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Brandon Lewis MP,
Secretary of State for Communities and Local Govt.
National Planning Casework Unit
5 St Philips Place
Birmingham
B3 2 PW

15th April 2016

Dear Minister,

Re: 'Outline application for residential development for approx 700 dwellings, public open space & community facilities including local shops with assoc. footpaths, cycleways, roads, engineering works & landscaping (means of access submitted) Germany Beck Site East Of Fordlands Road Fulford York' – Ref: 01/01315/OUT

Request for revocation of outline permission granted under Appeal Ref: APP/C2741/B/05/1189897 on 9 May 2007.

1. Fulford Parish Council (FPC) is writing to you in connection with the above referenced outline planning consent granted by the (then) Secretary of State in a decision letter dated 9 May 2007, in respect of land at Germany Beck. Through this letter, we respectfully request that you consider using your powers under Section 100 of the Planning Act to revoke this consent because the reasons for it having been granted have now been entirely superseded and not fulfilled and because significant material changes in the circumstances of the site and the nature of the proposed plans are likely to result in environmental damage of more than local significance. We believe that the matters raised below represent the exceptional circumstances that are required to justify the revocation of this planning consent.

Background

2. The outline planning application was first submitted in April 2001 and consent was granted in May 2007 following a public inquiry into two separate appeal sites, one of which was the Germany Beck site.
3. On 10th April 2012, a request on behalf of FPC was made to City of York Council (CYC) to revoke the outline permission, citing seven separate grounds. A CYC Officer under

delegated powers refused the request on 21st June 2013.

4. An application for all reserved matters was approved in May 2013 [12/00384/REMM] and the details required by pre-commencement conditions were approved between August 2014 and April 2015, [ref: AOD/14/00120, AOD14/00356, AOD/14/00357, AOD/14/00417, AOD/14/00419, AOD/15/00039]
5. Between 20th and 25th April 2015, Persimmon Homes (the Developer) appears to have 'commenced' the development by constructing a short stretch of the access slip road, just two weeks before the permission would have expired. Since then no further construction work has been undertaken.

Grounds for revocation.

6. It is contended that the Inspector and Secretary of State were influenced by misleading evidence submitted during the 2006 inquiry and also that the environmental conditions at the site have significantly changed in the intervening years, so that the development, if implemented would result in the following impacts:

a) Unacceptable flood risk to existing local residents, the wider public and future occupants of the proposed houses;

b) Damage to the historic environment and nationally significant heritage assets;

c) Damage to the historic character of York and

d) Harm to ecology and protected species.

IMPACT A) Unacceptable flood risk to existing local residents, the wider public and future occupants of the proposed houses.

The additional A19 flood defences:

7. Plans for a flood defence scheme at the A19 have recently been agreed through a Section 278 Agreement between CYC and the Developer and signed in October 2015, but only provided to FPC on 15 March 2016.
8. The defence scheme did not form part of the outline or reserved matters applications (although the broad principles were touched upon during the inquiry) and the scheme does not benefit from planning permission, has not been subject to any public consultation and has not been assessed for its efficacy or safety in any flood risk assessment or environmental statement.

9. The projected defences are necessary for the access junction to function as intended and a planning obligation in the S106 agreement provides for a financial contribution towards the additional defences. Without the additional defences, the single access junction would be subject to closure during significant flood events
10. The defences will be installed close to residential properties but local residents have not been informed of the proposals at all and it has not been demonstrated through a flood risk assessment whether the scheme will be effective over the lifetime of the development nor what the consequences for local residents would be in the event of failure of the defences.
11. Since 2006 the Environment Agency has further updated its flood zone maps and recent topographical surveys have been carried out on the site. As a consequence, the 1:100 year flood level has been raised from 9.81m AOD to 10.06m AOD. However, the level of the access road and junction will be set at a level of 9.81m, because the Developer will not increase the level to comply with the current 1:100 year flood level.
12. A short length of the access slip road has in fact been constructed on the site but in December 2015 it became covered in floodwater in a flood event that was significantly below the level of 9.81m AOD.

