Mr. A. Stokes,
Chief Executive Officer,
Staffordshire Moorlands District Council,
Moorlands House,
Stockwell Street,
Leek,
ST13 6 HQ
Date

Dear Mr. Stokes,
Moneystone Quarry - Planning Applications SMD/2016/0378, SMD/ 2019/0646,
SMD/2019/0716, SMD/ 2019/0725 (recently withdrawn) and replaced by SMD/2022/0014.

I write to you as an SMDC Council Tax Payer for a number of reasons.
Since 2010 I have watched with growing concerns about the vast sums of Council tax that has and continues to be wasted on the above applications. I invite you to now put an end to what by on any objective assessment is and always has been a flawed development project.
To aid you in your considerations I have set out my reasoning in detail. I ask that you do me the courtesy of providing me with a detailed response to the points I have raised so that they may become a matter of record.
I appreciate that this may take a little time. As it is of central importance to your Authority and perhaps of even more importance to residents whose lives are certain to be blighted by the proposed development I ask that you ensure that none of the above applications are determined or listed for hearing until I have received your reply and had chance to consider its findings and implications.
Please also ensure that a copy of my representations are exhibited on the planning portal in respect of each of the applications.

Your sincerely,
Paul Housiaux,
Resident,
Whiston.

Representations in respect of Planning Applications number SMD/ 2016/0378,

SMD/2019/0646, SMD/2019/0716, SMD/2019/ 0725 and SMD/ 2022/0014 at Moneystone Quarry

On the 10th. December 2021 Mr. B. Haywood, Head of Development Services at Staffordshire Moorlands District Council responded to a Freedom of Information Act (FOIA) request dated 11th. November 2021 that requested the (then) current status of Outline Planning Permission SMD/2016/0378.
Mr.Haywood's reply was as follows, ' The current status of SMD/2016/0378 is an **extant outline planning permission.'**

The document notifying the **' GRANT OF OUTLINE PLANNING PERMISSION'** for 0378 carried above capital heading the following ,
(1) the Planning Application number(0378), (2)' Determined on 26th. October 2016' (3) ' The Town and Country Planning Act' and (4) The Town and Country Planning(Development Management Procedure)(England) Order 2015.
The Statutory Provisions (3 and 4 above) appearing as they do *above* the statement of the grant of outline permission, ensures that all that follows within the document of the 26th.October 2016 is regulated by those statutory provisions and the contents of the document.

On page 17 of the 0378 Grant of Outline planning permission there is a heading thus,
Informative.
Numbered paragraph 2. States, '*This permission should be read in conjunction with the corresponding Unilateral Undertaking dated 26th.October 2016.'*
The Grant of planning permission is signed by Mr. B. Haywood on behalf of SMDC LPA at page 19.

A FOIA request asking for a copy of the Unilateral Undertaking to which the paragraph 2 referred, was provided by email on the 10th. December 2021. It disclosed that the Unilateral Undertaking mentioned in Paragraph 2 of the Informative set out on page 17 of the 0378 notice of planning permission was in fact a Section 106 Agreement purportedly dated 26th October 2016.(Version1). By earlier submitted FOIA requests SMDC LPA had stated that only *one* S106 Agreement existed this being Version (1).

The Oxford English Dictionary defines a Unilateral (Agreement) as *' an action or decision performed by or affecting only one person, group or country*

involved in a situation without the agreement of another or others.states",

' Planning Obligations, also known as Section 106 Agreements-[based on section 106 of the T&CPA 1990] are **private** agreements made between local planning authorities and developers and can be attached to planning permissions to make acceptable ' ***development which would otherwise be unacceptable'. (*** see http//www.planning portal.co.uk).
It is submitted that the use of the S106 statutory procedure by both SMDC LPA and the Applicants, has not been utilised in the manner appropriate to comply with the above cited authority.
Instead the S106 process has been repeatedly used as a *bargaining tactic* by the Applicants which is also contrary to Paragraph 1.2.1 of the Procedural Guide to Planning Appeals.
It logically follows and as a result of a proper construction of the wording of the Outline planning permission dated 26th. October 2016 that but for the ' Unilateral Undertaking/ S106 Agreement', the Outline Planning Application SMD/ 2016/0378 ***would have been a development which would have be unacceptable.***

By notice dated 26th.November 2015 a planning application to develop Moneystone Quarry as a leisure development under reference SMD/2014/0682 was refused planning permission as being *unacceptable* for reasons given.

