

APPENDIX I	Abington Consulting Engineers Initial conclusions and letter to LPA concerning Sequential Test submitted by Applicant.
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APPENDIX I

ABINGTON

CONSULTING ENGINEERS

CHARTERED CIVIL & STRUCTURAL ENGINEERS

Civil & Structural Engineering
Highways & Transportation
Flood Risk & Drainage
Project Management
Expert Witness

15th September 2017

Noreen Shardlow
Watermead Parish Council
11 Ayleswater
Watermead
Aylesbury
Bucks
HP19 0FB

Dear Noreen

Re: Aylesbury Crematorium (Planning Ref. 14/01575/APP)

I refer to your instruction for me to investigate Flood Risk issues relating to the above planning application.

I have been working as a Civil Engineering consultant for over 30 years and much of my expertise relates to Flood Risk and Highway planning. My considerable experience has led to my appointment as an expert witness on such matters at many public enquiries. Since 1999 I have been running my own engineering consultancy practice with the majority of my clients being in the development industry. During the course of my career I have witnessed many planning applications refused on the grounds of failing Flood Risk policy and I have set out below why this application should be treated in the same way.

Paragraphs 100 to 104 in the National Planning Policy Framework (NPPF) aim to deal with Flood Risk. This includes the application of the Sequential Test which is designed to steer new development to areas with the lowest probability of flooding. The Sequential Test is applied at strategic and site specific levels. Paragraph 100 lays the responsibility of applying the Sequential Test at the door of the Local Planning Authority (LPA), stating:

'Local Plans should apply a sequential, risk based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:

- *Applying the Sequential Test*
- *If necessary, applying the Exception Test'*

I gather from your knowledge of the history of this application, that there has been some dispute over who should be carrying out the Sequential Test. Paragraph 100 unequivocally states that this is the responsibility of the LPA and not the Applicant or their consultants. If the LPA are short on expertise on this matter, then the Environment Agency should be able to advise them accordingly.

In my experience, consultants often present their own assessment of the Sequential Test for the LPA to consider. However, this does not absolve the LPA from auditing these assessments and making their own judgement on the validity of their conclusions. For this planning application I see that the Applicant's consultant has prepared a document entitled 'Flood Risk Sequential Test and Exception Test'. A large proportion of the document focusses on the strategic availability of alternative sites. I cannot comment on the validity of the sites chosen, but the assessment generally only considers flood risk rather than wider planning considerations so it is a bit one dimensional in my opinion. Furthermore, very little effort has been made to explore how flood risk can be dealt with on these sites other than the one promoted by the Applicant.

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Abington Consulting LLP trading as Abington Consulting Engineers – Company Registration Number OC411451

Notwithstanding whether the Aylesbury Crematorium site is the only site available or not, the analysis of the site level Sequential Test in this document is deeply flawed. The requirement for a site level Sequential Test is covered in paragraph 103 of the NPPF which again reiterates that this is the responsibility of the LPA. The proposed development has been identified as 'Less Vulnerable' in accordance with Table 2 (Paragraph 066 Reference ID: 7-066-20140306) in the National Planning Policy Guidance (NPPG). Table 3 below taken from Paragraph 067 Reference ID: 7-067-20140306) of the NPPG shows the compatibility of Less Vulnerable sites with different flood zone. It specifically states that less vulnerable development **should not be permitted** in Flood Zone 3b.

Table 3: Flood risk vulnerability and flood zone 'compatibility'

Flood risk vulnerability classification (see table 2)	Essential infrastructure	Water compatible	Highly vulnerable	More vulnerable	Less vulnerable
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	✓	Exception Test required	✓	✓
Zone 3a	Exception Test required	✓	✗	Exception Test required	✓
Zone 3b: functional floodplain	Exception Test required	✓	✗	✗	✗

Key: ✓ Development is appropriate.
 ✗ Development should not be permitted.

The Applicant's 'Flood Risk Sequential Test and Exception Test' report fails to consider the sub-division of Flood Zone 3. Instead, on the last page of the report reference is made to 'Flood Zone 3' which clearly does not address the Sequential Test in the way it was intended.

In the absence of an accurate and correct Sequential Test from the Applicant, I have undertaken the Test myself with the intention of informing the LPA so that they can make a decision based on the facts. Enclosed is drawing 17040/102 which shows original survey levels and proposed development levels taken from the Stride Treglown drawing 80424-A1(0)003 revision A. On this I have superimposed the as built levels taken from a laser level survey commissioned by yourselves. The drawing shows the proposed and as built levels are generally the same. I have also produced drawing 17040/103 which shows the flood zones based on the original site levels. This shows that all of the car park area is in Flood Zone 3b and at least part of the new building is in Flood Zone 3a. The car park forms part of the development and is therefore classified as 'Less Vulnerable' which should not be permitted in Flood Zone 3b. Therefore, the development fails the Sequential Test and should not be allowed on breach of planning policy. Furthermore, even if the proposed and as built levels are used, the car park would remain in Flood Zone 3b.

I would be grateful if you could pass this letter and drawings on to the LPA for consideration. I understand that the original planning permission was quashed at Judicial Review on the grounds of failing the Sequential Test. Clearly based on the new evidence I have presented this ruling should be upheld by the LPA when determining this application.

ABINGTON
CONSULTING ENGINEERS
CHARTERED CIVIL & STRUCTURAL ENGINEERS

Civil & Structural Engineering
Highways & Transportation
Flood Risk & Drainage
Project Management
Expert Witness

Yours sincerely



Ian Brazier BEng (Hons) CEng MICE

Principal Partner
Abington Consulting Engineers

APPENDIX II [1 OF 2]

LLC/S52/A480008

LLC/S33/A480004

THIS AGREEMENT is made the *fourth* day *September* One Thousand nine hundred and eighty six BETWEEN AYLESBURY VALE DISTRICT COUNCIL of the The Mall Friars Square Aylesbury in the County of Buckingham ("the Council") of the first part ROYCO CORPORATION LIMITED whose Registered Office is situate at Royco House Liston Road Marlow SL7 1BX in the aforesaid County ("the Developer") of the second part and ROYCO LEISURE PARKS LIMITED (a subsidiary of the Developer) whose Registered Office is at Royco House aforesaid ("RLP Limited") of the third part

W H E R E A S:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1971 and a Principal Council for the purposes of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 for the area within which the lands described in Schedule I hereto and therein respectively defined as "the red land" and "the green land" are situate
- (2) The Developer is seised for an estate in fee simple absolute in possession of the red land
- (3) RLP Limited is seised for an estate in fee simple absolute in possession of the green land
- (4) By a written application dated the 23rd day of December One thousand nine hundred and eighty five and dealt with under reference number AV/2056/85 the Developer applied to the Council for permission to develop the lands and other land for housing and associated facilities a dry ski slope with associated shop and cafe a Nature Conservation Area recreational land with show ground site and jogging track Children's Zoo and two lakes with associated clubhouse and restaurant and other facilities shown on the Plan (hereinafter called "the Development Concept Plan") numbered 140/3A a copy of which is bound up within (hereinafter called "the proposed development")
- (5) The Council is the Local Planning Authority for the purposes of Sections 111 and 139 of the Local Government Act 1972 and is satisfied that the arrangements made in this Agreement and Associated Agreements with the Developer and Owners of other land adjoining the red and green lands severally and/or jointly will facilitate be conducive to and be incidental to the Council's functions

3. IN consideration of the covenants on the part of the Developer and RLP Limited hereinbefore contained the Council undertakes following the execution of this Agreement and the aforesaid Associated Agreements to issue formal Planning Permission in response to the said Application reference number AV/2056/85
4. THE provisions of this Agreement shall become binding upon the Developer and RLP Limited upon the grant by the Council of the Planning Permission in response to the said Application
5. NOTHING in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Town and Country Planning Act 1971 or under any other appropriate person or Authority pursuant to the provisions of the Town and Country Planning Act 1971 or any statutory amendment or re-enactment thereof
6. NO waiver (whether express or implied) by the Council of any breach or default by the Developer or RLP Limited in performing or observing any of the covenants contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof by the Developer or RLP Limited
7. THE Developer hereby agrees to pay the reasonable legal costs in preparation and stamping of the Agreement entered into herein such costs to be paid on the signing hereof
8. THE expressions "the Council" and "the Developer" and "RLP Limited" shall include their respective successors in title and assigns