Foul water pumping station:

13. The Inspector and Secretary of State's decision was also influenced by the undertaking of the Developer to provide a foul water pumping station in order to alleviate problems of sewage surcharging from Tunnel Drain into nearby properties:

IR 24.114 – "Several improvements would accrue from the scheme. Quite apart from increased flood storage provision and the implementation of planned flood defences, it is proposed to install a pumped system of foul drainage. The latter would prevent the sort of surcharging of the sewerage system that has been evident in the past on the Fordlands estate".

14. A Foul water pumping station is included in the outline proposal and is drawn on the Masterplan. It is also described in the Sept 2012 ES Update:

"If the development proceeds, then the foul water pumping station will be provided and it will be of benefit to those owners of properties on Fordlands Road, Cherrywood Crescent (and the development site) as it will prevent foul

matter from emerging from the existing drainage associated with those properties. This will remove a potential health hazard". (2012 ES 8.50).

15. However, during 2013, at reserved matters stage, it became clear that the pumping station had been abandoned without any explanation and without any assessment of the potential consequences for nearby residents.

Risk to future occupants:

16. There also exists an unacceptable risk to future occupants of the new houses located in flood zones 2 and 3. This is due in part to the increasing frequency and severity of flooding at Germany Beck but mainly due to the failure of CYC to acknowledge that houses were located in flood zone 3 and the continued reliance on the outdated and inadequate flood risk assessment of 2004 that significantly misrepresents the extent of flood zones existing at that time. The outline consent and reserved matters approval were based on the assumption that the whole of the housing site is located in Flood Zone 1 as confirmed in the Inspector's Report (IR 24.109) and the Secretary of State's Decision letter (§37). If the flood zones had been properly delineated in the 2004 FRA, it would have been quite evident even then, that parts of the housing site included areas within zones 2 and 3 as the Environment Agency maps would have confirmed.
17. A number of the approved houses are in fact located in zone 3, where flood water has been observed (in 2000, 2012 and 2015) to flow over the north bank of Germany Beck and inundate the zone 3 areas as indicated on the EA maps. The Council consistently refused to accept that this was the case in approving the housing layout at reserved matters stage and indeed materially misled the planning committee when the Flood Risk Officer explicitly denied it.
18. The Developer has never produced a plan showing the relationship of the houses with flood zones 2 and 3 and there is no flood resilience nor identified escape routes nor any other measures built into the approved house designs, contrary to the NPPF policies on flood risk. Furthermore, the site has never passed the sequential or exceptions tests as required by NPPF Policies.
19. During the discharge of the flood storage compensation condition (no 25), plans were approved indicating that the ground levels and finished floor levels of the houses in flood zone 3 areas would be raised to a higher level than those shown on the plans approved at reserved matters. Despite repeated requests from the parish council, no further flood risk assessment has been produced and the Environmental Statement has not been updated to

reflect the changes. [The 2004 FRA was produced in early 2004, long before the housing layout had been decided].

20. Taking all the above into consideration, together with the lack of any recent flood risk assessment for the additional defence scheme on a major arterial route into the City, the residual flood risk at this site resulting from the development cannot be considered to be safe or sustainable and fails to comply with national or local planning policy.

IMPACT B) Damage to the historic environment and nationally significant heritage assets.

The Battle of Fulford:

21. It is generally accepted that the Battle of Fulford was fought on the development site and whilst the battle site remains unregistered, English Heritage has made it clear that they consider it to be the most likely site. In fact, in 2012, English Heritage was advised by its Battlefield Panel that, in view of the evidence and inherent military probability, the site should be registered. The minutes of the Panel meeting confirm this:

6.3: "Having reviewed the case put forward, EH had concluded that, on the balance of probability, Germany Beck was indeed the location of the Battle of Fulford and a reasonable boundary could be identified focusing on the line of the Germany Beck. Members agreed that the evidence was as strong as it was for example in determining the location of the Battle of Maldon".