Following the refusal of the first Application (0682) Laver Leisure (Oakamoor) Ltd. (the appellant) appealed to the Secretary of State (PINS). However that appeal was
then ' held in abeyance' pending the outcome of the second (revised) application (0378). The justification given by the appellant in seeking the abeyance being that if the second application(0378) was successful then the Appellants would be ' content' and would not pursue a permission on the first scheme through the PINS appeal process. The record shows that the Applicants in the 0682 application were successful in obtaining the 0378 outline planning permission. Despite their assurance that if successful in the 0378 outline application their ' lack of content' was immediately made manifest in pursuing the 0682 appeal.

Subsequently the appellant asked the Planning Inspectorate (PINS) to determine the appeal on the basis of the revised (second) scheme.
PINS asked if the SMDC Local Planning Authority could advise whether they

were in agreement with the Appeal against refusal of the original (first 0682) application proceeding on the basis of the revised 0378 scheme being incorporated into the 0682 appeal. The SMDC LPA Planning Application Committee (PAC) firstly agreed that the Appeal should proceed on the basis of the revised 0378 scheme in March 2017. [see Agenda item 13 of the meeting of the SMDC PAC dated 13th.

However following further questioning by PINS the SMDC LPA PAC committee meet to receive a report from Executive Director Mr. D. Larner and then accepting his advice the PAC agreed that,

‘ it did not object to the substitution of the original scheme by the revised (second (0378)) scheme previously approved by SMDC LPA. ‘
‘Subject to the following conditions
(i) that the appellant sets out in a revised statement of case, that it abandons the original scheme (ie 0682) and will only produce evidence on the revised scheme’……..

’[NB] In late October 2019 the Applicants then advised by Avison Young Planning Consultants, submitted various documentation in furtherance of what was to become planning applications SMD/2019/0646. SMD/ 2019/0725 and SMD/2019/0716.

Contained in that documentation was a **Statement of Planning Support (SPS),** authored by Avison Young for and on behalf of Laver Leisure (Oakamoor) Ltd.

It remains available.

It contains a stated intention by the Applicants to rely upon all the material previously submitted in the scheme SMD/ 2014/0682 outline planning application. (which had been refused on the 26th October 2015 by SMDC LPA PAC.)

By making such assertions on behalf of the applicants in respect of the three ‘ Phased’ applications, the Applicants have again evinced an intention - and as documentation further establishes, an actuality - of a breach of one the conditions required by the SMDC LPA PAC at their meeting of the 13th July 2017. (see Agenda Item 13 - meeting of the SMDC LPA PAC held on the 13th. July 2017 and the Report of the Executive Director Mr. D. Larner).

This amounts to a *further repudiation* of the S106 Agreement dated 26th. October 2016 that was an essential part of the 0378 outline planning permission.

The inclusion of the blue pencil test into the next version(2) of the S106 Agreement that was adduced before the Inspector on the 27th July 2017

became part of the record of the appeal proceedings.(Version 2). It was intended to encompass the conditions required by the SMDC LPA PAC as evidenced in the 13th. July 2017 documents.
[NB] *Planning Inspectors have a Procedural Guide for Planning Appeals.*
It provides that,
Paragraph 1.2.1 ' *Making an Appeal should not be used as a **bargaining tactic** but only as a last resort **
**See earlier above.*

(a) this clearly was not a case of ' last resort' as the Appellants had secured the right to Appeal. This was also additionally demonstrated by the contents of the report of SMDC Executive Director written by Mr. D. Larner and dated 13th. July 2017 and thus at a time when the Appeal was about to be listed for hearing by PINS.

(b)Within the same paragraph further guidance provides that ' *Appellants should be confident at the time that they make their appeal that they are able to make their **full** case.'*
Again the words in the above cited Executive Director's report of the 13th. July 2017 set out the Applicant's concerns that they *could not be certain* of making their ' full case'. amounts to evidence of a further breach of the Procedural Guide to Planning Appeals cited above.
It is offensive to the normal construction of the english language to pretend that the PAC's agreement to the proposed substitution of the 0682 scheme with the 0378 scheme met the detail of the above guidance. It was in reality a **bargaining tactic** and as such something that has the potential to demean a Planning Authority who are required not to act in a way no reasonable Authority would act.
[See Wenesbury Case]

.**Paragraph 1.4 of the Executive Officers report to the PAC on the 13th. July 2017**

