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Our ref: PR01/21691.3/ROBIN

Your ref:

13 November 2018

Dear Ms Tremble

Re: Judicial Review action protocol: Letter before claim

Thank you for your letter dated 7 November 2018. Your letter starts with two preliminary points which I will address first.

Your point a questions whether our clients have sufficient standing to make a judicial review application. If you are in any doubt about the extent to which our clients, particularly Mr Adrian Hill, have been active in opposition to the Masterplan you can consult the Council's own minutes of its meetings recently and find the references to his attendance and questions. It is not a credible suggestion that the Court would find they have insufficient interest in the Masterplan and its promotion by the Council to be allowed to raise the matters of challenge contained in the pre-action protocol letter.

On your point b, seeking disclosure of the instructions to Mr Zack Simons, we have nothing further to add to what was said already in our letter of 5 November 2018.

Turning then to the substantive points in your letter I can summarise my understanding of your present position to be that: -

- (a) The Council offers no undertaking at all in respect of those sought and describes our requests in any event as "impermissibly broad".
- (b) The Council is offering no disclosure of background information as requested but invites our clients to consider whether disclosure is in any event necessary in light of the points made in your letter of 7 November.

The thrust of the Council's letter dated 7 November is essentially that the Masterplan does not have the status of the statutory development plan and that any influence that it has over the formulation of the development plan is something that would itself be subject to consultation in the future. Accordingly you say that judicial review would be inappropriate at this stage.

Your points do not provide our clients with the reassurance you suggest. Our clients' concerns centre upon:-

- an unreasonably partial consultation exercise the outputs of which, if relied upon to support changes to the development plan, will be a fundamentally unsafe basis on which to derive such support: and
- the manner by which the Council arrived at the Masterplan's favoured option.

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Your letter confirms that the Masterplan is still intended to influence changes to the development plan. Once the Council has settled upon a favoured option there is a far greater likelihood that this option will find its way into the development plan.

If you are willing to engage in meaningful, expeditious negotiation, on a without prejudice basis if the Council so wishes, on the terms of undertakings to meet our clients' concerns and the extent of a focussed disclosure exercise to address the two fundamental concerns set out above, judicial review can be avoided. If so, our clients are willing to make an open offer now that they will bear their own costs of that exercise and their costs to date.

If not, the conclusion has to be is that the pre-action protocol stage has achieved nothing by way of resolution of issues with the Council and that there is no prospect of doing so. Our clients' options are now effectively only to move to judicial review on the grounds set out in the pre-action protocol letter, taking into account the Council's latest position and anything that is said by you in response to this letter.

In the event that proceedings are commenced, our clients' offer to bear their own costs to date will, of course, fall away and the Council will be at risk of their full costs from the outset of this matter.

We ask you have your reply to this letter within 7 days of the date of this letter i.e. by 20 November at 5pm.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick C Robinson'.

Patrick C Robinson
Partner