SCHEDULE I

The Land

ALL THOSE PIECES or parcels of land situate partly in the parish of Aylesbury with Walton partly in the parish of Bierton with Broughton and partly in the parish of Hardwicke with Weedon in the County of Buckingham and being part of the property known as Dunsham Farm all of which land is for the purpose of identification shown edged red ("the red land") or edged green ("the green land") on Plan A annexed hereto

- (6) The Council being desirous of improving the area and general locality of the red and green lands and adjoining land wish to restrict and regulate the proposed development and the use of the red and green lands and is satisfied that the proposed development is such as may be approved by the Council under the Town and Country Planning Act 1971 subject to the Developer and RLP Limited first entering into this Agreement and the execution on the date hereof of the aforesaid Associated Agreements
- (7) The Developer and RLP Limited have agreed therefore to enter into this Agreement in order to secure the Council's objectives

NOW THIS DEED WITNESSETH as follows:-

1. THIS AGREEMENT is made pursuant to :
 - (a) Section 52 of the Town and Country Planning Act 1971
 - (b) Section 33 of the Local Government (Miscellaneous Provisions) Act 1982
 - (c) Sections 111 and 139 of the Local Government Act 1972 and both the positive and restrictive covenants and undertakings herein on the respective parts of the Developer and RLP Limited are entered into with intent that the same shall be enforceable without limit of time not only against respectively the Developer and RLP Limited but also against the respective successors in title and assigns of the Developer and RLP Limited and any person claiming title through or under respectively the Developer and RLP Limited to respectively the red land and the green land or any part thereof as if that person had been an original covenanting party in respect of the interest or estate for the time being held by that person
2. THE Developer and RLP Limited respectively covenant and undertake for themselves and their respective successors in title with the Council pursuant to all or any of Statutory powers referred to in Clause 1 hereof to the intent that the covenants undertakings and obligations hereunder shall be enforceable in the manner set out in Clause 1 hereof to observe and perform the following respective covenants obligations undertakings and restrictions namely:
 - (a) Obligations of the Developer:

No houses comprised in the proposed development shall be occupied until the Developer has to the reasonable satisfaction of the

See Notes
to Schedule
2 col 1.

Council carried out or caused to be carried out works and operations necessary to dig construct build or lay out as appropriate such of the recreational facilities comprised in the proposed development as are described in Column 1 of Schedule II hereto in the locations shown on the Development Concept Plan

(b) Obligations of the Developer and RLP Limited:

No houses

or
Approved
in whole
scheme
Approved

No houses in the proposed development shall be occupied until RLP Limited has submitted a Scheme to the Council and obtained its approval (which shall not be unreasonably withheld or delayed) thereto relating to the entire future care and management of the said recreational facilities on the green land and has entered into or secured the entering into of such further agreement or given such undertakings as are reasonably deemed necessary by the Council to the end that the said recreational facilities are forever maintained and used without any cost to the Council for the purposes described in Schedule II hereto for the benefit of the public generally or any section thereof either gratuitously or upon the payment of such reasonable sums or sum of money in the nature of an entrance fee or a rent or other periodical payment or otherwise howsoever as RLP Limited shall think fit for the purposes of providing either wholly or partly for or towards the costs charges and expenses or outgoings of any kind of or incident to the user or maintenance of the said recreational facilities except that the enjoyment of the public open space shown as No. 3 on the Development Concept Plan and Public Recreation/Meadow shown as No. 4 on the Development Concept Plan by the public shall at all times be free of charge and no money shall be demanded or received by RLP Limited in respect of any use or enjoyment of these areas by any person whomsoever

(c) Obligations by RLP Limited:

Works

Schedule
2 col 2

to be completed

within 2 yrs.

To carry out or cause to be carried out works and operations necessary to dig construct build or lay out as appropriate such of the recreational facilities comprised in the proposed development as are described in Column 2 of Schedule II hereto to the reasonable satisfaction of the Council within two years from the date hereof

SCHEDULE II

(Recreational Facilities to be provided and maintained)

Column 1

Water sports lake with boat slipway
Scenic Lake
Public recreation/meadow
Dry ski slope and its car parking
Wildlife Reserve
Jogging track and footpaths

Column 2

Lake Clubhouse
Ski slope shop/cafe
Interpretation centre

To be
Completed
by
3/9/88

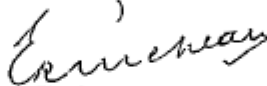
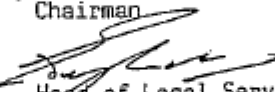
To be
built
Before
houses
occupied

all of which above facilities are shown on the Development Concept Plan
IN WITNESS whereof the parties hereto have caused their respective
Common Seals to be hereunto affixed the day and year first before
written

THE COMMON SEAL of AYLESBURY VALE)

DISTRICT COUNCIL was hereunto)

in the presence of:-


Chairman

Head of Legal Services



THE COMMON SEAL of ROYCO CORPORATION)

LIMITED was hereunto affixed in the)

presence of:-


Director



Secretary



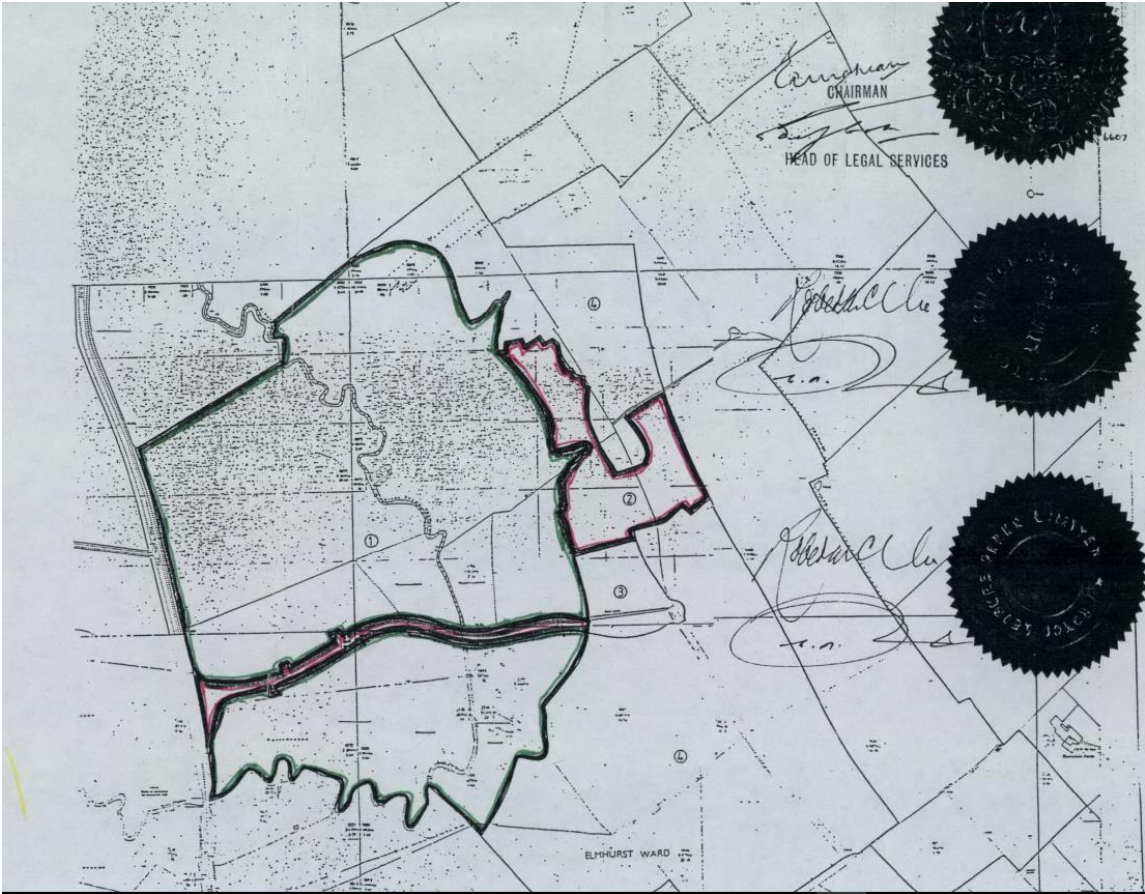
THE COMMON SEAL of ROYCO LEISURE)

PARKS LIMITED was hereunto affixed)

in the presence of:-


Director

Secretary





AYLESBURY VALE DISTRICT COUNCIL (1)

ROYCO CORPORATION LIMITED (2)

ROYCO LEISURE PARKS LIMITED (3)

AGREEMENT

under S.52 of the Town & Country Planning Act 1971,
relating to the provision of Recreational Facilities in
Development of land at Watermead, Buckingham Road,
Aylesbury

MEMORANDUM

By a Deed dated 20th April 2009 between the Council (1)
and Watermead Parish Council (2) the Council
covenanted not to seek to enforce any of the
obligations contained herein in relation to the
land as defined in the 2009 Deed.