(a) makes it clear that the SMDC LPA PAC were not willing to give an *unrestricted* approval to the planned substitution of 0682 with the 0378 outline permission as evidenced by them making their consent *subject to the following conditions,*
Para1.4,
(i) the appellant sets out in a (revised statement of case) *that it abandons the*

original scheme and will only produce evidence on the revised scheme' *.
*See subsequently the Statement of Planning Support (SPS) by the Appellants Planning Agents which contains assertions demonstrating an intention to act in contravention of this PAC imposed condition, by using the contents of the 0682 application in Phased applications.
(ii) all the consultation responses from the second application are put before the inspector.
(iii) those entitled to be consulted are told that the applicant proposes the substitution and given a further opportunity to make representations to the appeal inspector.

PINS subsequently determined that the Appeal should be considered on the basis of the scheme as *originally* submitted (0682).

Paragraph 1.10.1 of the PINS Guidance to Inspectors stresses 'that the Inspector **has** [*imperative*] to make the decision under the circumstances existing at the time he/ she makes it'.*
*NB. To a significant degree the Inspector was prevented from doing so by the actions of the Appellants, although some aspects of his rulings made and evidenced in the directions document dated 27th. July 2017 have survived and contains a specific finding as to **access** which has survived the planning process. (see later).

The Planning Procedural Guidance also advises that, ' It is important the LPA and the Applicants discuss and seek to agree any conditions *before* planning permission is granted'. It is clear from the dates and the contents evidenced in Item 13 of the SMDC LPA PAC meeting of 13th. July 2017 ongoing attempts were being made by the Applicants/ Appellants and the SMDC LPA ex post facto of the 0378.
The clear and obvious conclusion to be drawn from this sequence of events is that SMDC LPA and the Appellants were trying to use the procedure to rectify that both parties considered to be necessary to make an unacceptable 0378 permission acceptable. [see above Para 1.2.1 of the cited Planning Guide to Appeals and case law cited below [Goodlife Foods 2017]?
In the appeal of 0682 it is clear that the granting of 0378, with conditions had been granted some 12+ months prior to the hearing of the 0682 appeal which commenced on the 7th November 2017.
After the 26th. October 2016 there then followed a prolonged period during which the LPA and the Appellants attempted to agree certain issues they intend

at a future date to embody in a S 106 Agreement. The evidence shows that as a matter of fact, process and law these attempts failed.
Thus see the following,
On the 13th.July 2017 the Appellants entered into a Section 106 Agreement with SMDC LPA which would, '*if accepted by the Inspector*, commit Laver Leisure *to bring forward the revised scheme in a way which addresses the Councils (and thus the PAC's) concerns with the original leisure planning application.' [ibid 13/7/2017 Agenda item 13]*

'In effect, therefore the Section 106 Agreement, if found to be necessary by the Inspector, would limit the scope of any permission granted by the Inspector to the proposed revised scheme which was approved by the Council PAC in March 2017'
See the above cited report of the 13th.July 2017.' [ibid 13/07/2017 Agenda item 13].

Planning guidance also provides that,

' a positively worded condition which requires the Applicants (in 0378) to enter into a planning obligation under Section 106, or an agreement under other powers is *unlikely to pass the test of enforceability .....[and] ensure that the test of necessity is met* and in the interests of transparency'.(see Paragraph 101 Ref ID 219-010-20190723.*)
*Informative 2 on page 17 of the grant of outline planning permission demonstrates the claim that the S106 came into existence on or before the 26th. October 2016.

Appeal Process - SMD/2014/ 0682.
PINS determined that because of the complexities of the issues raised, a directions hearing should be listed to enable the Inspector to give the parties directions to ensure the Appeal was ready for a hearing. It is clear that before he sat to give those directions he had familiarized himself with the parties Statements of Common Ground.

The directions hearing took place at Moorlands house on the 27th.July 2017 before the Inspector Mr.D. Cullingford.
Rule 6 parties were also present.
The Appellant was represented by Mr. Tucker Q.C. at the direction hearing.

In outlining his approach to the hearing of the 0682 appeal Mr. Tucker addressed the Inspector on the issues and the contents of a Section 106 Agreement (version2).
He also stressed that the replacement Section 106 required by the SMDC LPA to ensure the Appellants compliance by the conditions it required, was subject **to ' the blue pencil test'.**
The claimed need for a ' blue pencil' test at the PINS directions hearing on 27th. July 2017 made by Mr. Tucker Q.C. on behalf of the Appellants, demonstrates that neither they nor the SMDC LPA were certain by the 27th July 2017 that they had a full and binding contractual agreement as to all necessary element of the appeal.
At best it could only be construed as being as conditional upon the *personal* determination of the PINS Inspector, and upon him determining the 0682 appeal in favour of the Appellants.