6.4: "The Panel: a) supported EH's view that, on the balance of probability, Germany Beck was the location of the Battle of Fulford; and b) advised that, notwithstanding the impending development, the site should be added to the Battlefields Register".

22. However, English Heritage decided not to register the site and that decision was apparently based upon the planning situation as evidenced in the minutes below:

5.2 "In relation to the forthcoming Selection Guide, it is clear that the Battle of Fulford is of sufficient historical importance for inclusion in the Register. On the basis of probability, Germany Beck can be identified as the location of the Battle of Fulford and on the basis of Jones' interpretation, a reasonable boundary could be identified focusing on the line of the Germany Beck. It is worth noting that the combination of evidence and reasoning here differs little from that used to determine the location of the registered Battle of Maldon.

5.3 Inclusion in the Register is not obligatory. To include Fulford in the Register

at this stage would raise the temperature of discussions regarding the detailed planning application. Following forthcoming development of the site, the site would be very unlikely to merit inclusion in the Register.

5.4 Given the planning history of this site, EH is currently considering responding to the request to Register with advice which recognises that Germany Beck is likely to be the location of the Battle, but that, given the planning situation, refrains from adding the site to the Register". [Battlefield Panel Report for meeting on 2 February 2012]

23. It must be noted that the City Archaeologist has always maintained his view that there is insufficient evidence to locate the battle site at Germany Beck and indeed he sent a formal response to English Heritage's consultation, requesting that the site should not be registered, without informing or consulting the people of Fulford or York. The developer's archaeologists similarly argued (and successfully persuaded the Inspector) that the battle was probably fought elsewhere.

24. There is a considerable body of documentary for Fulford and the archaeological evidence is greater than for any other battlefield of the 11th Century, yet this remarkable heritage asset is to be destroyed if the development proceeds and English Heritage has confirmed that following development the site would unlikely to merit registration. When taking decisions on this development the Council has failed to have regard to the importance of the battle site and has failed to consider the wider social, cultural and economic benefits that the asset would bring to the City.

Conservation Area

25. Since the appeal decision, a review of the Fulford Village Conservation Area has been undertaken, and the area has been extended so as to include the area of the site within which the access road and junction with the A19 is to be built. The direct impact on the Fulford Village Conservation Area is an important new material consideration that has received no review or evaluation whatsoever since its designation either from CYC or the Developer in the Environmental Statements.

26. However, the Council's Conservation Officer highlighted the impact of the access road in an internal memo relating to the reserved matters application dated 28 November 2012:

"In addition we notice that the access road appears to be highly damaging to the existing environment. Although the principle of the new road was agreed

before the conservation area boundary was extended, we do expect to have a degree of control of its detailed layout and design to reduce its impact as far as possible on important characteristics of the entrance into the village”.

It is relevant to note that the Council’s evidence to the Inquiry failed to assess the impact of the new junction on the (then) setting of the conservation area and merely concluded overall that: “no harm would be caused to the setting of the conservation area”, (Y3 12.15) although the Inspector did acknowledge that the setting would be “impaired”. [IR 24.76]

27. The S278 plans are to be implemented at the historic entrance to Fulford at the old fording area, the very area from which the village derives its name. Furthermore, one of the reasons for including the area as an extension to the conservation area was because of its association with the battle site.
- 28. The imminent destruction of a nationally significant battle site and CYC’s failure to undertake its statutory duty, under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, together with its failure to comply with policy in relation to the historic built environment under the NPPF §§ 126-141 are further potent reasons for the permission being revoked.**

IMPACT C) Damage to the historic character of York.

29. Since the outline consent was granted, it has become evident that the new A19 junction and the single access road into the development will cause irreparable damage to the environment and to the historic character of York, the preservation of which is the primary purpose of the green belt encircling the City. Furthermore, we contend that the Inquiry Inspector and the Secretary of State were materially misled by inquiry evidence produced by CYC.
30. It was claimed that the development site did not fulfill any green belt purposes and the Secretary of State also accepted at paragraph 18 that the proposals would cause no additional harm to the green belt. CYC’s 2003 ‘Approach to the Green Belt Appraisal’ (GBA) was cited at the inquiry in support of this contention and it is clear that the Inspector relied on the GBA evidence as proof that the site did not contribute to the historic setting of York and that this evidence was material to his decision.

