

Your Reference: PR01/21691.3/ROBIN
Our Reference: LT/C11/10
Enquiries to: Mrs L Tremble
Direct Dial: (01768) 212249
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Date: 16 November 2018



Town Hall, Penrith, Cumbria CA11 7QF
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By email Patrick.robinson@burges-salmon.com

Burges Salmon
One Glass Wharf
Bristol
BS2 0ZX

Dear Sirs

Judicial Review Pre-Action Protocol Letter Before Claim (“PAPL”)

We acknowledge receipt of your letter 13th November 2018 and would respond to the points raised therein as follows:

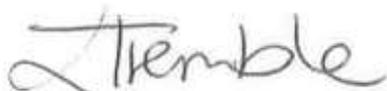
1. In relation to your clients’ standing, you misunderstand the query raised in our letter dated 7th November 2018. The PAPL did not provide any basis on which to reach any conclusion on your clients’ standing. Moreover, given that the proposed claimants are different from the client for whom Mr Simons’ Advice was prepared, there was a distinct lack of clarity as to the identity of any claimants in legal proceedings, should any be commenced. Nonetheless, having considered the matter and your response, we are satisfied that Mr Adrian Hill is likely to have sufficient standing to bring a judicial review claim albeit that we remain of the view that the substantive grounds are unarguable;
2. In relation to our point (b), it remains our position that we should be able to see the instructions which formed the basis of Mr Simons’ Advice, which Advice has been made public and disseminated by KPS. Our concerns about the extent documentation provided to Counsel and the specific questions posed therefore remains unresolved. Should proceedings be issued, it is plainly a matter that we may have to revisit;
3. In relation to your point (b), you misunderstand §21 of the PAPL response. We simply invited your clients to reconsider their position in light of the Council’s substantive response, with particular reference to the wide-ranging request for documentation. Your most recent letter makes your clients’ position clear;
4. You have summarised your clients’ concerns. We do not wish to repeat our substantive response in any detail but reiterate that those concerns are both unfounded as to their substance and are premature. As our response made clear, to the extent that the final Masterplan is used to inform the Local Plan Review in due course, your clients will enjoy full statutory rights to consultation and the independent oversight of a Planning Inspector. At that stage, any deficiencies in the process which led to the production of the Masterplan can fully be considered and addressed. Moreover, the Technical Appraisal set out in some detail the decision taking process that led to the preferred option. Your

clients may not agree with the choice of the preferred option but they cannot argue that it went unexplained. The preceding statements are obviously without prejudice to our general contention that the public engagement exercise on the Masterplan was entirely lawful for the reasons we gave in our 7th November letter;

5. Notwithstanding your concerns, you have referred to the prospect of a 'meaningful, expeditious negotiation on a without prejudice basis'. However, this offer seems to be contingent upon the Council offering some form of undertaking and a 'focussed disclosure exercise'. The Council is mindful of the clear guidance on ADR in §9 to the Pre-Action Protocol on Judicial Review and the overriding objective and would not wish to set its face against a negotiated settlement. However, the basis of such a negotiation is presently unclear. In order for the Council properly to consider this offer, we would wish to know the following:
 - a. Is the offer of ADR contingent upon the Council offering some form of undertaking? If so, would you clients be seeking substantially the same undertakings as set out in your original PAPL? The answers to each of these questions is likely to have an important impact on whether the Council feels that ADR is appropriate or not;
 - b. Would you clients be prepared to meet with senior officers in the Council who will be able to explain the rationale behind the Masterplan and its potential role (if any) in influencing plan-making? We believe that a sensible and respective two-way dialogue should be able to allay many (if not all) of your clients concerns without the need for litigation;
 - c. What do you consider to constitute a 'focussed disclosure exercise'? More particularly, the reference to 'focussed' suggests that you would be seeking less information than that set out in your original PAPL. Please could you clarify both of these points? We would like to know in particular whether you still require our response to your request for information by 22nd November.

Your letter of 13th November seeks a response by 20th November. We have responded expeditiously because we consider it important for all parties to resolve this matter quickly and efficiently. To that end, we are sure that you will be able to respond to the specific queries in §5 above by 20th November so that the Council can make a fully informed and considered decision as to ADR. Moreover, until we fully appreciate the nature of the focussed disclosure exercise, we will not respond in detail to your request for extensive further information in the PAPL since it might involve a disproportionate use of public funds, especially if your clients are now seeking (quite sensibly) to narrow the focus of their search.

Yours faithfully



Lisa Tremble
Assistant Director Legal Services