Z. Stubbs
C.I.T.

entire development period will carry out and perform
RLP Limited's obligations and provide an appropriate

By a
Council
Contract

capital sum to RLP Limited at the end of the
said period in the event that there is no Agreement
with an operator in force and that RLP Limited
needs capital funding to meet its obligations.

THE COMMON SEAL of AYLESBURY VALE)

DISTRICT COUNCIL was hereunto)

affixed in the presence of:-

Donald M. Giffen
COUNCILMAN

John M. ...
COUNCILMAN



THE COMMON SEAL of ROYCO CORPORATION)

LIMITED was hereunto affixed in)

the presence of:-

Robert C. ...
DIRECTOR
John ...
Authorised Signatory

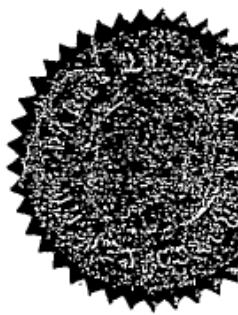


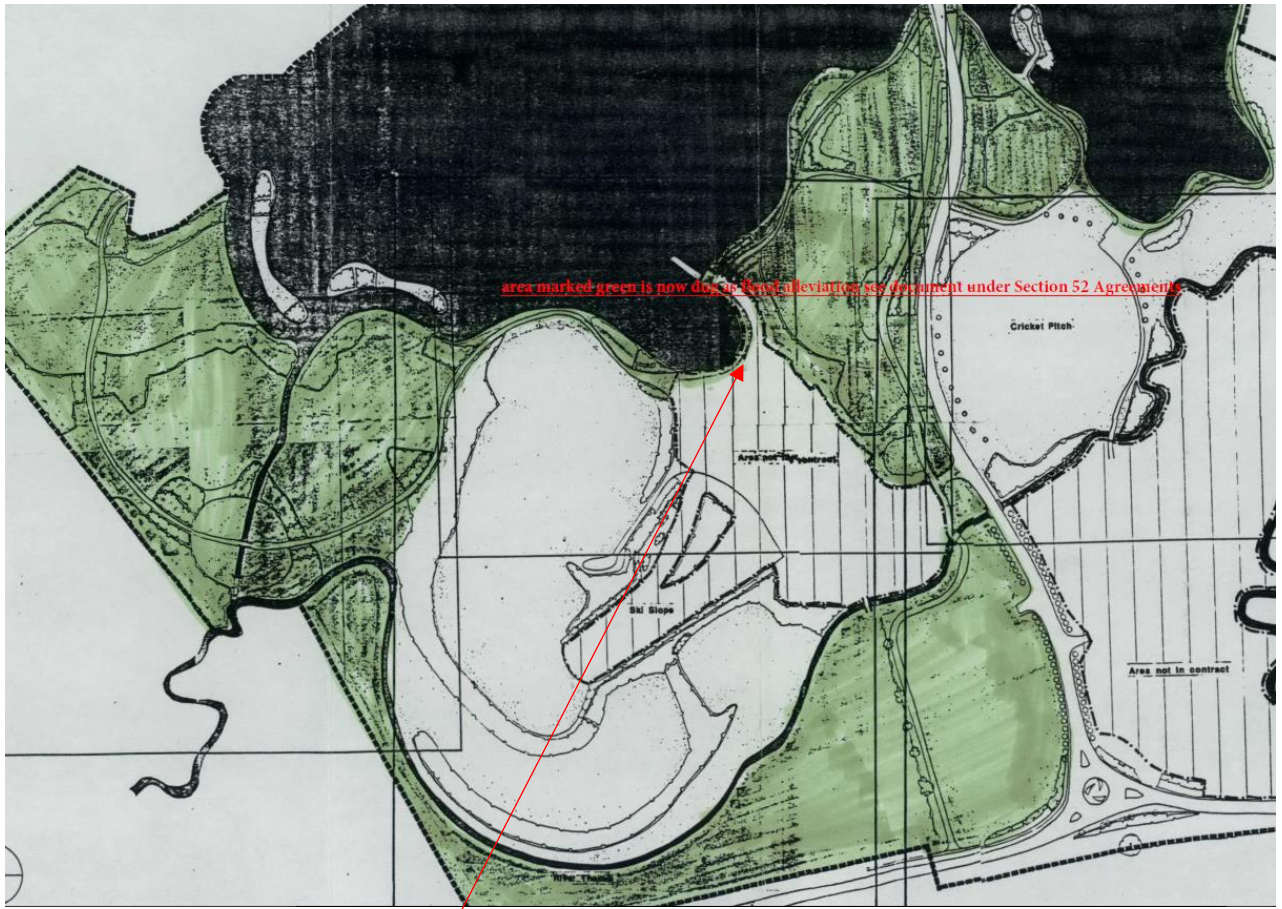
THE COMMON SEAL of ROYCO LEISURE)

PARKS LIMITED was hereunto)

affixed in the presence of:-)

Robert C. ...
DIRECTOR
John ...





area marked green is now dog to least alleviate S&S document under Section 52 Agreement

11 Kestrel Way
Watermead
Aylesbury
HP19 0GH

14th November 2017

Planning Department
AVDC

Dear Sir,

In my role as Chairman of the Watermead Gardening Society I am writing concerning the crematorium, built without planning permission.

Our biggest concern is having a building of this nature in the middle of a large recreational area. It will be most uncomfortable having fun with family etc., whilst being watched by grieving relatives. The playing-field adjacent to the crematorium is used for games and picnics by many families, both local and from other areas of the town. The allotments are to the west of the old ski slope adjoining the proposed memorial gardens. Whilst it is not busy like the Balloon Meadow just mentioned it is in my opinion a totally inappropriate siting.

Many of the Society members are health conscious and as such are worried about the prospect of emissions. I expect the produce from the chimney will be filtered, but some of the fine matter may escape. As we are so close we are worried about the long-term effect this will have and whether the particulates can enter the food chain through the vegetables and fruit we grow.

Having read the recent article in the the newspaper concerning the lack of planning permission I think it is monstrous that a spokesperson can suggest that now it is built they should just go ahead and use it. This will affect the community for a long time and could radically curtail the present use of the wide-open spaces. Therefore please refuse the company permission to use the facility.

Yours sincerely

Peter Smith – Chairman Watermead Gardening Society

AYLESBURY VALE DISTRICT COUNCIL
MEMO

APPENDIX IV

To: Area Planning Officer (South)-
66 High St
Deeds Keeper - Legal
Senior Land Charges Clerk - FSQ
Enforcement Team Leader -
66 High Street

Your ref: SK/1002

From: Katherine Stubbs
Solicitor

Tel ext: 5029

Date: 20th April 2009

Our ref: SPF/KAS/DS11/3/1197

23 APR 2009

Land at Watermead, Aylesbury


Subject: Planning Obligation Agreement

The Agreement in this matter made between AVDC (1) and Watermead Parish Council acting by its Chairman Susan Severn of 7 Pipit Walk, Watermead, Aylesbury, Bucks and its Clerk Glyndwr Russell Morgan Thomas of 1 Newville, Weedon, Bucks HP22 4NP (2) pursuant to (inter alia) Section 106 of the Town & Country Planning Act 1990 has now been completed and has been dated 20th April 2009. There was no monitoring charge payable under the terms of the Agreement as it was initially proposed several years ago and, in the circumstances of this case, our costs will be borne by this Council.

