

19B Victoria Street
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

www.richardbuxton.co.uk
law@richardbuxton.co.uk

City of York Council
Directorate of City Strategy
9, St Leonard's Place
York YO1 7ET

Attn Michael Slater
(Copy by email to michael.slater@york.gov.uk)

Our ref FUL001-1/LF

10 April 2012

Dear Sirs

Land at Germany Beck, Fulford
Revocation of outline permission APP/C2741/B/05/1189897 granted 9 May 2007

1. We act for Fulford Parish Council in connection with the above-referenced outline permission, granted by the Secretary of State in a decision letter dated 9 May 2007, in respect of land at Germany Beck, East of Fordlands Road, Fulford, York. Through this letter, we are formally requesting that the Council revoke the above stated planning consent on the basis that it is expedient to do so. It should be borne in mind that the reasons for it having been granted have been entirely superseded and not fulfilled, and that there have been extensive and significant material changes in the circumstances of the site since the appeal was allowed.
2. The Council will be aware that the power to revoke planning permission is contained in Section 97 of the Town and Country Planning Act, which provides as follows:
 - "97(1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.
 - (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations."
3. As you will be aware, the planning consent granted on appeal has not been implemented, (and the applicant has also now indicated its intent to seek an extension of time for implementation), therefore the power to revoke remains entirely at large. For the reasons set out below, the Council should exercise their power in order to revoke this consent; our clients formally request that this power is deployed.
4. We attach a copy of the Inspector's Report and the Secretary of State's decision letter in relation to the appeal with the electronic copy of this letter. It will be apparent that, entirely correctly, the site was approached as being in the Green Belt and was

R.M. Buxton
MA (Cantab) MES (Yale) Solicitor - Advocate

Susan Ring
LLM Env (London) Solicitor - Advocate

Paul Stookes
PhD MSc LLB Solicitor - Advocate

Associate: **Andrew Kelton**
BA (Cantab) MA (UBC Canada)

Associate: **Adrienne Copithorne**
BA (Cantab) MA (UC Berkeley) Solicitor - Advocate

required to sit the tests for inappropriate development contained in PPG2 and the relevant policies of the Development Plan. The following matters clearly justify the exercise of the Council's power.

5. Firstly, paragraph 20 of the Secretary of State's decision includes, as part of the very special circumstances justifying the release of the site for development, the fact that there was "the urgent need to release the Germany Beck site now". In fact, as set out above, this site has made no contribution to housing supply and has not fulfilled any urgent need that could justify its release from the Green Belt. The Germany Beck site has been dormant with no progress on the reserved matters or discharge of conditions for the past five years, until the recent lodging of the reserved matters application near the end of the five year period. Despite this application now being made at the end of the five year period it is understood that an extension of time application is being applied for. In such circumstances the entire rationale for treating its development as a very special circumstance has therefore been fundamentally undermined and the purpose of granting consent has not been fulfilled. The harm that the development would cause to the Green Belt is no longer capable of justification and the principle relied upon for the grant of permission has been undermined.
6. Secondly, and in particular in relation to harm to the Green Belt, since this appeal was granted and as part of the Core Strategy process, following the 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) 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 paragraph 18 of the decision letter, that the land did not fulfil that purpose is therefore no longer sustainable. This additional harm to the Green Belt is a further reason that the rationale behind granting permission has been completely superseded and can no longer be justified.
7. Thirdly, since the appeal decision, it has become apparent that the appeal site provides habitat and roosting opportunities for bats. In particular, significant populations of bats are present in the area of the new access road and junction, the details of which are not reserved. The impact of this road and junction on the use of the site by this 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 gives rise to duties under the Habitats Directive under Article 12 (see Morge (FC) v Hampshire County Council [2011] UKSC 2).
8. Fourthly, since the appeal decision was made, the A19 at Fulford has been declared an Air Quality Management Area and an Air Quality Action Plan is being prepared. As a result, no further emissions in the road corridor can be tolerated on the basis of human health. The exacerbation of the existing air quality flowing from the additional traffic loaded onto that road link is a further, highly significant, new material consideration that has arisen since the grant of planning permission. The impact on human health which would occur were the planning permission to be implemented is a further important material reason why the Council's power to revoke should be used. Indeed NPPF §124 requires the Council to consider if the development is consistent with the local Air Quality Action Plan before consenting to further development within AQMAs.

9. Fifthly, since the appeal decision was made, further important new evidence has emerged in relation to the significance of the site as regards the Battle of Fulford. This new evidence has dispelled the uncertainty relied upon by the Inspector as to whether or not the appeal site was the site of this battle. Such evidence has concluded that it is clear that the appeal site does form part of the field of engagement. An application to register the site as a historic battlefield site is pending. Under the NPPF the Council must have regard to the importance of a heritage asset when taking decisions on a development site, which includes or has the potential to include heritage assets with archaeological interest (NPPF §128).
10. Sixthly, since the appeal decision was reached, 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 contemplated. The direct impact on the Fulford Village Conservation Area is a further and important new material consideration. The need to address the Council's statutory duty, under Section 72 of the Planning (Listed Buildings etc) Act 1990, together with policy in relation to the historic built environment under the NPPF §§ 126-141 are further potent reasons for the permission being revoked.
11. Seventhly, the access junction and access road to the site lie within the flood plain. There have been significant material changes to national policy in relation to flood risk since the appeal was determined, and the location of the access road within the functional flood plain is no longer acceptable in relation to up-to-date national planning policy advice unless both the Sequential and Exception Tests have been passed. See NPPF §§ 100-103 and the accompanying Technical Guidance.
12. For each and all of these reasons it is now appropriate, applying the test contained in Section 97 of the 1990 Act, for the Council to revoke the planning permission; we look forward to hearing from the Council that they have resolved to take that decision. It is important to appreciate that many of the matters which have been set out above bear upon the environmental information which was provided with the application, and relied upon in the appeal decision; the changes in that environmental information are critical in the assessment of the suitability of the site. It is critical for the Council to have considered the full impact of failing to revoke this development, which was concluded to be a development requiring an Environmental Statement, before reaching any decision in respect of revoking planning permission.
13. We have also instructed leading counsel Ian Dove QC in relation to this matter.

We look forward to your response.

Yours faithfully



Richard Buxton

cc Persimmon Homes (Attn A Hopwood) by email only
alan.hopwood@persimmonhomes.com
Also copied to Derek Gould by email only derek.gould@york.gov.uk
And Sally Cawthorn by email only sally.cawthorn@york.gov.uk