

Ms Sally Madgwick
Rights of Way Officer
Wiltshire Council
Rights of Way and Countryside
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Our Ref: NML\AST9\1\9697800
Your Ref: SM/TUG/2015/02

Email: Sally.Madgwick@wiltshire.gov.uk;

31 March 2016

Dear Madam

Re: Commons Act 2006 s.15 - Application to register land at Bondfield, Woodborough as a Town or Village Green

We write in response to Mr Lloyd's letter received with your letter dated 3 March 2016. We do not repeat the contents of our letter of December 2015 setting out the basis of our client's objection.

On behalf of our client, Aster Property we continue to object to the application and adopt the same subheadings as used in our letter of December 2015.

The first point to note about Mr Lloyd's letter is that it does not introduce any new evidence into the Application (for example by way of further statutory declarations or otherwise). Accordingly, Mr Lloyd's rather extravagant references to, for example, "the whole community" (p.3) and "most locals" (p.4) without any further evidential foundation must be discounted.

1. Section 15C

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As to section 15C the position as set out in our December 2015 letter is correct and nothing in Mr Lloyd's letter casts any doubt on the correct statutory interpretation of the need for a terminating event. Mr Lloyd does not identify any such terminating event.

2. The Application incorrectly identifies the Land.

Mr Lloyd's letter does nothing to explain away the force of the points made in our letter of December 2015 in this regard. The simple fact is that Mr Lloyd made a sequence of manifestly inaccurate statements in submitting the Application. Even now he is equivocal about the hardstanding area plainly used for car parking (his point 3 under this head), and attempts to say that the land was correctly identified within the Application (which is simply and plainly wrong). The Application is manifestly and substantially inaccurate in relation to the area it identifies and the Application and supporting questionnaires do appear to have been completed with little care as to their accuracy. Accordingly they are not persuasive documents as demonstrating the requisite level of continuous user.

3. The Land has not been used by a significant number of local inhabitants as of right in lawful sports and pastimes on the land for a period of more than 20 years

We set out the history of the land and its features in some detail in our letter of December 2015. Mr Lloyd does not appear to dispute the regular maintenance of the land or the regular presence of liveried vans and uniformed individuals. It is not speculation to say that anyone who (as Mr Lloyd suggests) was familiar with the land would not have realised it was being formally maintained by Aster Properties as their land. Mr Lloyd concedes that the land is substantially enclosed. To acknowledge the presence of concrete bollards and fencing along the eastern side, but to then say it only runs for 26% of the length, does not undermine the substantial enclosure to the land, which is an obvious mark (again to anyone familiar with it, and especially when taken with the other facts mentioned above) that a third party maintains control of this small enclosed parcel of land. Mr Lloyd has not suggested that the stock transfer publicity was in any statutory way defective. It follows that it would have been widely publicized requiring, as we pointed out, a vote of all those tenants remaining in social housing at the time.

Looking at the circumstances in total it remains clear that any use by members of the public was simply permissive.

We do not intend to respond individually to Mr Lloyd's more general observations later in his letter. However, it is notable that he does not seek to contest the point that even on a cursory analysis of the questionnaires the difficulties we highlighted in our December letter arise. These are not minor or peripheral matters, but go directly to whether there is any good evidence that a significant number of people directly attest to their own use of the land for the requisite purposes over the requisite period.

For those reasons, we invite the Council to refuse the application or provide full written reasons as to why it is continuing with the application.

We thank you for your attention to this matter.

Yours faithfully



Neil **Devonshires Solicitors LLP**

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Our Ref: NML\AST9\1\9455761
Your Ref: SM/TVG 2015/02

By way of e-mail and post

29 January 2016

Dear Sirs

Commons Act 2006 section 15

Application to Register Land at Bondfield, Woodborough as a Town or Village Green

We write further to the above matter and, particular to our letter of objection dated 29 December 2015.

It was agreed in an e-mail correspondence between your Sally Madgwick and our David Kaluwahandi dated 29 December 2015 that, as the letter of objection was registering our client's initial objections to the application, we had the opportunity to provide further objections to the application by 31 January 2016.

However, after completing further investigations we can confirm that our client has no further objections to add to those already detailed in the letter of objection dated 29 December 2015.

In respect of our letter of 29 December 2015, and in particular, point 2 of our client's objection letter labelled "Incorrect identification of the Land" which referenced a plan that was to be provided at a future date, we now attach the said plan.