I attach a copy of the completed Agreement for the Senior Land Charges Clerk, the Enforcement Team Leader and the Accountancy Manager and two copies for the Area Planning Officer (one copy for your file and one copy to be placed on Part I of the Register of Planning Applications).

I should be grateful if the Senior Land Charges Clerk would register this Deed in the appropriate part of the Register and if the Deeds Keeper would index the original Deed in the usual way.

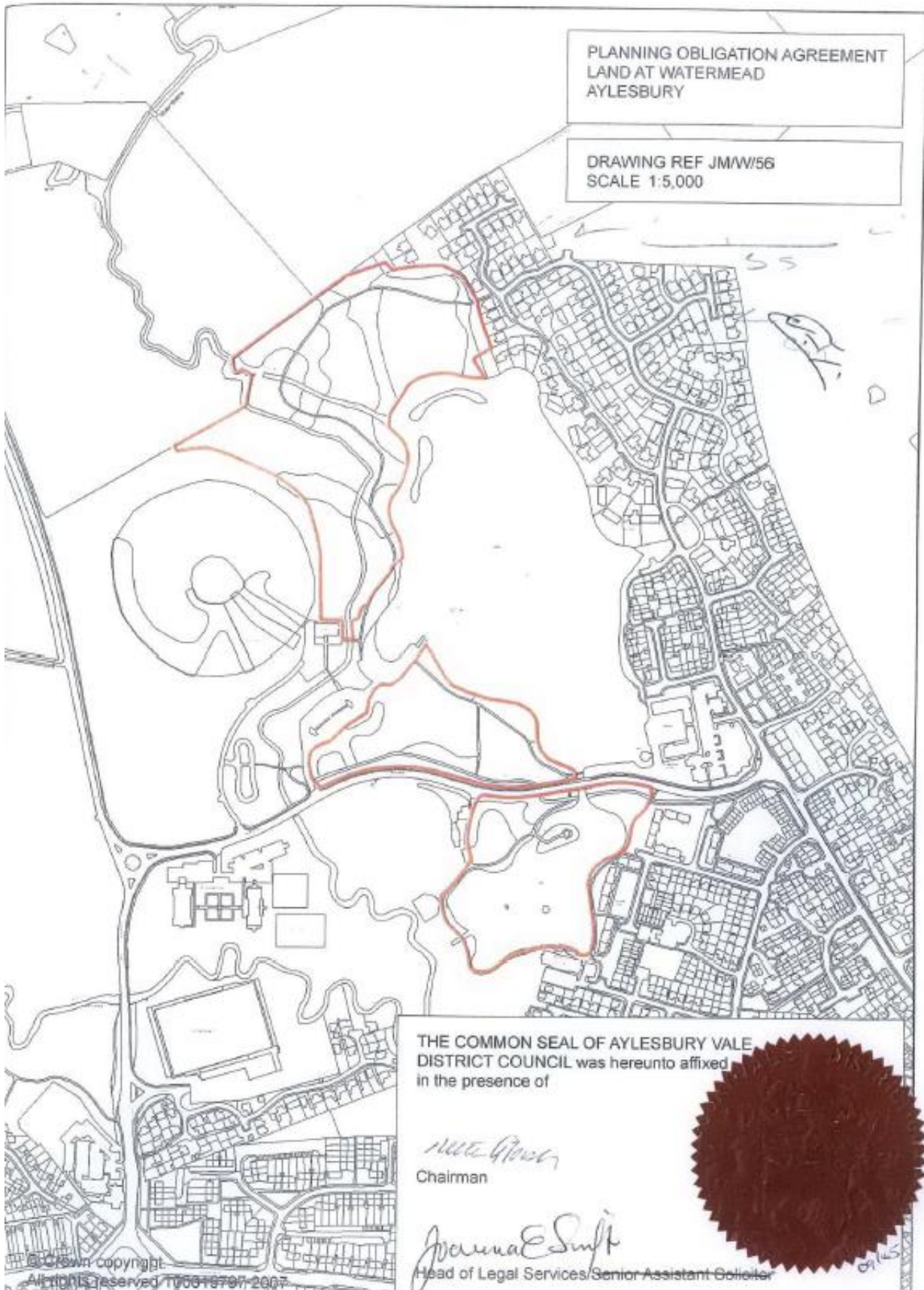
The Area Planning Officer and/or the Enforcement Team Leader will need to monitor the obligations in the Agreement to ensure compliance at the correct times. Please contact me if you require any assistance in dealing with any breaches that may arise.



Katherine Stubbs
Solicitor

Enc.

2.2 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa



IN THE PROPOSED MATTER OF

WATERMEAD PARISH COUNCIL

Proposed Claimant

and

AYLESBURY VALE DISTRICT COUNCIL

Proposed Defendant

and

WESTERLEIGH CREMATORIA

Proposed Interested Party

ADVICE

INTRODUCTION AND BACKGROUND

1. We are instructed by Irina Schwab of Schwab & Co Legal Services Ltd on behalf of Watermead Parish Council ("WPC") to advise on the prospects of a court action against Aylesbury Vale District Council ("the Council") for breach of an agreement under section 52 of the Town and Country Planning Act 1971 ("the 1971 Act") concerning development of land at Riviera Restaurant, Watermead, Aylesbury, Buckinghamshire, HP19 0FU ("the site").
2. The development of the site concerns the erection of a crematorium with access road, car park and ancillary work and associated landscaping. Planning permission was granted by the Council on 18th June 2015 (reference 14/01575/APP).

3. WPC sent a pre-action protocol letter to the Council on 22nd July 2015 concerning a proposed judicial review challenge to the decision on the basis that the Council had misdirected itself on the issue of flood risk relating to operational development and the presumption in favour of granting planning permission (set out in paragraph 14 of the National Planning Policy Framework, "the NPPF"). As one of use was instructed on this matter by WPC we need not set out further details but note that the case progressed to the High Court (*R (Watermead Parish Council) v Aylesbury Vale District Council*, unreported) where it was dismissed on 4th March 2016 by HHJ Waksman QC (sitting as a deputy High Court judge).

4. The background to the matter with which this advice is concerned is as follows: on 4th September 1986 the Council entered into an agreement under section 52 of the 1971 Act ("the 1986 Agreement") with Royco Corporation Limited and Royco Leisure Parks Limited when planning permission was granted for the development of lands and other land for housing and associated facilities a dry ski slope with associated shop and café, a nature conservation area, recreational land with show ground site, a jogging track, a children's zoo, two lakes with associated clubhouse and restaurant and other facilities (as shown on plans accompanying application AV/2056/85) on an area of land including the site. The 1986 Agreement provided, *inter alia*, that the owner of the green land (Royco Leisure Parks Limited; this includes the site) or its successor in title or licensees (clauses 1(c) and 2) were to submit a scheme committing to "forever" maintaining the recreational facilities described in Schedule II of the agreement at no cost to the Council. The 1986 Agreement does not restrict the obligations to the submission of the scheme alone: by clause 2(b) Royco Leisure Parks Limited was to enter into any further agreements or undertakings "*...to the end that the said recreational facilities are forever maintained and used without any cost to the Council for the purposes described in Schedule II hereto for the benefit of the public...*"

5. It is clear that the 1986 Agreement required Royco Leisure Parks Limited and/or successors in title to provide and maintain the recreational facilities

described in Schedule II in perpetuity. By clause 2(b) of the 1986 Agreement payment may be charged to the public or in the form of rent for any of the recreational facilities except for the public open space shown as No.3 on the Development Concept Plan and public recreation/meadow shown as No.4 on the Development Concept Plan, which were to remain open to use by the public free of charge.

6. The recreational facilities described in Schedule II of the 1986 Agreement are as follows:
 - a) Water sports lake with boat slipway
 - b) Scenic lake
 - c) Public recreation/meadow
 - d) Dry ski slope and its car parking
 - e) Wildlife reserve
 - f) Jogging track and footpaths
 - g) Lake clubhouse [known as "The Riviera"]
 - h) Ski slope shop/café
 - i) Interpretation centre.

