

The Chief Executive
Buckinghamshire Council

BY EMAIL ONLY

Date: 20th June 2022
Our Ref: BMG/CLA
Your Ref:
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Direct Fax: 01223 323370
Email: Bob.McGeady@ashtonslegal.co.uk
Dept: Commercial Property

Dear Sirs

NEWTON LONGVILLE PARISH COUNCIL

POTENTIAL JR AGAINST BUCKINGHAMSHIRE COUNCIL

PRE-ACTION PROTOCOL LETTER

**JUDICIAL REVIEW
PRE ACTION PROTOCOL LETTER
REQUIRES YOUR URGENT ATTENTION**

**IT IS ESSENTIAL THAT YOU TAKE IMMEDIATE ACTION CONCERNING THIS MATTER
RELATING TO THE ISSUE OF A PLANNING PERMISSION PURSUANT TO A
RESOLUTION OF THE COUNCIL'S THE DEVELOPMENT MANAGEMENT COMMITTEE
ON 18TH NOVEMBER 2021 AND 26TH MAY 2022**

THE CLAIMANT

1. The Claimant is Newton Longville

DETAILS OF THE CLAIMANT'S LEGAL ADVISERS

2. Ashtons Legal
Chequers House
77-81 Newmarket Road
Cambridge
CB5 8EU

The person who is dealing with this matter is Bob McGeady

DETAILS OF THE MATTER BEING CHALLENGED

3. We act for Newton Longville Parish Council which challenges the validity of your Council's manner of dealing with the planning application made by

Bawden Energy Limited of 41 Dover Street London W1S 4NS

The Parish Council's particular concerns relate to the grant of planning permission on the basis of the reports dated 18th November 2021 and 26th May 2022.

DETAILS OF INTERESTED PARTIES

4. Bawden Energy Limited of 41 Dover Street London W1S 4N

THE ISSUE

5. The above application was the subject of recommendations for approval AND WAS considered by various committees of the Council.
6. Officers powers significantly misled members of the committee in relation to a number of important and fundamental issues that had they been properly addressed would inevitably have led to a different outcome. We details those issues below.
7. The first issue relates to paragraph 2.7 of the report dated 26th November 2021. In that report a breakdown of the proposed development is set out and the committee is advised as to what is considered to require planning permission. The statements made as the ability of the Applicant to avail themselves of permitted development rights are legally and factually incorrect.
8. Permitted development rights in this situation only apply to "Gas Transporters." A Gas Transporter is;

"Formerly public gas transporter, a company that owns or operates gas pipelines used to transport gas to customers or the system of another gas transporter. A gas transporter must be licensed under the [Gas Act 1986](#) unless an exemption applies"

9. The applicant for planning permission is not a defined gas transporter and no exemption applies. Thus members have been misled as to the need for planning permission for various aspects of the development. Had they been properly advised they may have taken a different view. In any event, the decision they have taken is tainted by the fact that they were given incorrect advice as to this point. As that advice underpins the advice given and the recommendation made to members the decision cannot stand.
10. This issue arose in relation to a different site owned by SGN. In that case their agents stated

Carter Jonas

The bio-methane injection facility was constructed in 2014 in accordance with the Town & Country Planning (General Permitted Development) (England) Order 2015 Class A, Part 15 in relation to power related development for gas transporters. This permits statutory undertakers to erect apparatus and carry out development in, on, over or under the operational land of the gas transporter.

The erection of apparatus, the transportation and injection of bio-methane into the Portsdown Hill facility by SGN employees is therefore considered permitted development. However, the General Permitted Development Order (GPDO) does not permit third party operators to inject bio-methane into gas transporters as they are not considered as statutory undertakers.

SGN is therefore seeking planning permission to extend the right to third party operators to undertake this operation alongside the statutory undertaker. The application is being submitted as a change of use as it constitutes a marginal intensification of the existing operation.

11. The same situation pertains here which confirms the incorrect advice given to members.
12. The second issue relates to the proposed hours of operation and the timing of deliveries. In relation to this issue we draw attention to paragraph 1.7 of the report dated 26th May 2022. It is there recorded that;

“The preference is that night time HGV movements are prohibited altogether, as is common with supermarket deliveries near residential properties, **however it is acknowledged that the Strategic Sites Committee were advised they could not control traffic movements in this way.**” (my emphasis)

13. As with the first issue this is clearly incorrect to give as it is accepted that planning authorities have a wide discretion to limit various aspects of any development and deliveries to a site such as this being located within a residential area are a matter that the Committee clearly had the ability to regulate. We are instructed that the committee had concerns about this aspect and it is clear that had the members been properly advised on this point then it is more than likely that a suitable condition would have been imposed. This of course assumes that members were still prepared to approve the application had they been properly advised on the permitted development aspect.
14. The final issue relates to a long running issue that my clients have raised on numerous occasions with the council and that relates to the Unilateral Obligation. We are instructed that the “final” version was published on the public register on 27th October 2021 and was dated 8th October 2021. This was revised by a further “draft” dated 23rd May 2022. This was just before the issue of planning permission and was not made available to permit my clients a sufficient opportunity to consider it and comment upon it. There are a number of matters that are concerning about the Council’s approach to this unilateral obligation.
15. Whilst it is accepted that the Committee could consider the application and take account of the draft UU at that stage officers were under a duty to consider whether the final version was sufficiently similar to that considered by the committee and whether the matter ought to be referred back to the committee in accordance with the principles established in *Kides v South Cambridgeshire*.
16. Secondly, the report of 18th November 2021 the Council states that;

“This is not a requirement to make the development acceptable but is a voluntary undertaking and has not been given weight in the planning balance.”
17. This should be contrasted with paragraph 1.15 of the report on 26th May 2022 which states;

“The proposal that was put forward to Planning Committee subject to conditions and a legal agreement that was considered comprehensively at Strategic Site’s Planning Committee on 18 November 2021. Whilst alternative options were explored to address concerns about the potential impact of the proposal on nearby residents, given the lack of consensus between the Parish Councils, any alternative was considered unreasonable. The proposal will therefore be taken forward in line with the recommendation put to planning committee, including as to routing arrangements, as no new material planning considerations have been raised.”

18. Clearly, the UU is and always was an important part of the mitigation proposed and as such should have been subjected to the proper consultation arrangements. Once again it is clear that members were misled as to the weight to be given to the UU in the original report as it is nonsensical to suggest that the routing and other provisions could be enforced with the need for the UU.

DETAILS OF ACTION THAT THE DEFENDANT IS EXPECTED TO TAKE

19. In the light of fact that the Council has granted planning permission an application for judicial review will be made asking the Court to quash the grant of planning permission so that the Council can re-determine the application taking account of the relevant material considerations
20. The Council is requested to agree that it will not contest such proceedings and will pay the costs of the Applicant.

DETAILS OF DOCUMENTS CONSIDERED RELEVANT AND NECESSARY

21. The various reports referred to above and correspondence between Newton Longville Parish Council and the Council.

ADDRESS FOR REPLY AND SERVICE OF COURT DOCUMENTS

22. Ashtons Legal
Chequers House
77-81 Newmarket Road
Cambridge
CB5 8EU

FAO Bob Mc Geady
bob.mcgeady@ashtonslegal.co.uk

PROPOSED DATE FOR REPLY

A response by **24th June 2022** is required.

Yours faithfully



Bob Mc Geady
Consultant
Ashtons Legal

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