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21 September 2006

Dear Sirs,

Planning Application No. P05/2310

We understand that Planning Application No. P05/2310 (the “**Application**”) and its related listed building consent, will be submitted for determination by the South Area Planning Sub-Committee (the “**Sub-Committee**”) at its meeting on 9 October 2006. We were genuinely surprised to hear this in light of the recent planning inquiry regarding an identical planning application. We believe that consideration of the Application should be deferred until the results of that inquiry are published.

As you know, Planning Application No. P05/2334 (the “**Second Application**”) has been the subject of an appeal for non-determination which was heard by the Planning Inspector on 7, 8, 9 and 12 September 2006 (the “**Inquiry**”). The Application and the Second Application were identical when made in September 2005, though subsequently, the scheme of development of the Application was amended by Clan Real Estate (Lambs Club) Limited (the “**Applicant**”). Prior to the Inquiry, the Council accepted the Applicant’s proposal that the plans for the Second Application be amended to be identical to those of the Application and the Planning Inspector accepted this change at the Inquiry. As a result, the Application and the Second Application propose exactly the same redevelopment of No.1 Lamb’s Passage.

Given that the applications are identical, it would be fundamentally wrong for the Sub-Committee to determine the Application whilst the Planning Inspector’s decision on the Second Application is pending. In fact, the Application should not be considered until the result of the Inquiry is known and therefore it should not be included on the agenda for the Sub-Committee’s meeting on 9 October. We set out our reasons in more detail below.


1. On 7 June 2006 you issued a statement in which you indicated that the Application would be withdrawn from the agenda for the meeting of 8 June pending consultation on a development brief for Lambs Passage (the “**Development Brief**”). The Development Brief was to be considered by the South Area Committee on 14 September 2006 but Members deferred a decision pending the outcome of the Inquiry.

In our view this was the correct decision and establishes a precedent for the Sub-Committee's consideration of the Application which you should follow. In addition, without an adopted Development Brief, we do not see how it is possible for the Sub-Committee to determine the Application in any event.

2. Proper regard for planning process and the standing of the Planning Inspector would indicate that the Application should not be considered by the Council until the outcome of the Inquiry is known. Our advice is that the Planning Inspector's decision is a material consideration in the determination of Application by the Sub-Committee. Therefore, to proceed before the decision is known would be unreasonable and potentially subject to judicial review.
3. The Council has committed a significant amount of time and money in appearing at the Inquiry, including preparation time for your planning and legal teams and instructing a barrister to appear on your behalf at the Inquiry. It would be an unjustifiable waste of ratepayers' money (and the investment of time and effort by other parties to the Inquiry) if the Sub-Committee was to determine the Application before the result of the Inquiry is known. No doubt you will also consider how this will appear to voters in the Borough.
4. The position in which you find yourselves is a direct result of the "twin-tracking" of these applications by the Applicant. Twin-tracking is generally considered an abuse of the planning process and the government has passed legislation which will prohibit such manoeuvres in the future. Therefore, it would be eminently reasonable to defer any consideration of the Application until the result of the Inquiry is published. To do otherwise might be seen as being too accommodating to the Applicant.
5. Finally, in accordance with well-established principles of natural justice, the Council should not be seen to be acting as a judge in its own cause. The Council and its officers have made a number of arguments before the Inquiry and for the Sub-Committee to seek to determine those same issues in the Council's favour in advance of receiving the Planning inspector's report, would be inappropriate, unconscionable and an abuse of process.

In short, it would be perverse for the Sub-Committee to consider the Application whilst the outcome of an Inquiry on an identical application is pending. We trust that you will take all these matters into account when reviewing the agenda for future meetings of the Sub-Committee and decide that the Application should not be considered until after the result of the Inquiry is made public.

Yours sincerely,



Ken Pottinger
for and on behalf of
Lambs Action Team

cc:

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