7. We are instructed that some of these facilities were never constructed, or have become "unusable", in breach of the 1986 Agreement. However, The Riviera was constructed and still operate from the site (see letter from Ms Shardlow of WPC to Mrs Kitchen at the Council dated 17th November 2015).

8. A further section 52 agreement was signed on 23th June 1988 pursuant to clause 2 of the 1986 agreement ("the 1988 Agreement"). It confirmed that the developer had provided what it was required to by clause 2(a) of the 1986 Agreement, and, in accordance with clause 2(b), agreed to "*maintain the aforementioned recreational facilities...in a reasonable state and available for public use but so that the public recreational areas edged green on the attached plan shall always be available for use by the public free of charge.*" (clause 2 of the 1988 Agreement).

9. Through correspondence with the Council dated 19th January 2016 the Council confirmed that it considered that the 1988 Agreement effectively cut down the land to be “forever” maintained at no cost to the Council to the land edged in green in the plan accompanying the 1988 Agreement, rather than the recreational facilities described in Schedule II of the 1986 Agreement. The Council went on to state:

“It is my opinion that once the recreational facilities had been provided in accordance with clauses 2 (a) and 2(c), and a scheme submitted and approved by the council together with the 1988 agreement required under clause (2b), and the houses subsequently occupied, those obligations were effectively discharged.

A subsequent agreement under Section 106 agreement of the Planning Act was entered into with Watermead Parish Council to secure the management and maintenance of the open space referred to in the 1986 and 1988 agreements. This related again to the green edged land.

It is my understanding that there is therefore no scheme to protect the land outside the green edged land identified in the 1988 agreement, including the Riviera land and facilities in perpetuity.”

10. There is a further section 52 agreement which is not relevant to the purposes of this advice.
11. A handwritten memorandum, signed by the Council's solicitor, Ms Katherine Stubbs, is noted on the front of all three section 52 agreements. It states:

“By a Deed dated 20th April 2009 between the Council (1) and Watermead Parish Council (2) the Council consented not to seek to enforce any of the obligations contained herein in relation to the land as defined in the 2009 Deed.”

12. This deed (reference SPF/KAS/DS11/3/1197 (legal services) and SK/1002 (planning team)) was agreed under section 106 of the then-applicable Town and Country Planning Act 1990 (“the 1990 Act”) and concerned land defined by the plan attached to the deed. This plan concerns three distinct areas covered by the 1986 Agreement but does not overlap with the red line plan

accompanying the application by Westerleigh Crematoria. In other words, the 2009 Deed does not affect the site.

13. As a final background matter which is only peripherally concerned with the matters discussed in this advice, on 30th March 2015, on an application by Westerleigh Crematoria, Patterson J quashed the planning permission granted by the Council on 28th October 2014 for a crematorium including a single-storey building, remembrance gardens, 138 parking spaces and other associated development on land to the north of Cane End Lane on the edge of Bierton north of Aylesbury (*R (Westerleigh Group Ltd) v Aylesbury Vale DC* [2015] EWHC 885 (Admin)). The learned judge held that there had not been any evidence of European protected species on the alternative Watermead site (i.e., the site) in contrast to the site which benefitted from planning permission. In those circumstances the information on the Watermead site should have been brought to the attention of the committee, and the committee may have decided to defer its decision on the application to seek further information from Natural England or from the applicants and would then have further reached a view about the likelihood of licensing the application site. Patterson J held that the advice to the Council's Planning Committee contained in the officer's report closed off consideration of the Watermead site on this aspect significantly misled the members and the matter was not corrected orally (paragraph 94 of the judgment).
14. We are instructed that "*Watermead residents are concerned that the section 52 provision in their deeds is disregarded and breached, therefore the value of their properties and way of life being devalued.*" It is clear that local residents are deeply concerned about the development which has been granted planning permission on the site, as they will have relied on the section 52 clause in their deeds for comfort that the site would remain in leisure use in perpetuity.
15. We are asked to advise on:

-
- a) Whether the section 52 planning agreement is still binding.
 - b) If so, can action be taken against the Council?
 - c) Does section 106A(1) of the 1990 Act imply that a planning obligation can only be an agreement entered into after the coming into force of the 1990 Act i.e. not applying to a section 52 agreement already entered into?
 - d) Will Westerleigh Crematoria have to apply to the Council under section 106A for the modification or discharge of the section 52 agreement?
 - e) Alternatively, can they apply to the Lands Tribunal under section 84 of the Law of Property Act 1925?
 - f) If they take this course of action, can WPC oppose it?
 - g) Can WPC initiate legal action for enforcement/breach of this planning agreement instead of opposing a possible application by Westerleigh Crematoria to discharge it?
 - h) Can WPC proactively defend the perpetuity of the section 52 planning agreement or take active steps to make sure this is not discharged?
 - i) May legal action be taken by WPC on behalf of the residents whose properties are affected?
 - j) Which court should the claim be issued in and what procedure do we need to follow?

ADVICE

Whether the section 52 planning agreement is still binding

16. The 1971 Act only allows section 52 agreements to be varied or discharged by deed or upon application to the Lands Chamber of the Upper Tribunal. Notably, the Council has not sought to argue that the 1986 Agreement no longer applies to the land. Rather, the Council's argument is that in the 1988 Agreement the parties agreed that the area of land to be maintained and used for recreational facilities in perpetuity would be the reduced area of land described as the land "edged green" on the plan attached to the 1988 Agreement. This plan did not include the land known as The Riviera.

17. In response to the Council's argument, this is quite simply not what the 1988 Agreement says. It states that "[i]n accordance with clause 2(b) [of the 1986 Agreement]...RLP agreed to maintain the aforementioned recreational facilities

(and also those to be provided in accordance with clause 2(c) of the [1986] Agreement) in a reasonable state and available for public use but so that the public recreational areas edged green on the attached plan shall always be available for use by the public free of charge.”

18. It can be seen from the text quoted above that what the 1988 Agreement did was define further what areas would be provided for the use of the public free of charge. It did not further define or restrict which facilities would be provided (it can be seen that full compliance with the 1986 Agreement in this respect had occurred and was expected by clause 2 of the 1988 Agreement), nor did it further define or restrict which areas would be subject to the requirement to maintain at no cost to the Council in perpetuity. Those areas still had to be provided and maintained, albeit the public could be charged for their use unless they fell within the green shaded area on the plan accompanying the 1988 Agreement.

19. In summary, all the 1988 Agreement did was reflect that the development had moved on since the Council had regard to the Development Concept Plan in 1986 and the area of public open space and public recreation/meadow shown on the Development Concept Plan were now defined by the plan accompanying the 1988 Agreement. Otherwise, the 1986 Agreement is still binding and the obligation to provide and maintain The Riviera site (amongst other recreational facilities) in perpetuity was not affected by subsequent agreements.

If so, can action be taken against the Council?

20. Yes, subject to the issues and time limits discussed below.

Does section 106A(1) of the 1990 Act imply that a planning obligation can only be an agreement entered into after the coming into force of the 1990 Act i.e. not applying to a section 52 agreement already entered into?

Will Westerleigh Crematoria have to apply to the Council under section 106A for the modification or discharge of the section 52 agreement?

Alternatively, can they apply to the Lands Tribunal under section 84 of the Law of Property Act 1925? If they take this course of action, can WPC oppose it?

21. For clarity, we answer these questions together. Those instructing consider that section 106A(10) (which provides “section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation”) only excludes the possibility of applications being made to the Lands Tribunal in respect of planning obligations entered into after the coming into force of the 1990 Act. we agree. “Planning obligation” is defined in the 1990 Act as an obligation entered into by any person interested in land in the area of a local planning authority, as referred to in section 106 and sections 106A to 106C. Moreover, section 106(9)(a) provides that “[a] planning obligation may not be entered into except by an instrument executed as a deed which states that the obligation is a planning obligation for the purposes of this section” (emphasis added). Therefore, a planning obligation must be made under section 106 the 1990 Act and it must be stated that it is a planning obligation for the purposes of the 1990 Act. If it does not, it is not considered to be a valid planning obligation.

