

Our Ref: RE/NJD/325206.0003  
Your Ref:  
Date: 25 June 2021

Mr. Clarke  
Acting Legal and Licensing Services Manager  
East Suffolk Council  
Riverside  
4 Canning Road  
Lowestoft  
Suffolk  
NR33 0EQ

Birketts LLP  
Providence House  
141-145 Princes Street  
Ipswich  
Suffolk IP1 1QJ

T: +44 (0)1473 232300  
F: +44 (0)1473 230524  
DX: 3206 Ipswich

[birketts.co.uk](http://birketts.co.uk)

Dear Mr. Clarke

## Application DC/20/1831/OUT

We write on behalf of our clients, Mr and Mrs Chalmers, in response to your letter dated 26 May 2021, sent as a result of our Pre Action Protocol Letter of 5 May 2021 to the Council's Head of Legal and Democratic Services Manager as we wish to clarify further the reasons why we feel it necessary to challenge the Council at this stage. We would respectfully request that this letter, along with our previous letter and attachments, is placed before committee to enable members to have full knowledge of the concerns our clients have raised.

## Legal Principles of the First and Second Ground

We are well aware of the cases that you have referred to and quoted from within your letter regarding the failure to provide members of the committee the correct information. You cite the case of *R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 which refers to the Planning Officers' reports as indeed does the case of *R v Mendip DC ex parte Fabre (2000)*. However, our concerns were quite deliberately focused upon what was said at committee rather than just the tabled papers, given that officers updated members verbally at committee, something not uncommon when the situation may have changed from when the committee report was written and subsequently published to when the committee meeting actually takes place. What must be assessed is the overall assessment of the planning issues given to the committee, giving particular weight to what was said at the committee to update and reassure members just at the time when they are fully addressing their minds to the detail of the issues in order to arrive at a decision.

At this critical stage the Council's Head of Planning and Coastal Management said unequivocally and misleadingly that the Highways Authority had raised "concerns" rather than "formal objections" expressions which have very different meaning in this context as a Head of Planning must have appreciated. Handing over to a case officer to "*provide further detail*", does not cure the problem. The members had at this stage been led to believe there was no outstanding objection and they would just be hearing further details of the "concerns". Furthermore as the most senior planning officer at the meeting and head of planning control, it is illogical to imply as you do, that the members would have appreciated that Mr Ridley must have been mistaken and that the case officer better understood the status of the Highways Authority's position; quite the opposite, one would expect the members to have given greater weight to the word of the more senior adviser.

37734731.V1 Let To Martin Clarke 24 06 21 v 3  
325206.0003 24/06/2021

Offices also in: Cambridge, Chelmsford, London and Norwich

Birketts LLP is registered in England under no. OC317545 and authorised and regulated by the Solicitors Regulation Authority no. 441849.  
Registered office at: Providence House, 141-145 Princes Street, Ipswich, Suffolk, IP1 1QJ.  
A list of members may be inspected at any of our offices. The term 'Partner' is used to refer to a member of Birketts LLP.



IS 700564

In respect of the Second Ground, if members are so well versed on planning appeal decisions as you indicate in your letter, we fail to understand why Mr Ridley sought to raise the Harrogate Appeal case in the first instance. Members should have been informed by officers that costs in respect of planning appeals are only awarded to the appellant by a Planning Inspector in the event the local planning authority has acted in an unreasonable fashion. Discretion is exercised on a factual case by case assessment. It would be extremely hard for a Planning Inspector to consider that the local planning authority had acted unreasonably when having due regard to the responses from a statutory consultee and award costs to the appellant in these circumstances. We therefore remain of the view that the committee was put under pressure to vote in favour of the application by an exaggerated costs risk, which compounded the error in failing properly to report that the highway authority had maintained its objection to the application.

