



PLANNING

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**Your Ref**  
**Our Ref**      **DS/PCL/1300**  
**Date**          **7<sup>th</sup> December 2018**

Fergus Pate  
Principal Delivery Officer  
Teignbridge District Council  
Forde House  
Brunel Road  
Newton Abbot  
TQ12 4XX

Dear Fergus,

## **WOLBOROUGH BARTON - 17/01542/MAJ**

Thank you for your email. It appears that there is a significant degree of misunderstanding between us.

Neil Emery, who was present at the meeting, informs me that our team were quite clear that, regardless of the views that may be expressed relating to the understanding the historic context of the church, those views should not (and cannot) be used to justify an alteration of the boundaries of a site allocation.

Given the output of the framework plan which followed (i.e. which seeks to vary the allocated areas), this can hardly be described as consensus. I understand that the same discussion was had at the meeting last week.

I will ask Neil to provide a more detailed response to the points of detail raised in your email. I will also respond to some of the statements of fact which are not agreed. However, in the meantime, there is no getting away from the point of principle that a non-DPD cannot alter the policies of the statutory development plan.

You clearly do not appreciate the scale of the task in hand, it is not possible to 'work with the grain' of the current draft to get to a position that would enable a DfP to be lawfully adopted/approved by the Council. A more wholesale amendment would be required.

Therefore, I have tried to summarise the points made in our correspondence to date on this point (including the Counsel's Opinion) as a final attempt to avoid the need to lodge a legal challenge.

Needless to say, in the event that a legal challenge is necessary, we will draw this letter to the Court's attention in the context of any discussion regarding costs.

### **Why the DfP is Unlawful**

As we have explained on a number of occasions, the legislation is quite clear that if a document is produced that meets certain criteria, it must be prepared as a Development Plan Document.

In this case, the relevant criteria are if a document "contains statements regarding...the development and use of land which the local planning authority wish to encourage during any specified period ...the allocation of sites for a particular type of development or use..." or "development management and site allocation policies, which are intended to guide the determination of applications for planning permission" (see Regulations 5 and 6 of The Town and Country Planning (Local Planning) (England) Regulations 2012).

If the DfP is intended to guide the "determination of applications for planning permission" or "a statement regarding... the development of... land" it can only be lawfully prepared and adopted as a DPD with the result that the relevant consultation processes must be followed.

It would not be lawful to adopt such a document by any other route: a DPD by any other name is still a DPD. There is no way that this procedure can be circumvented.

The DfP being pursued by the Council must be intended to "guide the determination of applications for planning permission" on this site. Otherwise, the document has no function and would represent a considerable waste of resources.

It is a matter of indisputable fact that the DfP seeks to change what has been allocated in the DPD in terms of the development boundaries, disposition of uses etc. There is no getting around this without a complete reworking of the DfP. This issue cannot be solved through minor tweaks to the drafts or discussions about the historical context of the church.

Drawing the above together, the Council's position only make sense if the intention is:

1. to produce a DfP which is not consistent with the adopted policy; and
2. use that DfP to effectively override the policies of the adopted development plan policy in the determination of planning applications.

If I am wrong in the above assumptions, please could you explain:

1. What status you consider the DfP would have in the determination of planning applications;
2. Where the DfP departs from the adopted local plan policy, what weight you would give to the DfP and the statutory development plan policy respectively.

In considering your response, please think about how this would play out in front of a Judge when being cross examined by a barrister. Please be assured, this comment is not intended to come across as a threat. However, I need you to very carefully and critically reconsider the Council's position in the context of a potential legal challenge. As noted below, if the Council continue as it intends, a judicial review is inevitable.

I note that you intend to recommend that Members of the Planning Committee adopt the DfP. If you continue as proposed, we cannot stand with you for a number of reasons. The principal reason is that a determination based on the DfP (i.e. an unlawful policy document) will be vulnerable to legal challenge.

We appreciate that the course of least resistance may be to blindly follow the Council towards the adoption of the DfP and to give the Council everything it desires. However, if we were to make an application in accordance with the adopted DfP and obtain planning permission, that planning permission would almost certainly be judicially reviewed.

As you know, the local residents are primed and waiting to find another way to challenge the development of this allocated site. There is no way that they would miss this opportunity in light of such a clear breach of the Town and Country Planning (Local Planning) (England) Regulations 2012 ("the 2012 Regulations") particularly when there have been recent high profile Court

decisions on this exact point (see our Counsel's opinion for details). This is certainly not in anyone's best interests.

We cannot risk a judicial review of the grant of planning permission on our site. Therefore, if the Council will not reconsider its position regarding the lawfulness of the DfP, we will have no choice but to legally challenge the DfP ourselves.

I acknowledge that you remain incredulous regarding our intention to lodge a legal challenge. I can assure you that our intentions are genuine. It would be a great pity for all involved if the Council continues in its current course simply because it doesn't believe that a judicial review will be lodged.

If, despite the contents of this letter (together with the numerous other letters that we have sent), the Council remains minded to proceed with the DfP as currently proposed, please let me know as soon as possible as my client will need to instruct his solicitors to start the Pre-Action Protocol procedure.

Kind regards,

**For PCL Planning Ltd  
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