22. In *R (Barker) v Merton LBC* [1998] JPL 440 Latham J held that the problems presented by the different methods for dealing with disputes relating to agreements signed under the 1971 and 1990 Acts made it “impossible to see how those problems could ever be worked out satisfactorily” (page 442). In this case the relevant clause read:

“To commence building operations on the leisure centre on the land shown for the purposes of identification only (edged in green) on plan 1 within 18 months of the opening for trade of the retail store and to complete and open to the public that leisure centre within 36 months of the opening for trade of the retail store.”

23. However, after the development was built the developers determined not to proceed in accordance with the terms of the agreement and Merton LBC decided not to seek to enforce the agreement. An agreement signed in relation to further development on the site expressly stated that the

obligations which were substituted (from the earlier agreement pre-dating the 1990 Act) were to be planning obligations for the purposes of section 106 of the 1990 Act. The developer argued that the section 52 agreement had not been discharged by the section 106 agreement, and that the section 106 agreement was not valid. Merton LBC disagreed. The argument before Latham J was that a material consideration, namely the valid section 52 agreement, was not taken into account and that: “[a] comparison of the provisions of section 52 of the 1971 Act and section 106 of the 1990 Act shows that there are distinct differences which are so substantial that no agreement can properly live under both regimes.... The statutory intention must have been, it is said, that a section 106 agreement would be a different creature from a section 52 agreement.” (page 443).

24. Latham J held that these points were “at least arguable”, but did not actually determine the issues raised as he considered that a lawful policy was adopted by the council in 1993 not to seek the provision of the leisure centre otherwise required by the section 52 agreement and so in the exercise of the learned judge’s discretion he refused leave to apply for judicial review.
25. Following this case, in an article very helpfully highlighted to us by those instructing published in the Journal of Planning and Environmental Law 1998, Aug, 750-751, “Varying Planning Agreements” (Martin White), the author concluded that planning agreements under the 1971 Act can be varied or discharged only by application under section 84 of the Law of Property Act 1925 (“the 1925 Act”) or by agreement in the form of a deed between the parties. This is to be contrasted with planning agreements under section 106 of the 1990 Act which can be modified or discharged by application under section 106A (if five years from the date of the obligation have elapsed) or by deed. The two regimes were legally separate and mutually exclusive.
26. Accordingly, a section 52 agreement can only be modified or discharged either by the agreement of all the parties by way of an executed deed or by

agreements. So: (1) the case is unlikely to reach court; (2) if it does, it is likely that the court will refuse permission to proceed based on the conduct of the parties; and (3) even if, at the end of the process of challenging the decision through the courts, WPC is ultimately successful, it is difficult to see what would be accomplished other than a new deed being executed which removes the obligation to maintain The Riviera in perpetuity.

CONCLUSION

34. A claim may be brought by way of judicial review seeking to challenge the Council's approach to the 1986 Agreement and its interpretation of the 1988 Agreement. This would have to be preceded by a letter setting out WPC's claim in detail in order to found a decision which may then be the subject of challenge. Those instructing would have six weeks following the Council's response to their letter in which to bring a challenge. Whether a challenge should be brought requires consideration.

35. We trust this has addressed the queries posed by those instructing. Should WPC determine to proceed we would be happy to advise further in relation to the letter to be sent to the Council setting out the basis of the claim. If we may be of any further assistance for any other reason please do not hesitate to contact US in the usual way.

Richard Kimblin QC
Nina Pindham
No5 Chambers

16th March 2016



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Noreen Shardlow
11 Ayleswater
Watermead
Aylesbury
Buckinghamshire
HP19 0FB

12/07/2017

Dear Noreen

I was very concerned to hear that the planning decision for the crematorium will be redetermined by AVDC in the near future.

It would be a terrible blow if the balloons are no longer able to use the Balloon Meadow at Watermead as it has provided a great spectacle for so many people over so many years. Looking back through my log books I have found the first flight entry from Watermead on 26/09/1992, so coming up 25 years!

I think the site of the crematorium next to the Balloon Meadow will have a massive affect on our business in Aylesbury, and spoil a great leisure facility for local residents. It hardly seems appropriate for colourful balloons full of excited passengers to take off next to a crematorium chimney.

Apart from the sheer unpleasantness of launching next to such a facility, I am very concerned that the safety of our flights will also be compromised not only by the structure but by its emissions.

It seems as if we will be able to continue our flights for this season, however we may have to think about relocating next year if the facility should commence operations.

It would be an extremely controversial planning decision to allow this facility to be built in the middle of a large area of housing, bringing all the trappings of death into the midst of the lives of so many families, what on earth were they thinking when this was originally passed? Let's hope that common sense prevails.

Yours Sincerely

Stuart Seager

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Stuart Seager Managing Director



10th November 2017

Noreen Shardlow
Watermead Parish Council
11 Ayleswater
Watermead
Aylesbury
Bucks
HP19 0FB

Dear Noreen

Re: Aylesbury Crematorium (Planning Ref. 14/01575/APP)

I refer to your instruction to assess the Sequential Test carried out by Crematorium Management Limited (CML) and their consultants relating to the above planning application.

Background Expertise

I have been working as a Civil Engineering consultant for over 30 years and much of my expertise relates to Flood Risk and Highway planning. My considerable experience has led to my appointment as an expert witness on Highway and Flood Risk matters at several public enquiries. Since 1999 I have been running my own engineering consultancy practice with the majority of my clients being in the development industry.

In my letter to you dated 15th September 2017 I set out why the site at Watermead fails the Sequential Test at site level. I have now reviewed the 'strategic' Sequential Test produced by CML which assesses sites around Aylesbury and have the following observations.

Scope of Site Search

The first stage of the Sequential Test has been carried out using a 'sieve analysis', whereby GIS mapping has been used, along with a series of constraint layers to filter out unviable sites. The scope of the analysis is supposed to be based on a 30 minute drive time (paragraph 8.7 of the main Sequential Test report). However, the search area shown in Appendix F refers to an 18 minute drive time which would suggest that the area of the assessment is too small.

Flood Risk

One of the layers used is the Environment Agency's (EA) fluvial flood risk mapping. Areas which have been excluded from the site search include Flood Zones 2 and 3. Using this as a means of excluding sites demonstrates a lack of understanding of flood risk engineering. Sites located in Flood Zone 2 can easily be reallocated into Flood Zone 1 by raising site levels followed by a Flood Map Challenge (flood compensation is only required for raising land in the flood plain defined as Flood Zone 3). In contrast, the majority of the Watermead site is located in Flood Zone 3b (the functional flood plain) and is unable to benefit from this process. Furthermore, it should be noted that the application site would have been 'sieved out' during this process and is certainly Sequentially lower in the pecking order than a site solely in Flood Zone 2.

Operational Considerations

The second stage of the Sequential Test involved scrutiny of the sites left following the initial sieve analysis. This task has been undertaken by CML as described in paragraphs 7.1 and 7.2 of Appendix F. Some of the criteria set aside for CML to assess relates to highly specialised matters such as Highways, Landscape Impact, Topography etc. Whilst I can appreciate the CML may have some knowledge of such matters, I doubt very much that they have staff suitably qualified to provide a full professional assessment. If they did, it begs the question why they have employed a Highways consultant to produce a Transport Statement instead of doing this in house. Furthermore, as CML have already heavily invested in the Watermead site, I doubt they are capable of making an impartial assessment.

Looking at the various questions posed to assess the viability of sites, question 2 asks:

'Does the local road network and/or junctions offer acceptable access to the site without the need for significant highway improvements?'

The question itself is flawed because the cost of any highway improvements is linked to the value of the site. If a site is sufficiently cheap, then this can be offset against the cost of the highway works. With regards to the assessment of access, as stated above, I doubt CML have the expertise to accurately assess this. I am often employed by experienced developers to troubleshoot development access issues. Quite regularly the solutions are not readily apparent and further investigation is necessary to solve the issues. This level of scrutiny clearly hasn't been carried out by CML and therefore I do not consider their comments valid. I have similar reservations about the accessibility assessment.

Question 9 relates to topography and whether significant remodelling and disposal of material is required. This is largely not a planning consideration and certainly should not be elevated above flood risk planning policy when determining if a site is viable or not.

