and local environment, by avoiding putting new or existing occupiers at risk of harm from unacceptable levels of air quality. Development proposals should show how they have had regard to the UK Air Quality Strategy or any successive strategies or guidance, ensuring that pollutant levels do not exceed or come close to exceeding national limit values.”
- 3.3. **Air Quality data used by applicant (and endorsed by officers) is out of date, factually incorrect, and can not be relied upon.** The applicant’s air quality report adopts the old 25µg/m³ lower and inappropriate standard for PM2.5 air quality. The UK standard at the time of the air quality report’s writing was in fact 20µg/m³. (https://uk-air.defra.gov.uk/assets/documents/Air_Quality_Objectives_Update.pdf) Officers reviewing the applicant’s work similarly failed to identify [the correct UK standard](#) of 20µg/m³. This is especially significant in those sections considering 2023/24 projections.
- 3.4. Furthermore, the **applicant’s air quality report itself notes (para 3.1.3) that it will become out of date in October 2022.** The report therefore should have been updated in 2023 to reflect the [updated 2023 regulations](#) in respect of the government’s newly adopted 2041 target of 10µg/m³ which means that those sections relating to operational levels once the houses are developed in 2041 are out of date and fail to reflect the government’s halving of the target emissions.

- 3.5. This is compounded by the fact **that traffic modelling data is unrealistic so radically underestimates pollution levels**. It does not including sound SEN traffic generation data. The numbers for AM arrivals and PM departures are absurd (17/34) suggesting that systematically more people leave the site than enter it. In any event the figures are wholly unrealistic given the expectation that students will be from across the Borough and need teachers who will also likely travel. A number of 120 or more was surely realistically required.
- 3.6. Moreover, for the remainder of the sites **the national traffic survey data was ignored**, which would conventionally lead to a factor of at least 1.6 car movements allowed per dwelling in any model. This is especially significant given the Highway Officers acknowledgement in his report that alternative forms of transport and walking are unlikely to take hold. He states at paragraph 3.1 that *“it is not agreed that the site’s location would lead to less reliance on car use and encourage travel by sustainable or active mode of travel such as public transport, walking and cycling.”* The number of movements for 450 dwellings and a SEN school with 100 students are therefore inconsistent with national data and irrationally low at 262 evening peak etc.
- 3.7. The effect of incorrect vehicle modelling figures has a cascading effect on many other factors important to the validity of the Access**
- 3.7.1. Vehicle numbers and frequency are PIVOTAL to subsequent issues relating to accidents, access, congestion, pollution & AQMAs, and Health to name but a few. Given the existing traffic and potential RTA issues arising from the narrow width of the Dedworth Road at the Western End and the impact of traffic flows using the nearby Aldi entrance
- 3.7.2. Members and residents consider that an inadequate analysis has been conducted on the appropriateness of an entrance of exit onto that stretch of road given the expected vehicle types accessing the site, the 320 habitations and, the Special Education Needs School, who will require routinely large cars, buses and ambulances. As one resident says, *“it is almost impossible to exit Aldi safely.”* This is once again a PIVOTAL issues that will create much harm.
- 3.7.3. Members concerns were irrationally dismissed by the planning officer in their report and during the meeting.
- 3.8. **Modelling routes are also considered incorrect** as they incorrectly treat the Aldi entrance as a *“spur off the (as yet unbuilt) road into the residential development”* rather than *“an entrance directly onto Dedworth road”* – which might explain some of the modelling errors we refer to above.
- 3.9. **The cul-de-sac access is dangerous.** *“the single road into a cul-de-sac of 320 households plus a school and community building is simply designing a problem into the plan”*. It fails to adequately consider the impact of a road blockage on the single access into the “cul-de-sac” and the requirement for an emergency access route.
- 3.10. **No EQIA has been considered** for this site especially given the presence of a SEN school, and is especially significant because the WHO recognise that those with protected characteristics are more likely to suffer from issues related to poor air quality.
- 3.11. **The report failed to consider or report on harmful issues raised in the Applicants own reports** which would impact the principle of development or require detailed conditions to be included which they are not e.g. **Land**

contamination, Surface and ground water flooding from the combination of the high-water table and existing flooding issues and from drainage systems from external sites to the South in land given them any weighting

- 3.12. **The reliance on a third party (the EA) in the recommendation is in principle unsound.** The officers themselves described their own recommendation as “unusual”. This recommendation violates the broad legal principle of alienability. *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304, 321h. The officer recommendation purports to give a third party the ultimate right of veto and is the “effective surrender of the bodies independence”. If the EA approve then the decision is approved. If the EA don’t approve then the determination is unclear. So this recommendation is certainly “unusual” as the officers put it, and in fact likely unlawful.
- 3.13. **Officers cannot ensure compliance of the EA with the statutory determination period.** if the EA do nothing then officers no longer have the required authority to reject the application – which means that if the EA fail to act within the statutory period for any reason at all (e.g. incompetence or lack of resources) then the officers cannot ensure compliance with the statutory determination period, because the panel have not explained what their position would be. This is especially odd given the officers repeatedly warned about the risks of non-determination in the meeting. So again, this “unusual” clause is unusual because its novel form is likely unlawful.
- 3.14. **This report gives the appearance of predetermination.** Moreover, it gives the appearance of predetermination – that all applications are inevitably approved by the EA - and they cannot in principle maintain an objection to an application. In short, the panel needed to make a decision based solely on the information they had at the time. If it was imperfect for want of the EA advice, then that should have been weighed by the panel – and most likely led to refusal, because it is clear that officers view the current position of the EA as indicative that the site requires an updated and sound FRA.
- 3.15. **The reports made inappropriate, not-relevant and misleading statements** e.g. 10.9 *“New development is expected to demonstrate how it has incorporated sustainable principles into the development including, construction techniques, renewable energy, green infrastructure and carbon reduction technologies as set out in Policy SP2 of the BLP that requires all development to demonstrate how they have been designed to incorporate measures to adapt to and mitigate climate change”* – Either the proposals comply, or they do not comply. Anything else might be regarded misleading opinion.

Submissions and evidence

This submission is made by 7 people including RBWM Councillors/Panel Members, a Parish Councillor, and RBWM residents. It should be noted that other residents wanted to speak up but have concerns about the repercussions to them if they do so.

Submissions by signatories and other contributing parties available upon request.

We appreciate you accepting this request to pause the process, receiving our initial explanation about our concerns, our requests for moving forward with this specific application and future improvements to the processes of RBWM.

Your faithfully,
For and on behalf of The Signatories,

A handwritten signature in black ink, appearing to read "W Da Costa", written over a horizontal line.

Cllr. Wisdom Da Costa,
West Windsor Residents Association,
Clewer & Dedworth West

The Signatories

1. Cllr. Wisdom Da Costa, Clewer & Dedworth West Ward, Windsor, RBWM
2. Cllr. Carole Da Costa, Clewer & Dedworth West Ward, Windsor, RBWM
3. Cllr. Ewan Larcombe, Datchet, Horton and Wraysbury Ward, RBWM
4. Cllr. Louvaine Kneen, Chair of Planning, Holyport Ward, Bray Parish Council
5. Michael Boyle, Resident, Windsor
6. Jean Cozens, Resident, Windsor
7. Andrew Hill, Resident, Maidenhead