

City of York Council  
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Attn. Alison Hartley (copy by email)

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Our ref FUL1-001/LF

**URGENT LETTER  
RESPONSE REQUESTED BY 10:00AM TOMORROW  
OR AN URGENT APPLICATION TO THE COURT MAY BE REQUIRED**

25 February 2014

Dear Sirs

**Land at Germany Beck, Fulford  
Discharge of Condition 12 relating to written scheme of archaeological investigation**

Our instructions are that shrub and tree removal works are commencing on the Germany Beck site along the route of the proposed access road prior to the Council's approval of the written scheme of archaeological investigation (condition 12 to the outline consent APP/C2741/V/05/11898897) apparently on the basis this scheme does not apply to this area of the site. This is factually incorrect since the line of the access route is directly associated with Mr Jones' evidence of the line of the Battle of Fulford and is therefore important in archaeological terms. Further, according to Mr Jones, because tree roots are likely to reach to "natural archaeological levels" (ie associated with levels where he has excavated important finds), the ad hoc removal of trees and shrubs without the proper archaeological supervision and application of method statement techniques could lead to irrevocable damage to the archaeological datum associated with the site of the Battle of Fulford.

We request that the Council take immediate steps today to require the developer to stop until there is Council approval of the condition 12 written scheme of investigation. We seek your agreement to this by 5pm today 25 February 2014. We have copied this letter to the developer's solicitors to English Heritage, along with our letter to the Admin Court (copy enclosed) to renew the application in the proceedings Jones v English Heritage CO/1932/13 to an oral hearing following the Order of Mrs Justice Lang refusing permission. We have advised the Court that we may seek to have the renewal hearing listed on an urgent basis for the reason that the works now commencing are likely to lead to irrevocable damage to the Battlefield site. This is necessary until either the developer agrees to stop or the Council requests it do so.

Discharge of Condition 12

In relation to discharge of Condition 12 we also understand that the Council recently rejected the developer's written scheme of archaeological investigation following submissions from Professor Richard Morris on behalf of several archaeologists shortly before Christmas (23

December 2014) that the developer's proposals were unsatisfactory and would risk damaging battlefield archaeology. Professor Morris was on the EH review panel in relation to the decision whether or not to designate the Germany Beck site as the site of the Battle of Fulford. We understand that Professor Morris and others have insisted (quite rightly) that the archaeological investigations must be carried out in a manner suited to a mediaeval battlefield site. It is plain that this must be done before the access road works referred to above commence.

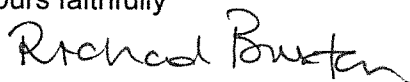
We therefore request that you obtain the planning officer's file relating to the application to discharge condition 12, (Ref: AOD/14/00003) and we request that you provide us with a full and complete copy of all documents submitted in relation to the matter, including Professor Morris' submissions, any notes and memos of discussions etc. between officers, the developer or their archaeologist and other 3<sup>rd</sup> parties including English Heritage. As recently as last Friday 21 February 2014, these documents are being withheld from the public online register. You are specifically requested to do this as an officer of the Court and in relation to your duty of candor in relation to these and the related Jones v English Heritage proceedings. Can you please confirm by return that the Council will obtain these documents for us today and that you will provide these documents to us by no later than 26 February 2014 with a certification that the copy is a complete copy of the file. There may be content in the file that needs to be brought to the Court's attention in relation to the proceedings against the Council (presently before the Court of Appeal) and English Heritage and we need this information urgently.

#### EIA subsequent applications

Underscoring the above is our clients on going concerns that the discharge of substantive conditions relating to archaeology, flooding and surface water discharge should be treated as part of a multi-consent stage process under the EIA regulations, which plainly is not happening. The consequence is that important environmental information related to mitigation of adverse environmental effects is not being made available to the public and the decisions in relation to the discharge of the conditions are being taken without adequate transparency as part of the EIA multi-consent process. This is regrettable and we consider that the Council is not in compliance with the EIA directive and EIA regulations. Can you confirm that from now on the Council will treat the discharge of condition 12 and all other similar pre-commencement conditions in relation to mitigation of environmental effects that informed the original or subsequent ES statements, as EIA development, and on this basis properly consult the public and make documentation available in a fully open and transparent manner. Your cooperation in this regard is appreciated to avoid further litigation against the Council.

We look forward to hearing back from you in relation to the requests set out above by 10:00am tomorrow.

Yours faithfully



Richard Buxton

cc. Persimmon Homes (Attn James Garbett)  
English Heritage (Attn Trevor Griffiths - Sharpe Pritchard Ref: TG/sat/4084/73)