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The Inspector
Core Strategy Examination Hearing 22 February 2012

6th March 2012

Dear Sir,

Haringey Borough Council
Core Strategy Examination Hearing Session 22 February 2012

With respect to the above hearing, I wish to submit some important legal documents – with interpretation - to you. You were kind enough to agree to this request of mine to submit important documents after the hearing. I apologise for the late transmission as I was sorely incapacitated.

1.0 It appears that the LB Haringey has failed to consider the legal protection of EPS (European Protected Species) of wildlife (ie bats) that are known to be present on the Application Site at Pinkham Way.

2.0 It appears that LB Haringey produced a Core Strategy document that is insufficiently robust to withstand a legal challenge to any development proposals for the Application Site. LB Haringey appear to have ignored the presence of bats and other legally-protected species on the Application site – and perhaps on other sites too within the borough.

3.0 Bats are definitely present on the Applications site.

The Jacobs Report of June 2009 demonstrated (in Tables 1 and 2 of their report) the presence of commuting and foraging bats.

A group of residents also conducted brief bat surveys and indicated a considerable number of bats also commuting and foraging on the site and a much greater number feeding above the damp air of the pond in Hollickwood Park.

3.1 Bat roosts may also be present

The Jacobs report reported that a large number of trees have a good potential for bat roosts. Bat roosts are really small holes or crevices, fissures etc in trees or stacked lamp-posts where bats may in summer give birth and suckle their young (maternity roosts), other roosts where they rest, mate, or hibernate.

3.2 Legal protection of Bats and their Roosts

All bats and all bat roosts are protected against obstruction or damage – even if bats are absent. (Attachment 3 page 2).

4.0 Legal duties of L B Haringey towards bats

L B Haringey has a legal duty to protect European Protected Species (bats as well as their roosts) See Attachment 3 pages 1 and 2 – summarised in the next paragraph below

5.0 LB Haringey's conflicts on this site

L B Haringey needs to resolve a conflict of two interests:

- (a) Legal protection of bats by LB Haringey is mandatory, requiring LBH to ensure the protection of bats, their roosts and since their local numbers are also to be protected, then protection probably extends to their commuting routes and important foraging sites along lines of trees and around different types of vegetation on the site. These routes and sites will depend on much of the vegetation present – but only surveys will reveal their whereabouts.
- (b) The declaration that this Application site is to be an “Industrial site”
This would mean the removal of a high proportion of vegetation which would conflict with the requirement of bats to breed, to feed, to nurture their young, to maintain their local distribution and their numbers. (Attachment 3 page 2).

5.2 The obligation to convert this site into an “Industrial site” is in conflict with the statutory duty to have due regard to the Habitats Directive and to the legal requirements to protect bats and their roosts given in Attachment 3 page 2.

6.0 Isn't this legal protection an exaggeration?

A glance at Attachment (2) indicates that a judgement at the High Court ruled against Cheshire East Borough Council which was found guilty of failing to comply with the relevant legislation for protecting bats. That LPA failed to consider the three “derogation tests”. LBH seems also to have ignored them.

6.1 What does “protection of bats” mean?

Looking at Attachment (3) - the second page summarises that: no activity shall be permitted that threatens the numbers and distribution of local bat populations.

6.2 This indicates that the designation “Industrial site” needs to be very considerably modified or abandoned in order to satisfy its Statutory Duties.

6.3 Should L B Haringey wish to press ahead with its designation of “Industrial site” status, then it needs to satisfy the three “derogation tests” given in the High Court case in Attachment 2.

Alternatively, since the Habitats Regulations (1994) have been superseded by the Conservation of Habitats and Species Regulations 2010, then it would be necessary for L B Haringey to go straight to the Habitats Directive of the European Union.

6.4 There in Article 16 of the Habitats Directive they will find a horrendously complicated route to achieve their end – but where there are rich pickings for lawyers on both sides and after prolonged litigation, Haringey's legal costs may well exceed the value of the Application site. It is a route not worth pursuing.

Yours Sincerely,

Dr S. Oliver Natelson