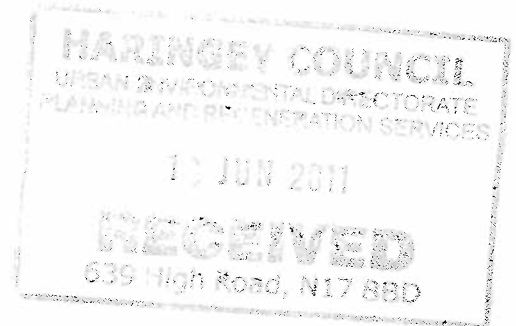
The Planning Inspectorate
c/o Ms Litha Efthymiou
Haringey Council
North Tottenham Customer Services Centre
639 High Road
London
N 17 8BD

14 June 2011

Our ref:
JP/NG



& BY E-MAIL: litha.efthymiou@haringey.gov.uk

Dear Sirs

Haringey Core Strategy: Written Representations on behalf of Mr Stephen Brice

We write further to our 15-page submission letter of 1 June 2011 and to the exchange of e-mails between our Mr Pavey and Ms Efthymiou, the Programme Officer in this matter, on 3 and 6 June 2011 (copies enclosed).

For the avoidance of any doubt, the instant letter is intended for consideration specifically by Inspector Andrew Seaman who is examining the Haringey Core Strategy, not merely the Inspector's programme officer.

In her e-mail of 6 June 2011 at 2:19pm, Ms Efthymiou wrote:

> *"[The Inspector] confirms that the hearing sessions will be open to the public to observe but that participation is limited to those who have submitted a duly made representation. The Town and Country Planning (Local Development) (England) Regulations 2004 relate to the preparation and adoption of development plan documents. Regulation 28(2) provides details of how and when representations are to be made and Regulation 31 indicates that it is these representations that must be considered by the Inspector. I therefore confirm that if your clients have not submitted a duly made representation in accord with the Regulations then they cannot participate in any relevant hearing session. Due to the provisions of the Regulations your letter, which was forwarded to the Inspector, cannot be accepted as a formal submission at this stage."*

We infer from this that the Inspector has been made aware of our submission letter, but has refused to consider it in any detail or to take into account the points raised in it in his examination of the Core Strategy. It is wholly unclear from Ms Efthymiou's email whether the reasoning contained within it is the Inspector's, or Ms Efthymiou's own (itself a matter

of concern, given that it is the Inspector, not Ms Efthymiou who is seized with examining this Core Strategy and determining the procedure to be adopted on the examination process). But more fundamentally, the approach followed in Ms Efthymiou's email betrays the following clear legal errors.

(1) As is made clear in the Court of Appeal's decision in the case of *Blyth Valley Borough Council v. Persimmon Homes (North East) Ltd and others* [2008] EWCA Civ 861 at paragraphs [38] to [40] (referred to in our submission letter), the Inspector's role in examining this Core Strategy is an inquisitorial one. That being so, as a matter of public law, the Inspector should in principle to take into account any material consideration drawn to his attention. The points raised in our submission letter are clearly material to the soundness and legality of the Core Strategy: therefore the Inspector clearly ought to take them into account formally in reaching his conclusions on the Core Strategy.

(2) Ms Efthymiou's email makes the legal error of interpreting far too restrictively the statutory provisions concerning the examination process. Specifically, Ms Efthymiou's email says that Regulation 31 of the Town and Country Planning (Local Development) (England) Regulations 2004 (**"the 2004 Regulations"**) provides that it is the representations duly made in the pre-submission consultation process which the Inspector must take into account before make any determination on the Core Strategy – the necessary implication being that the 2004 Regulations prohibit the Inspector from taking other representations into account if drawn to his attention, regardless of their content and the reasons why they were not put to the Inspector sooner. That is wrong. Regulation 31 says that the Inspector *must* consider any representations submitted during the pre-submission consultation process under Regulation 28(2) (which itself must last at least six weeks)[1]. Regulation 31 does not say the Inspector may *only* take such representations into account. Indeed, Regulation 31 surely cannot be interpreted as setting a limit on what the Inspector can take into account given that neither it, nor indeed the Planning and Compulsory Purchase Act 2004 (**"the 2004 Act"**) or other parts of the 2004 Regulations, say explicitly the Inspector should take into account a whole host of other documents besides the submitted Core Strategy itself which the Inspector must clearly grapple with, including for example the sustainability appraisal. Elsewhere in this examination process, the Inspector has already given parties who made representations during the consultation process the opportunity, within certain time limits, to "put in further material" if they feel it is necessary (paragraph 5.3 of the Inspector's Pre-Hearing Notes issued on 15 April 2011). The 2004 Regulations do not expressly permit this. Clearly the absence of express permission in the 2004 Regulations does not prohibit the Inspector from taking into account further material.

(3) Ms Efthymiou's email says that the Inspector will ignore any submission from a party arguing (as our submission letter does) that they did not make representations in the pre-submission process because the pre-submission consultation process was

[1] Regulation 28(3) of the 2004 Regulations

unlawful. This is positively Kafkaesque. S.20(5)(a) of the 2004 Act makes clear that the very purpose of this examination process is, among other things, for the Inspector to determine whether the consultation requirements of the 2004 Regulations were satisfied. These include the requirements – which our submission letter explains were clearly *not* fulfilled in this case – that any provision of the proposed submission Core Strategy which would designate the Friern Barnet Site for industrial use had to be consulted upon for at least a 6 week period[2] (not the 4 week window which Haringey allowed), and that the consultation documents (through the submission proposals map) had to make clear to the public that Haringey proposes not only to change the Friern Barnet Site's employment use designation to an industrial use designation, but *also* proposes to remove the nature conservation designation to which the site's existing employment use designation is subject[3]. The Inspector cannot conceivably determine whether those requirements of the 2004 Regulations were fulfilled if he refuses to countenance any argument that the consultation process concerning proposals for the Friern Barnet Site was seriously flawed. The minimum starting point for the Inspector must be to allow Mr Brice, PWA members and/or representatives to address him on the legality of the consultation process which Haringey adopted for its proposals for the Friern Barnet Site, and if the Inspector finds that the consultation process was flawed, recommend that Haringey re-consult on relevant parts of the Core Strategy, thus permitting Mr Brice and other PWA members the opportunity to formally advance its substantive concerns as part of such further consultation.

