

FULFORD PARISH COUNCIL

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Hannah Blackburn
Development Management Officer
City of York Council
West Offices
Station Rise
York YO1 6GA

30th May 2014

Dear Hannah,

Re: AOD/14/00120 | Details required by Conditions 12 (scheme of archaeological work), and 19 (site investigation) (01/01315/OUT) | Germany Beck Site East Of Fordlands Road York

Further to our letter of 14th May, Fulford Parish Council is writing with additional comments on the application and to request that the Council's recent refusal to allow it to be determined by the Planning Committee be reconsidered.

Call-in request

On 19th May 2014, Councillor Aspden's request that the application be called in was refused on the basis that there had been no objections by consultees and that the Council would not be requiring any further information in respect of the previous environmental statement. We ask that this decision be reconsidered in light of the substantive objections now submitted, but most importantly in consideration of the value of Fulford's historic environment to the local and wider community as well as the national importance of the Battle of Fulford.

Designation of the Battle of Fulford – Jones v English Heritage

We request that any decision on this application be deferred until the outcome of the High Court hearing held on 22nd May 2014 is announced. In the event that the decision not to designate is overturned, the implications for the development and the archaeological investigation would be immense.

EIA Regulations

We repeat our previous comments regarding the EIA Regulations as they apply to 'subsequent' applications and the requirements for the submission of environmental information.

We refer to the Council's letter to Richard Buxton dated 4th March 2014, which states: *"The Council considers that the applications for approval of the conditions which are currently before it (which are 'subsequent applications in terms of the EIA Regulations 2011) do contain "other substantive information relating to the environmental statement" and it will therefore be publicising this material accordingly"*.

Since the new information relates to the original Environmental Statement (and updates), it follows that the applicant should have submitted the 'other' or 'further' information in the form of an update to the ES with an accompanying Non-Technical Summary. This is because it contains "*Information for inclusion in environmental statements*" as described in Schedule 4 (Part 2) of the Regulations:

(2) "*A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects*" and (3) "*The data required to identify and assess the main effects which the development is likely to have on the environment*".

In accordance with Regulation 22, 'Further information' is requested when the applicant has submitted an environmental statement and, the receiving authority:

"...if of the opinion that that the statement should contain additional information in order to be an environmental statement, shall notify the applicant.....". Regulation 22 – (1).

It is therefore our view that the further information should have been submitted as an update to the ES so that it integrates with and relates to the original ES, allowing the reader to properly understand the context of the details provided. The absence of a Non-Technical Summary in this regard is particularly regrettable and could lead to an unlawful decision.

Condition 12 – WSI Revision F

Consultation: Following comments made by English Heritage on Version E of the WSI, the applicant submitted a revised WSI (Version F). In these circumstances, we consider it important that the Council should re-consult English Heritage in order to discover if the revisions fully address the specific concerns that were raised and also to obtain the further views of EH in relation to the objections of FPC and Chas Jones.

Internal memo: We note that John Oxley states that it is his opinion that "*Version F of the WSI addresses the requirements of Condition 12 and that it should be approved*" (Memo dated 22 May 2014). Mr Oxley acknowledges that the consultation process has "*raised a number of issues*" but he then goes on to state: "*I do not intend to address each of these individual comments and substantial differences of opinion that have been expressed*". If the City Archaeologist fails to address the substantive comments and objections of Fulford Parish Council (a statutory consultee), the process of evaluating the environmental information would be seen as seriously flawed (responses from the consultees and the public are defined as 'environmental information' in the Regulations, which the Council has a duty to consider before it may lawfully approve the application [Reg 3 [4]).

Paragraph 3 of the memo states:

"A WSI is a technical document which is written for a specific purpose between specific parties. It is not written for distribution to a wider non-archaeological audience".

This statement is an affront to the Fulford community, several of whom have made comment on the WSI, despite the lack of any site notices to advertise the submission of further environmental information. To imply that the WSI is somehow beyond the comprehension of the public breaches the EIA Directive, which provides for “*early and effective*” public engagement at every stage of the EIA consent process.

Our letter of 14th May 2014 describes how the WSI lacks transparency and clarity and that the drawings are hopelessly inadequate for a scheme of this importance. It also contains factual errors, omissions, misleading statements and irrelevant material and no reasonable planning authority would approve such a flawed document without any attempt to answer valid criticisms from a statutory consultee and other interested parties.

We trust you will take these additional comments into account and that the Council will reconsider its position regarding Councillor Aspden’s ‘call in’ request and allow the application to be determined by the Planning Committee.

Yours sincerely

A handwritten signature in black ink that reads "J. M. Fletcher". The signature is written in a cursive style. Below the signature is a long, thin horizontal line that tapers to a point on the right side.

Jeanne Fletcher – Clerk to Fulford Parish Council
Cc: Michael Slater, Gareth Arnold,