Question 10 asks whether a site is large enough and suggests that a 4.04 hectare site is required for a crematorium. I notice that many sites have been dispatched on the basis of being smaller than 4.04 hectares, yet the Watermead site is only around 1.3 hectares. Given that CML clearly consider the Watermead site suitable for development as a crematorium, dismissing sites on the ground of 4.04 hectares is misleading and again shows that the Sequential Test has not been carried out satisfactorily.

Final Assessment – Savills' Letter

In the final part of the Sequential Test, a letter has been produced by Savills and presented in Appendix G. Following the first two phases of the Sequential Test, only six sites made it to this final phase for Savills to assess.

The case put forward by Savills revolves around land values which I have no doubt they are well qualified to comment on for housing and commercial development. They acknowledge that few sites have been sold with planning permission for a crematorium and it is clear that they have no data to back up their claim that housing and commercial sites are more valuable than a crematorium site. Site values must largely come down to supply and demand, and based upon the Sequential Test presented by CML, we must expect that demand is currently outstripping supply which will drive up land prices.

Savills state *'Savills would not for instance advise a landowner to engage with a crematorium developer should there be a clear indication that the subject site had residential or employment potential in the short-to-medium and potentially longer term. The potential land values associated with such forms of development*

render crematorium development unattractive. Land values paid for crematoria simply cannot compete with these alternatives.'

It is obvious from this that the former owner of the Watermead site did not consult Savills as they believe the application site has greater value as a commercial site which it already has planning permission for. If we are to believe Savills' position on land values then either the site has been sold off cheaply, or a crematorium can be located on a commercial site with associated land values.

Savills go on to state:

'Savills would normally advise land owners not to deflect resources away from the primary objectives of achieving high value housing and employment allocations until the process reaches that conclusion and only then if the site's medium to longer term prospects have been significantly diminished.'

Whilst I respect this approach, it does not automatically rule out sites for crematorium development. Not every land owner has the comfort of waiting out the 'medium to longer term prospects'. Many have to speculate on the basis of their own retirement or life span expectations and this can lead to taking opportunities as and when they arise. Unfortunately, Savills approach will always lead to the conclusion that a site would have better prospects somewhere in the distant future and no site would ever be best served by developing it as a crematorium. On this basis I consider the final analysis of the Sequential Test deeply flawed.

Conclusion

The Sequential Test has been carried out on what would appear to be a smaller area than agreed with the LPA. Assumptions made about flood risk demonstrate a lack of understanding of developing in Flood Zones and also incorrectly assumes priority should be given to the application site (which is largely in Flood Zone 3) over sites in Flood Zone 2.

CML have seemingly undertaken the task of assessing sites without the benefit of the necessary comprehensive range of professional advice and their conclusions are also compromised on the basis of their evident self-interest.

Savills assessment is based on a flawed and/or selective or incomplete interpretation of basic economics and considers that all site owners have the benefit of decades to speculate on an uplift in land values. There could never be a case to develop a crematorium if their logic were applied to any site. Their views also fail to factor in the possibility that where there are housing aspirations for a large site, gaining some development in form of a well landscaped and suitably secluded crematorium, for example, could facilitate the quicker development of other tranches for housing.

Finally, if the Applicant were to run the Sequential Test on the application site, it is quite clear that it would never have been selected as it would patently have failed on the criteria comprehensively and by a wide margin for both Flood Risk and minimum site area. On this basis I consider the Sequential Test has been carried out in a wholly flawed and unsatisfactory manner and that no weight can be accorded to it in the planning balance.

I would be grateful if you could pass this letter and drawings on to the LPA for consideration.

ABINGTON
CONSULTING ENGINEERS
CHARTERED CIVIL & STRUCTURAL ENGINEERS

Civil & Structural Engineering
Highways & Transportation
Flood Risk & Drainage
Project Management
Expert Witness

Yours sincerely



Ian Brazier BEng (Hons) CEng MICE

Principal Partner
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AYLESBURY VALE DISTRICT COUNCIL

Planning

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Our Ref: MD/13/01837/COMM
Your Ref: ---



30 August 2013

Pauline Tillett
22 Brendon Gardens
Nailsea
Bristol
BS48 2LA

Dear Pauline Tillett,

**Proposed site for crematorium;
Site: Riviera Restaurant, Watermead, Aylesbury.**

I refer to your enquiry which was registered on 03 July and I apologise for the delayed response.

The enquiry relates to the Riviera restaurant, a building previously used as a ski-ing and water sports centre. The building is to the west of Watermead Lake within an open area with the former ski slope mound to the northwest. The nearest dwellings are some 285 metres away to the west (Weedon Hill/Buckingham Park) and some 300 metres to the east (Watermead). The Watermead Holiday Inn Hotel is about 220 metres away to the southwest.

The restaurant is close to the River Thames, which flows close to the east of the building, between it and the lake shore, and on to the southwest. The extensive car park is to the southeast of the river, with access to the restaurant by way of a footbridge.

The identified site area includes the building and car park and the vehicular access from Watermead Road to the south, along with the ski slope mound. The lake itself is understood to be in common ownership at present.

The proposal is to remove the restaurant building and redevelop the site to accommodate a crematorium. The crematorium building would include a chapel with a capacity of just over 100 people, along with ancillary facilities, landscaped gardens and a car park for around 75 cars. The crematorium building is shown to be located on the site of the existing building.

In summary, the scheme put forward gives rise to a number of concerns.

In making decisions on planning applications, regard must be paid to the provisions of the Development Plan. For the purposes of your enquiry, the significant element of the Development Plan at present is the Aylesbury Vale District Local Plan (AVDLP). In addition, it is relevant that the Vale of Aylesbury Plan (VAP) Strategy was submitted to government for independent examination on 12 August 2013. The VAP Strategy forms the first part of the future local plan (Local Development Framework – LDF) which sets out strategic objectives for the district, along with apportionment of housing growth and the principles and policies of how development should take place, including the delivery of infrastructure, economic growth and housing. At a later date, the VAP Delivery Policies document will form the second part of



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the local plan providing more detailed development management policies. If required a site allocations document will also be produced. Published Government planning guidance set out in the National Planning Policy Framework (NPPF) must also be taken into account.

As you are aware, the need for a new crematorium to cater for the growth needs of the town and the district was identified at the LDF consultation stage in 2007. The need for a new facility was supported by private crematorium operators and took account of the existing provision at Amersham (15 miles away) and Milton Keynes (25 miles away). A site to the north of the town would be the preferred option, to provide the optimum distribution of facilities having regard to the existing provision to north and south. It is anticipated that unless a suitable site emerges spontaneously through the planning process, a site would be allocated in the future VAP Allocations document.

It is acknowledged that an application has recently been made to Wycombe District Council to site a crematorium at Little Kimble, some 4 miles south of Aylesbury. Although the provision of a crematorium on another site close to Aylesbury would have no direct bearing on consideration of a planning application for a crematorium on the Riviera site, it is clear that if the Little Kimble proposal is implemented, the need for an additional crematorium may be considered to have diminished and consequently the allocation of a site may no longer be considered necessary.

The main criteria for a crematorium site were identified as follows:

- The site should be well suited for the building and use, accessible by public transport, and with all main services available.
- The site should be located so that it does not have a material adverse impact on land uses in the neighbourhood.
- The site should provide for safe and convenient vehicle movement to and from the building, and adequate car parking.

These three criteria provide an overall summary of the application of current development plan policies and NPPF guidance to the locational evaluation of crematorium proposals. Additionally, in this case, it is necessary to consider policies relating to the loss of the Riviera as a restaurant and function suite facility that provides a service to people in the area.

The site is to the north of Aylesbury and close to the town, and therefore well located in relation to the existing crematorium facilities serving the area, and to the existing and future needs of the town and district.

The site is close to the A413 Buckingham Road, a route well served by bus services between Aylesbury and the towns and villages to the north. As the site accommodates the existing restaurant use, it is anticipated that all main services are available.