IR 24.16: ‘More importantly, an assessment of the quality and characteristics of the spaces around York that contribute to the special character of the City, and hence to the primary purpose of the Green Belt, have already been undertaken in the context of the Green Belt Appraisal. Neither application

site would encroach into any space identified as contributing to that Green Belt purpose’.

IR 24.72: ‘Neither site forms part of the historic strays and green wedges crucial to the character of York, as the “Green Belt Appraisal” confirms. Neither would either site fulfil any other Green Belt purpose’.

31. However, it is a matter of fact that the Germany Beck site was specifically excluded from any assessment in the GBA and was drawn as ‘white land’ in the GBA maps because, in the opinion of CYC, the site had already been effectively removed from the green belt due to its draft allocation. Of course the Secretary of State disagreed with this approach and her Decision Letter rightly states that the site should be regarded as lying within the green belt despite its draft allocation [§17].

32. Inquiry evidence was presented in relation to the exclusion of the Fulford site from the GBA and the relevance of the designation of Fulford’s conservation area in 1998 but the Inspector, having been misled by CYC’s submissions, misconstrued the evidence:

IR 24.70: “In relation to the Germany Beck scheme, there are claims that a recent ‘appraisal’ of the York Green Belt now includes areas that contribute to the setting of villages like Fulford, “whose traditional form, character and relationship with the City and surrounding agricultural landscape is of historic value”. It is a matter of fact that the “appraisal” does not refer to Fulford in that way”.

33. If the Inspector and Secretary of State had been aware that the Germany Beck site had been expressly omitted from consideration in the GBA, their conclusions in relation to harm (and additional harm) to the green belt may have been materially different.

34. Since this appeal was granted and as part of the (then) Core Strategy process, following a submission by Fulford Parish Council in 2010, the Council has reassessed the 2003 Green Belt Appraisal and the function performed by the Green Belt in this area. The Council has concluded that part of the appeal site and the immediately adjacent land (from which the appeal site is incapable of sensible distinction) forms part of a green wedge and fulfils the primary purpose of preserving the historic character and setting of the City of York. (LDF Technical Paper 3 Historic Character and Setting, City of York Council January 2011). The conclusion of the Secretary of State, at §18 of the decision letter, that the land did not fulfil that purpose is therefore no longer sustainable.

35. The omission of the Germany Beck site from any consideration in the GBA and the consequent failure to identify the actual harm to the Green Belt is a further reason that the rationale behind granting permission can no longer be justified.

Very Special Circumstances;

36. Paragraph 21 of the Secretary of State's decision justified the release of the site through very special circumstances:

"For the reasons given in paragraphs 22-25 below, she agrees with the Inspector in IR24.69 that the housing requirement in York, in terms of total numbers and type and mix, and the lack of sequentially preferable sites, constitute very special circumstances of sufficient weight to clearly outweigh the identified harm to the Green Belt".

37. In fact, this site has made no contribution to housing supply whatsoever and will not do so for at least another year to eighteen months even if construction of the access road were to start immediately. It is also the case that an application to extend the validity of the outline application remains extant, as well as a duplicate reserved matters application that the developer has (in 2015) indicated a desire to bring forward.

38. Minutes and correspondence from meetings held in 2011 between the Developer and CYC reveal that the master plan arrangement, the housing mix and the S106 obligations were no longer considered appropriate by the developer:

"With regard to the master plan amendments it was acknowledged that the housing mix proposed in the original master plan is no longer relevant to market circumstances. Therefore the proposed apartments at approximately 100 in number will be reduced or abandoned and replaced by family housing. Furthermore, the developers considered that areas of open space could be reduced and there are therefore inevitable variations in numbers of units to be delivered, density etc". (Meeting minutes 11 August 2011)

"The Developers confirmed that their priority is to secure the validity of the planning permission over an appropriate period beyond May 2012. Also, and as previously discussed with CYC, there will be a need to review some of the conditions as attached to the current planning permission and the Section 106 Agreement both as to general items and the delivery of affordable housing, in accordance with current economic circumstances.