(4) Ms Efthymiou's email ignores the fact (explained in paragraph 20 of our submission letter) that, despite various other amendments made earlier this year, Haringey's Statement of Community Involvement (**"SCI"**) itself has *always* promised that "Anyone has the right to *appear in person* at the examination" of a DPD [emphasis added], not merely to *observe* the examination process. This surely generates a legitimate expectation as a matter of public law that, Mr Brice and/or PWA have a right to address the Inspector at relevant hearings of this examination if the Inspector will not take account of our submission letter. We note that the SCI first containing this provision was endorsed on 4 October 2007 by an Inspector (Keith Holland), whose approval was (at the time) required before Haringey could adopt an SCI in these terms[4].

(5) Ultimately, even if the Inspector limits himself to considering properly (as he must in any event) the Council's submitted documents and the representations which *were* submitted during the consultation process, it is clear that Inspector can *only* reach the conclusion that the proposed re-designation of the Friern Barnet site is unsound anyway. The Council's own documents clearly demonstrate that the Council's stated reasoning for its proposed re-designation of the Friern Barnet Site is irrational: it relies on representations by interested parties relating to completely different sites; it proceeds on the factually wrong basis that the site has an established industrial use; it ignores the site's existing environmental designation; and it purports to justify

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[2] See Regulation 28(3) of the 2004 Regulations

[3] See Regulation 6(1)(b), Regulation 6(5), Regulation 13(4) and Regulation 30(1)(b) of the 2004 Regulations.

[4] See section 18(4) of the 2004 Act, as originally enacted, and as it remained in force until 6 April 2009.

the re-designation on the obviously misconceived basis that a developer is discussing submitting a planning application for development of a waste facility on site. In addition, there is no evidence base at all within the Council's submitted documents, or representations submitted during the consultation process, which concerns this proposed re-designation, let alone begins to justify it. And to designate the site for industrial use on the basis of a developer's application to develop a waste facility on site flies in the face of other policies of the submitted CS itself – which say that site allocations for waste facilities are not to be dealt with in the CS, but in the quite separate North London Waste Plan, which is still out to public consultation. Those are all points raised in our submission letter, but which ought to be clear to the Inspector himself from the submission documents. In all the circumstances, even if the Inspector limits himself to considering the documents which Ms Efthymiou's email says he is constrained to consider, it would still be outside of the powers of the 2004 Act for him to finds that this proposed re-designation is sound. If the Inspector were nevertheless to recommend adoption, it would then be open to Mr Brice or PWA to institute s.113 proceedings before the High Court seeking a declaration to the effect that the adoption was outside of the powers of the 2004 Act, and an order quashing the parts of the Core Strategy relating to the Friern Barnet site. But if the High Court could entertain a challenge from Mr Brice or the PWA on that front *after* the examination process, it makes no sense to suggest that the Inspector has no discretion to consider these concerns of Mr Brice or the PWA *during* the examination process (either in writing or orally).

In the circumstances, the Inspector's refusal so far to take account of our submission letter, and his refusal so far to permit Mr Brice or the PWA (themselves or through representatives) to address him at relevant examination hearings, betray various errors of law.

We feel duty-bound to put the Inspector on notice that, should he continue to refuse to take into account our submission letter and to permit Mr Brice or his representatives to address him at relevant examination hearings, Mr Brice will strongly consider seeking judicial review of the Inspector's approach to the examination process (as communicated in Ms Efthymiou's emails of 3 and 5 June 2011) on an expedited basis, in order to correct the existing errors of law before the examination process goes too far, and if necessary, to seek an interim injunction restraining the Inspector from proceeding with the examination process unless and until the claim for judicial review is determined. It appears to us that our client Mr Brice has good grounds for doing so given the legal errors we have identified. And while this is an unusual step to take, it is one that we consider warranted given the seriousness of those errors, and given that it is clearly in no one's interests for the examination process to proceed to its conclusion, at great expense, if – as a result of a refusal to countenance the substantive and procedural concerns raised in our submission letter – there is any risk that Haringey may adopt a Core Strategy which (as explained above), we consider would be eminently capable of a challenge in the High Court under s.113 of the 2004 Act.

However, our client is not of limitless means. And we are conscious that other parties involved in the examination process (including the planning inspectorate) do not have

limitless resources. We respectfully urge the Inspector to take the more proportionate step of revisiting his current position, without the need for anyone to engage in costly litigation on the matter.

Response

In light of the urgency of this matter, we invite the Inspector's substantive response to this letter by close of business on Thursday 16 June 2011. In particular, we invite the Inspector to confirm that he will take into account the submissions set out in our letter of 1 June 2011 and that he will allow our client, either himself or through a legal representative, to participate in the hearings listed at paragraph 18 of that letter.

Please acknowledge receipt and please note that any responses should be sent, at least, by e-mail to both of the following e-mail addresses, as our Mr Pavey will be out of the jurisdiction during the course of this week:

- james.pavey@knights-solicitors.co.uk
- nicola.gooch@knights-solicitors.co.uk

Yours faithfully