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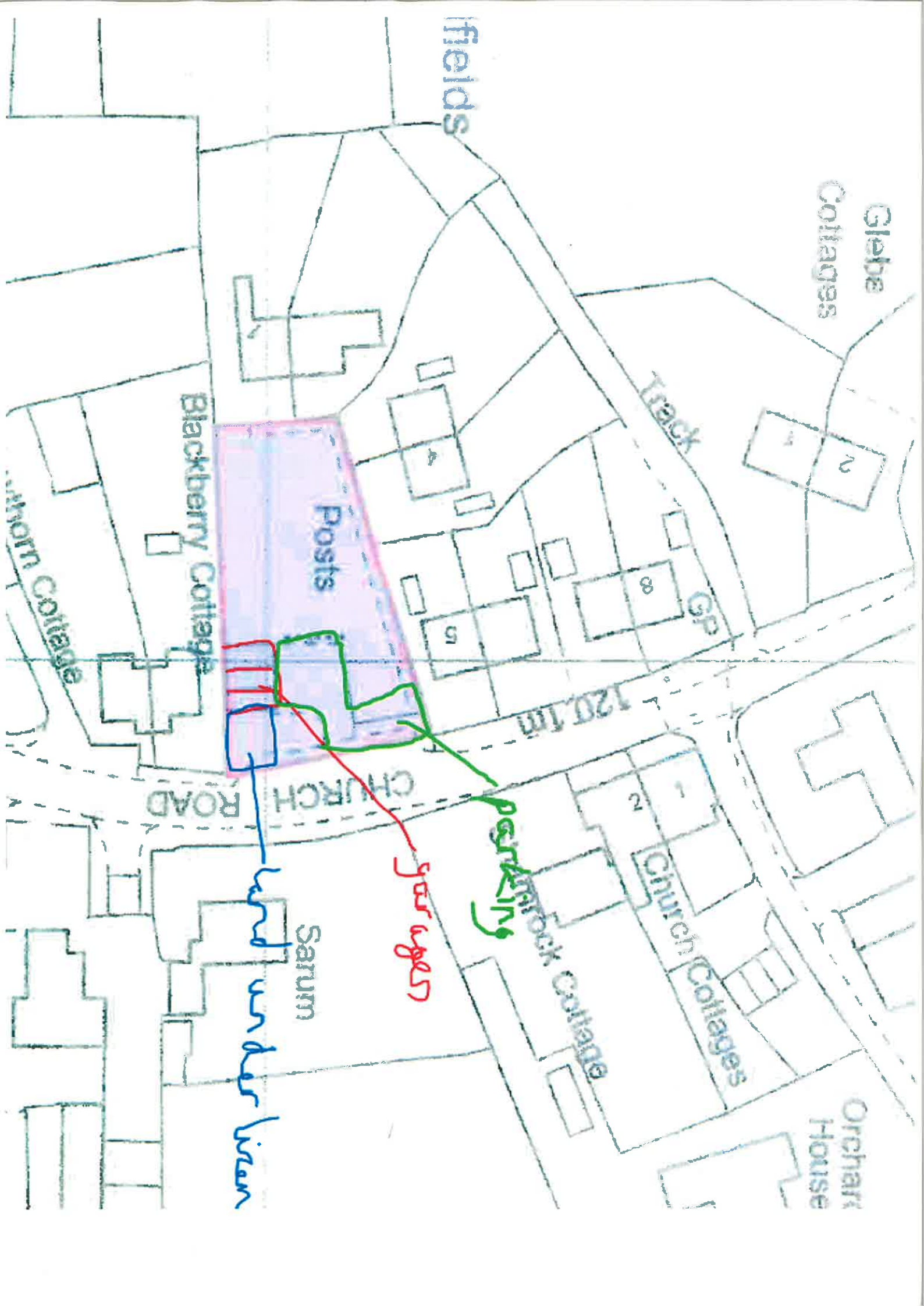
Yours faithfully,

A handwritten signature in black ink, appearing to read 'Neil Lawlor', written in a cursive style.

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Our Ref: NML\AST9\1\9346265
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By way of e-mail and post

29 December 2015

Dear Sirs

Commons Act 2006 section 15

Application to Register Land at Bondfield, Woodborough as a Town or Village Green

Letter of objection

We write in response to your letter of 5 November 2015 notifying us of an application ("the Application") made under s.15 of the Act in relation to the above land ("the Land"). We thank you for supplying us with a copy of the application.