Also on account of current economic circumstances the content of the master plan as included in the outline planning permission will have to be reviewed. Examples of the need to review are the shift in market terms away from apartments of which notionally 15% are included in the current outline". [Meeting minutes 20 September 2011]

39. In a letter dated 25 October 2011, LDP Planning (for the Developer) wrote to CYC in the following terms:

"Following the approval of reserved matters there would be numerous options available to address other areas of concern such as making changes to the original master plan design, amending the phasing, seeking the removal or variation of conditions and amending the previous S106 Agreement both in terms of quantum and timing including submitting an extension application at that time. Additionally, the S106 can be appealed after five years if necessary". (Letter LDP Planning to CYC 25 October 2011)

Sequentially preferable sites:

40. The Germany Beck site has never been assessed in the Local Plan process (which seeks to exclude sites with primary environmental constraints from allocation) and the site has never been allocated in any adopted plan. Since 2006, many additional sites have come forward for allocation that would score higher in any sequential test and it is evident that Germany Beck would now fail the primary constraints of historic character, flooding and nature conservation/ecology and would not be considered suitable for allocation today.

41. The development as envisaged ten years ago is clearly no longer appropriate and the very special circumstances relied upon for the grant of permission are no longer capable of justification. Furthermore, considering that the Appeal was allowed on the basis of fully contributing to York's housing supply up to 2016 at the latest, the whole rationale for the decision has been fatally undermined.

IMPACT D) Harm to ecology and protected species

Bats:

42. Inquiry evidence was provided by local residents regarding the bat populations present on the site but the evidence was ignored and the developer did not undertake any bat surveys whatsoever on any part of the site despite the development being classed as a 'Major Infrastructure Project' where bat surveys should be carried out as a matter of course (as

confirmed by Natural England's Standing Advice and the Bat Conservation Trust Guidelines).

43. It is relevant that the Secretary of State failed to confirm in her Decision that she was satisfied that protected species had been considered.
44. In June 2012, a bat roost was confirmed on the site of a care home proposed for demolition, which lies directly adjacent to where the raised access road will pass through the habitat used by the bats to reach Germany Beck. The Developer was instructed to undertake surveys and submitted some very limited survey work during 2012. In early 2013, surveys commissioned by FPC confirmed significant populations of bats and a major commuting and foraging route for bats stretching from the River Ouse, across the A19 along the Germany Beck corridor. FPC's consultant also severely criticised the Developer's survey work as being flawed in its methodology, survey work and conclusions.
45. Access was not a reserved matter, but nevertheless the Council imposed a condition on the reserved matters application requiring mitigation in the form of hop-overs to be provided to assist bats in crossing the access road and an inspection of all trees on the site prior to any works. The major crossing point at the A19 will inevitably be severely impacted by the road construction and loss of trees and vegetation whatever mitigation is put in place but the derisory mitigation actually proposed in a field to the east will be hopelessly ineffective.

Water voles;

46. Germany Beck has long been known to support water voles but the cursory survey carried out by the developer's ecologist in 2011 was accepted by CYC as evidence that no water voles were present. At the reserved matters committee meeting on 25 April 2013, a speaker informed the planning committee that he had seen water voles in the beck that very morning as he had similarly observed on many previous occasions.
47. In May 2015, after further reports of sightings from members of the public, the Council's newly appointed ecologist visited the site and confirmed that water voles were indeed present along Germany Beck. The developer was instructed to obtain a licence from Natural England before any works in the vicinity of the beck could be commenced. The developer applied for a licence in August 2015 and we understand that it was granted in March 2016. Works to clear voles from the beck commenced on 11 April, resulting in additional hedge removal not previously identified in any Environmental Statement.
48. In addition, the updated ES Air Quality Chapter failed to take account of the impact of the A19 works on ecological receptors, finding that there were none:

6.3.1: "Ecological receptors, within 100 m of the works, also need to be identified. An ecological receptor refers to any sensitive habitat affected by dust soiling and includes locations with a statutory designation e.g. Sites of Special Scientific Interest (SSSI) and Special Areas of conservation (SAC). There are no such ecological receptors requiring consideration".