The site is within an area of countryside beyond the limit of existing built development. In such areas development plan generally seek to resist new built development other than specific development plan proposals. In this case it is recognised that the site is an already developed site, and that the information submitted indicates that the proposed building would not be significantly larger or more visually intrusive than the existing building. Having regard to the lake side location, and the potential for enhancement of the ski slope mound and the surrounding area through appropriate landscaping, it is considered that the proposal provides the potential for provision of an attractive facility that would visually enhance the surrounding area.

It would be necessary to ensure, however, that existing public recreational access to the land, in particular to the lake shore, is not prejudiced. The leisure building adjacent to the lake and the ski slope formed part of the original concept for the Watermead development in 1986, and a legal agreement was entered into relating to the provision of recreational facilities.

Although it is recognised that the existing use of the building represents a move away from the original concept, it remains a recreational facility in association with public access to the land adjacent. The proposal would change the primary use of the land and may be seen to give rise to potential conflict between the needs of the crematorium and its users and the use of adjacent land for recreational purposes. In addition, it is my understanding that the original agreement remains in force and that therefore change of use of the land and building may also necessitate agreement to and completion of a deed of variation.

The site lies within Flood Zone 3B, the functional flood plain. The Environment Agency (EA) has observed that land within the site area has a 1 in 20 chance of flooding in any one year. This is an area suitable only for water compatible development: however it is recognised that there is already built development on the site, and reduction in the built footprint would offer betterment in terms of flood risk. However, if an application is to be submitted a Flood Risk Assessment would be required.

Advice from the EA also states that the burial of ashes, if proposed, would be required to accord with safeguards to protect against groundwater contamination. No burials should take place below the level of the water table, or within 30m of any watercourse or lake, or within 10m of any field drain. Compliance with the requirement to prevent burial below the level of the water table would require assessment of the level of groundwater, which would require regular monitoring over a 6-12 month period and must include monitoring during the period of highest groundwater, late winter and early spring.

The EA also states that to safeguard biodiversity, a 15-30m buffer zone should be established around the River Thames and the lake, free from built development including lighting, gardens, formal landscaping and footpaths. A scheme for the provision and management of these buffer zones should be submitted and approved in advance of the implementation of the scheme and thereafter implemented.

In addition, the wider site which has been lightly used for the last few years is likely to have been colonised by wildlife. A habitat survey and report to establish the significance of the site, to identify mitigation methods to safeguard habitats and species, and to set out biodiversity enhancement proposals, would be appropriate. For further advice you are advised to contact the Council's Biodiversity Team on 01296 427972.

As noted above, the site of the proposed crematorium building is in relatively close proximity to residential development at Watermead (some 300m away across the lake) and Weedon Hill/Buckingham Park (some 285 metres away over the Buckingham Road). The Holiday Inn Hotel is also close by (about 220m away). It is recognised that the proposed siting complies with the minimum clearance standard set out in the Crematorium Act 1902. The Council's Environmental Health division does not object at this stage to the siting of a crematorium, although the comments state that the cremation of human remains is a regulated activity under the Environmental Permitting Regulations 2010. Accordingly, the activity will require a Environmental Permit issued and enforced by the District Council, and based on the Department for Environment, Food and Rural Affairs Statutory Guidance for Crematoria; Process Guidance Note 5/2(12).

Past experience, however, indicates that a proposal to site a crematorium in relatively close proximity to a large number of houses is likely to result in a significant level of local opposition. This is likely to be the case even if it is evident that the proposal accords with the relevant legislation and guidance, and does not give rise to technical objection from the Environmental Health standpoint. In a situation in which a need for a crematorium has been

established but no detailed assessment of the merits and disadvantages of potential sites for that crematorium has been carried out, public opposition to the use of this site for that purpose may have significant weight in the decision made on a planning application.

Access to the site, as at present, would be from Watermead (the road), which is subject to a 30mph speed restriction, has footways on both sides and benefits from street lighting. It joins the A413 Buckingham Road at a traffic signalised junction. Highway comments indicate that as part of any future planning application, a Transport Statement (TS) would be required to assist consideration of the highway and transport implications of the proposal. This would include such issues as traffic generation resulting from the existing and proposed uses, any impacts on the junction of Watermead with the A413, travel to the site by sustainable modes, and parking provision.

Some traffic data is provided with the submission, based on the applicants' experience. This states that the national average number of vehicles attending a cremation is 18, and that the operational timetable would programme cremations at 45 minute intervals, although typically there would be only four services per day. 95% of services would take place between 10.30 and 15.00. On the basis of this information, it is likely that this site could generate 144 vehicle movements per day by people attending cremations, plus the funeral procession cars plus staff vehicles. From the information submitted, however, it appears likely that relatively few of these vehicle movements would take place in the peak periods.

The existing use as a restaurant, in accordance with the Trip Rate Information Computer System (TRICS) is likely to generate in the region of 42 vehicle movements per day per 100m². In the absence of detailed floor plans of the restaurant it is not possible to estimate the likely existing traffic generation potential of the restaurant use. Nevertheless it is considered likely that the proposed use would result in an increase in vehicle movements. While the impact of the proposal in terms of vehicle movements would need to be examined in more detail as part of the TS process, it is likely that the proposal would give rise to the need for a contribution to ALUTS. AVDLP policy AY2 requires all new developments in and around Aylesbury likely to add significant additional vehicle movements to the local road system to contribute financially towards the implementation of the Aylesbury Land Use & Transportation Strategy (ALUTS). The scheme requires a one-off payment to contribute to transport infrastructure improvements in the area to partially offset the increase in traffic resulting from the development. The Council's published SPG document "Transport Contributions from non-MDA Development at Aylesbury" sets out the circumstances and geographical areas within which such contributions will be required, and the means of calculation of the requisite amount.

The existing access appears geometrically adequate to accommodate the nature and amount of vehicles that are likely to be related to the proposed use. It would be necessary to show that adequate parking can be provided within the site to avoid displacement parking on the highway, but it appears that adequate land is available for such provision.

Highway advice indicates that while additional information will be required to fully assess the highway and transport implications of the proposal, it would seem unlikely that there would be a fundamental highway objection to the proposal.

AVDLP policy GP93 states that the Council will resist proposals for change of use of community buildings and facilities for which there is demonstrable need. Regard will be had however to the viability of the existing use, the presence of alternative facilities and the community benefits of the proposed use. The NPPF at paragraph 70 states that planning authorities should seek to deliver the social, recreational and cultural facilities and services the community needs, planning positively for the provision and use of community facilities and other local services to enhance the sustainability of communities. They should guard against the unnecessary loss of valued facilities and services.

The existing restaurant and function use on this site provides a service to the community in an accessible location. While the proposed use would also be beneficial to the community, it is evident that the two uses are not directly comparable. The proposal would represent a loss of a community facility, and may be considered in conflict with policy GP93 and NPPF advice. The wording of the policy, however, allows the viability of the existing use to be taken into consideration. In order to address this issue it would be necessary to provide evidence to the effect that the existing use is not and could not become a viable use, or to provide evidence of efforts to market the business on the basis of continuation of the existing use or a similar use equally beneficial to the community.

In summary, it is my opinion that additional information, as detailed above, would be required in order to fully assess the acceptability of the proposed development. On the basis of the information available, however, it may be that concern over the impact of the proposed use in terms of the residential amenity of nearby householders and concern over the loss of beneficial community facilities, may mean that support could not be given to this proposal. I would draw your attention to the Council's full applications checklist which sets out the required supporting information to accompany a full planning application, which is available on the AVDC web site. Where appropriate, the application should include a statement of Community engagement which demonstrates how the application meets the requirements for Community involvement in planning applications.

You will appreciate that at this stage advice can be offered on an informal basis only, and should not be taken to represent a formal determination by the Local Planning Authority nor does it cover Building Regulations. Any subsequent application would be considered in the light of Development Plan policies, all material considerations including Government advice, technical advice and, if appropriate, public comment. In addition, if an application is submitted, issues not addressed in this response may be considered relevant. Nevertheless, I hope this letter is helpful to you.

You may require a separate consent under the provisions of the Building Regulations for any works proposed. You are therefore advised to seek advice from the Council's Building Control section on this matter. Please call 01296 585460 for further advice.

Yours sincerely,

M J Denman

Senior Planning Officer (East)