On behalf of our client, Aster Property Limited ("our client") we object to the application. This response is a holding response pending further instructions which we understand is acceptable in light of the telephone and e-mail correspondence between your Sally Madgwick and our David Kaluwahandi on 22 December 2015.

Our client objects to the application for the following reasons (this is not necessarily an exhaustive list):

1. The Council has no power to register the Land by virtue of s.15C.
2. The Application incorrectly identifies the Land.

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3. The Land has not been used by a significant number of local inhabitants as of right in lawful sports and pastimes on the land for a period of more than 20 years
4. Such use did not continue as at the time of the application.

1. Section 15C

Section 15C provides that any right under s.15(1) ceases to apply in the event of a relevant trigger event set down in schedule 1A of the Act. In such a case, the right becomes exercisable again *only* if a relevant terminating event occurs.

On 30 September 2015, our client applied for planning permission for development of the Land. The planning application (application reference: 15/10193/FUL) was registered on 16 October 2015 and duly publicized. By a decision dated 2 December 2015 the said planning application was refused. However, the relevant terminating event is that all means of challenging the refusal in legal proceedings in the UK are exhausted. It cannot matter for these purposes that the Application was made (if it is so) before the planning application was registered. That is because the clear Parliamentary intention behind s.15C is to cause any existing right to continue with an application to cease until the local planning authority (or the Secretary of State on appeal) has decided whether planning permission should be granted for development of the site. Otherwise, the substantive merit of the planning proposal (on the assumption permission is granted) would be lost simply because an applicant for a village green had managed to get their application in one day earlier. Obvious problems which could not have been intended might also arise where, for example, the proper registration of a regular planning application was delayed for some reason.

The terminating event has not arisen because our client retains a right to appeal and it necessarily follows that it cannot be said that all means of challenging the refusal are exhausted. The application is accordingly misconceived and must be refused for this reason alone.

2. Incorrect identification of the Land

It is important to note that Mr Karl Lloyd who made the application signed a statutory declaration in support of the application (his is the only statutory declaration) and within it he declared the truthfulness of the contents of the application and that there was no other fact which he was aware of and which should be brought to the Council's attention as one likely to affect its decision on the application.

However, the plan provided to the Council is manifestly inaccurate in substantial ways, having regard to the terms of the application. In particular, but without being exhaustive:

1. It is marked as a simple quadrilateral on the application plan, but also on each of the plans used in the questionnaires supplied in support of the application;
2. The quadrilateral includes garages which have been leased to tenants in adjoining properties;
3. The quadrilateral includes a significant area of car parking used set aside for use by our client's tenants;
4. The quadrilateral includes an area of land which until recently had been available under licence granted by our client to an occupier of its housing. As can be seen on street view photographs of the area, that land was enclosed by fencing for the use of Blackberry Cottage which adjoins the Land.

Those defects are marked on the plan that will follow. For that further reason the application should be rejected at this stage.

It also follows from the above that the application and presumably the supporting questionnaires were completed with little care as their accuracy. Those materials cannot be relied upon in such circumstances, especially when there is only one statutory declaration and the rest of the information is provided by standard questionnaires.

3 & 4. No sufficient user as of right for 20 years and/or as at the date of application

In any event the gravamen of the picture appearing from the questionnaires is not the uninterrupted use of the Land (or any part of it) as a Town or Village Green for the requisite period of 20 years. Nor does the evidence support such a use continuing as at the date of the Application.

In considering this issue generally it is important to bear in mind the history of the site and its limited size. In relation to that latter point of size an easy comparison can be made between the size of the Land and, for example, the garden space of Numbers 3 and 4 Bondfields. The point can be made by simply looking at an ordinance survey map of the area. However, taking more accurate measurements, the total size of the Application site including the areas which should have been (on any view) excluded is c. 850m². Excluding those areas the Land shrinks to c. 600m² (a reduction of more than 25% which simply serves to highlight the extent of the inaccuracy in the application). Compared to that c. 600m², the gardens of Numbers 3 and 4 total more than 800m² (albeit that measurement includes the footprint of the dwellings). Thus, a Village Green application is being made in relation to a space which is only c. 50% bigger than immediately adjacent residential gardens.

The Land is, as we understand it, part of a larger quadrilateral of land developed by Wiltshire Council or its predecessor in title (collectively "the Council") in about the 1950's. At that time eight semi-detached houses were constructed on the western and northern boundaries of the Land (the southern boundary being marked by Blackberry Cottage and two other adjoining properties).