6.9.1: "The nearest ecological receptor are Fulford Ings SSSI, located approximately 350 m from the proposed site..." (Chapter 6 2012 ES)

49. In fact, the SSSI is immediately adjacent to the A19 and the flood walls are proposed within or immediately on the boundary of the SSSI. The above statements are highly misleading and provide further evidence that by ignoring the presence of protected species and other ecological receptors, the (EIA) planning process has been critically undermined.

50. The impact of this development on the use of the site by these two protected species was not considered at all by either the Inspector or the Secretary of State. The prejudice and disturbance to protected species and their habitat is clearly an important material consideration, which was not taken into account at the time when consent was granted and is a further reason to revoke the consent.

Additional comments;

Air Quality:

51. Since the appeal decision was made, the A19 at Fulford has been declared an Air Quality Management Area and requires an Air Quality Action Plan. In 2012, the Air Quality chapter of the Environmental Statement was updated and concluded that 'slight adverse' or 'negligible' impacts would arise. However, the assessment was undertaken for a base year of 2010 and 2023, (the first year that the site would be fully operational). In addition, an intermediate year was assessed, 2017, which assumed that a third of the development would be constructed and therefore a third of the traffic was modeled. [2012 ES Non-Technical Summary 6.4]. This modeling can no longer be relied upon.

52. The inclusion of part of the site within an Air Quality Management Area is a further, highly significant, new material consideration that has arisen since the grant of outline planning permission. The impact on human health and ecology that would occur were the planning permission to be implemented is a further important reason to revoke the consent.

Conclusions:

53. For each and all of these reasons, we ask that the consent be considered for revocation and that a public inquiry be called to investigate the issues raised. Fulford Parish Council believes that the decision taken in 2007 was grossly wrong and that its implementation would not be in the public interest.

54. It is important to appreciate that many of the matters which have been set out above bear upon the defective environmental information which was provided with the application, and relied upon in the appeal decision; the changes in that environmental information are critical to the assessment of the suitability of the site and it is crucial that the damaging impact of failing to revoke this EIA development is considered.

In addition to the revocation request, Fulford Parish Council will request, under separate correspondence, that an EIA Screening Direction be issued in respect of the access road and flood defence works at the A19.

The documents that we consider relevant and referred to in this letter are listed below and are being provided through a Dropbox file, but we would be pleased to provide any additional information that may be required.

Thank you for your consideration of this matter.

Yours sincerely

Karin De Vries

Chair of Fulford Parish Council

Copied to:

Mike Slater (CYC)

Simon Usher (Persimmon Homes)

Robin McGinn (Persimmon Homes)

Julian Sturdy MP

Documents – Dropbox Link:

<https://www.dropbox.com/sh/ciojptonev5bn7s/AAC7zvtZh7lha6gkvPWrVu9na?dl=0>

Secretary of State Decision Letter

Inspector's Report

2004 Flood Risk Assessment

FPC Revocation Request 10 April 2010

City of York Council Decision and Report on revocation request – May/June 2013

City of York Council's 'Approach to the Green Belt Appraisal' - January 2003

FPC Submission – (York Core Strategy) - June 2010

Technical Paper 3 Historic Character and Setting, City of York Council - January 2011

Fulford Village Conservation Area Appraisal – 2008

S278 Agreement

S278 Plans

English Heritage Battlefield Panel Minutes - 2 February 2012

English Heritage Report for Battlefield Panel meeting - 2 February 2012

Minutes of meeting between City of York Council and Persimmon Homes – 20 September 2011

Letter from Persimmon Homes to City of York Council – 25 October 2011

City of York Green Belt Appraisal 2003

Green Belt Appraisal Maps North and South

A19 Photographs