### **Request for Information**

We are disappointed that you failed to supply us with copies of documents that we requested and we therefore submitted a request pursuant to the Environmental Information Regulations 2004 to the Council (letter submitted 27<sup>th</sup> May) and had hoped in the duty of candour the Council would, on this occasion, respond favourably to our request. We have received a few documents from the FOI team which cover a few weeks over last summer and we have requested this is revisited as we know meetings were held with the applicant in previous months and our request was for information to be provided from 2017 when the applicant had informed Melton Parish Council that the access road from the development would not be through St Andrew's Place but would be across the Carter land. The Council is reminded that pursuant to Section 77 of the Freedom of Information Act 2000, it is a criminal offence, once a request for information has been submitted to a public authority and the applicant would have been entitled (subject to paying a fee, if applicable) to the documentation requested, for any of that information to be altered, defaced, blocked, erased, destroyed or concealed with the intention of preventing the disclosure. This applies to the public authority and to any person employed by, or is an officer of the public authority. It is therefore vital for the due and proper planning process that the Council are transparent with the public and not withhold information.

### **Site Visit**

During the course of the committee which sat on 30<sup>th</sup> March, members were shown just two photographs of St Andrew's Place, it is not known what day of the week or at what time of day the photographs were taken. None the less, as the case officer clearly stated "the use of this route as the access is a cause for concern" and that one of the photographs highlights "an existing issue with on-street parking on a relatively narrow road". We are of the view that in order for members to fully appreciate just how narrow St Andrew's Place is and where many of the pinch points are, in order to make a comprehensive and rational decision with full information, that a site visit would be essential. We would suggest that prior to a site visit being arranged, the procedures set out at paragraph 7 of the Council's Code of Good Practice/ Guidance for Members within the East Suffolk Council's Constitution are revisited and updated as they are currently out of date in line with the latest Government Guidance on numbers that can safely meet in an outdoor space that were issued on 17<sup>th</sup> May, which would now allow for all committee members to participate in a site visit. We would also request that the highways officer from Suffolk County Council be invited to attend the arranged site visit so that he is available to respond to any queries that members may have during the visit.

### **Further Consultation with Suffolk County Council Highways**

We would also urge that given that more than 9 months have passed since Suffolk County Council sent in their last letter of objection in respect of this application, a further consultation request is made. On consideration of the local highway authority's responses dated 12<sup>th</sup> June 2020, 1<sup>st</sup> July 2020, 22<sup>nd</sup> July 2020 and 1<sup>st</sup> September 2020, it is very apparent that they had a strong preference for the site to be




accessed by an alternative route. Whilst the current plans lodged have introduced some mitigation measures to provide some modest additional parking and improvements to the footway in St Andrew's Place, this alone does not mitigate the fact that the road remains narrow. Suffolk County Council still have concerns and still had an objection to the construction traffic using this route over the course of five years as the development is constructed, hardly the transient amount of time which the planning officers alluded to during the course of the planning committee in March. The County Council want an alternative route for all construction traffic accessing the site; as yet we have not had sight of any alternative routes being offered. It is our view that a Construction Management Plan should be submitted to the Council for consideration as a pre-requisite to the grant of planning permission as if the applicant is unable to provide an alternative route for construction traffic, the County Council's objection must be considered in more detail.

The County Council has also objected on the grounds of traffic impact and sustainable transport, reiterating the undisputed fact that the Melton crossroads junction is already over capacity and regular users suffer significant delay, which will only be exacerbated in the event the development goes ahead. They have requested that the applicant provides measures to improve sustainable transport to encourage the occupiers of the new development to have less reliance on the car. However, the applicant appears to have failed to acknowledge this concern and objection the County Council has raised as clearly insufficient mitigation has been offered up, as evidenced by the fact that the County Council have maintained their objections on these two points.

Given the local highways authority have maintained their objections during the lifetime of this application, we would have expected for a highways officer to have been present during the course of the committee meeting to answer highways queries that members may have had. This was not the case. However, given the issues that have not been resolved, we would ask that a highways officer from Suffolk County Council is in attendance at the committee meeting when this matter is presented once more to enable members to direct any highways queries to the expert rather than to the planning officers.

Yours sincerely,



**Richard Eaton**  
**Partner**  
**For and on behalf of Birketts LLP**

Direct Line: 01473 406291  
Direct e-mail: richard-eaton@birketts.co.uk

cc: Rachel Smith  
Philip Ridley  
Cllr Rachel Smith-Lyte ESC  
Cllr Alexander Nicoll SCC