The Land was for the use of the tenants then occupying that social housing provided by Council. The land was, as our client understands it, maintained by Council or its predecessor in title for those purposes and the tenants would have made a contribution to the maintenance of the Land which was then undertaken by the Council and is now undertaken by our client (as has been the position since the stock transfer in 1995).

Therefore at all material times the Land was maintained for those purposes by the Council and latterly by our client. For the period when that maintenance was being undertaken by our client they used liveried vans and uniformed individuals to undertake the work. The

annual maintenance cost is estimated to be in the region of £1,000 and involved repeated and regular visits for the purposes of cutting the grass, leaf collection and litter collection. The maintenance included any necessary works to the perimeter path which runs along the northern and part of the western boundary of the Land. It therefore cannot have escaped the attention of anybody familiar with the Land that it was being maintained, not as public open space, but by our client for use in accordance with the properties in the immediate vicinity (which still include two units of accommodation held on short tenancies, the rest having been purchased over time by use of the right to buy).

The Land is, in fact, substantially enclosed. On the southern side it is enclosed by its boundary with Blackberry Cottage. On its western side it is enclosed by Numbers 1 and 2 Bondfields. On the northern side it is enclosed by Numbers 3-6 Bondfields and on the eastern side it is enclosed by chain link fencing supported by concrete posts, and further bollards running adjacent to the garages. Viewing the Land from Church Road (the only potential access point by the public) the obvious impression is of land enclosed for the benefit of Bondfields, which is precisely the purpose to which the Land was put. As the Council will be aware, the use of enclosure in this way is a primary demonstration of the exercise of control of land, manifestly inconsistent with others claiming to use the same land as of right.

It is also worth noting that the stock transfer itself would have received wide publicity requiring as it did a vote of those tenants remaining in social housing at the time. It is unlikely in those circumstances that individuals living in the near vicinity of Bondfields would have remained ignorant of the purposes for which the land was being used for that reason alone.

Accordingly, for all those reasons, the occupiers of the housing units (rather than the general population of the village) had permission to use the land for any normal purpose, and any such use was not "of right".

Moreover, in light of the facts referred to above, to the extent that anyone else was using the site for requisite purposes they were doing so with the implied licence of our client and the use was also permissive.

For those reasons the application must fail.

However, there are a number of further main points which arise on the questionnaires themselves.

1. The questionnaires do not provide sufficient evidence that the required "*significant number of local inhabitants*" have used the Land for the requisite purposes. In particular, it does not demonstrate that a significant number of local inhabitants other than the specific group of individuals expressly permitted to use the land (see above) have done so for the requisite period of time.
2. Using the land for access (for example via the perimeter path) is not within the requisite purposes provided by the Act, nor is using the Land for fetes which may occur once, twice or three times a year. It is clear from a number of the questionnaires that that is the purpose for which those individuals have used the land. For the avoidance of doubt our client does not accept that a fete amounts to the use of the Land for either sport or pastimes.
3. Even a cursory analysis of the questionnaires indicates internal inconsistency within a number of the questionnaires and the fact that a number of those responding have not actually answered the questions asked especially when those questions relate to the use that the *actual responder* has made of the site. Where the responders do reply to those questions more often than not the answer is simply directed towards the infrequent community use of the land for fetes etc, which cannot possibly be sufficient to support the application.
4. It follows from the above that this is precisely the kind of application made not because it has genuine merit, but as a reaction to the planning application made recently in relation to this land. Sadly, the obvious purpose of making the application is simply to attempt to frustrate development proposals for the land.

For the reasons set out above we invite the Council to decide:

1. That it currently has no power to entertain the application due to the operation of s.15C of the Act; and/or
2. That the application is manifestly bad for failing to identify the Land appropriately and should be rejected for that reason; and/or
3. That the application is manifestly not supported by sufficient evidence and should be rejected for that reason.

If the Council decides to continue to entertain the application and, in light of this objection, makes provision for a non-statutory inquiry to take place, we would be grateful for full written reasons for any such decision so that they may be considered with our client.

For the avoidance of doubt, our client contends that in light of this application the Council cannot grant the application as made or at all.

We expect to make any further representations by 31 January 2016. We thank you for your attention to this matter and, should it be required then please do not hesitate to contact us on the details below.

Yours faithfully,



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