Despite this lack of certainty the SMDC and the Appellants had entered into a Section 106 Agreement intended to reflect the conditions required by the SMDC PAC.*
* (See Paragraph 1.4 of the Officer report dated 13th. July 2017.)
This lack of certainty is further evidenced in conditionality specified in the document of the 13th. July 2017 at paragraph 1.4.

Copies of the proposed S106 Agreement were delivered to the parties during the ongoing directions hearing at Moorland House after its commencement on the 27th.July 2017.
The copies circulated were literally ' hot off the press' and because of this heat were not at the time capable of scrutiny by the Rule 6 parties.

This version (2) was undated and not effectively signed.(I have a copy).
It represents clear evidence that the Appellants intended that the contents of the Section 106 Agreement dated 26/10/2016 (version 1) and forming a part of Outline Planning Permission SMD/2016/0378, should be changed as necessary in the course of Appeal hearing of SMD/2014/0682.
Version 2 as put before Inspector Cullingford on the 27th.July 2017 was thus an overt intention by the Appellants that amounted to a repudiation of version 1 of a S106 Agreement.
It will be understood that acting with the authority of SMDC LPA , Officer Mr. B.Haywood had at page 17 paragraph 2 of the notice of Outline Planning Permission had made Version 1 an **essential** element of the outline planning

permission.
With effect from the 27th.July 2017- almost a year after the grant of the Outline permission- both the SMDC LPA and the Appellants had expressed a clear intent to repudiate version 1 of the S106 Agreement and to replace it with version 2 containing the blue pencil test.
The rigour of Section 106 in the T&CP 1990 coupled to statutory Government guidance specifies that conditions can **only** be attached to make acceptable a development which **would otherwise be unacceptable.** The Appeal was of course an appeal against the refusal of SMD/2014/0682 which was by the 27th. July 2027 self evidently unacceptable because SMDC LPA had on the 26th.November 2015 refused it.

It must logically follow that both SMDC LPA and the Appellants were, on the 27th. July 2017, placing into the discretion of Inspector Cullingford the decision as to the adequacy or otherwise of the effectiveness of version 2 of the S106 Agreement(dated 13/07/2017) to render the SMD/2014/0682 application acceptable, should he *firstly* grant the Appeal and *if* he granted the Appeal then, use his authority and discretion to ' use the blue pencil' to ensure compliance with, inter alia, the additional conditions required by SMDC LPA PAC as evidenced in the document dated 13th.July 2017.

Between the 13th. July 2017 and 8th. November 2017 there was a lacuna in the planning process except in so far as it may have gone between the SMDC LPA and the Appellants ' behind a curtain'.
The Appellants, guided by advisers, has engaged in a process that repudiated the S106 Agreement an essential to the lawfulness of SMD/2016/0378 outline planning permission.
They made significant changes in version 2 of the S106 Agreement and tellingly stressed to the Inspector that version 2 now contained an additional blue pencil test with all that is thereby implied by both law, guidance and practice.
This further rested upon the exercise of the discretion of Mr. Cullingford.
For the record there is (still) to be found on the SMDC LPA's SMD/2014/0682 appeal file a copy of Mr. Cullingford's findings of the 27th. July 2017, a copy of which I retain.

As the hearing on the 27th.July 2017 was a formal part of the appeal process, the contents are also a formal part of the legal planning process and thus binds upon the parties.

I note in passing the SMDC in response to a FOIA request has asserted the existence of only **one** such S106 document as forming a part of the 0378 planning process.
This is demonstrably inaccurate.

Before considering the implications and consequences of Planning law and procedure, statutory and planning rules and guidance and private law requirements, it is appropriate to set out the detail of the PINS hearing of the 0682 Appeal by the appellants.
The hearing took place before Inspector Mr. David Cullingford who had dealt with the directions hearing in July 2017.
The full appeal hearing was scheduled for about five days. It commenced on the morning of the 7th November 2017.
On that first day and at an early stage, and whilst again outlining to the Inspector the basis of the appeal against the refusal of the 0682 application on the 26th.November 2015, Mr Tucker Q.C. handed to the Inspector and other parties a **new** Section 106 Agreement (version 3) and stressed that the ' blue pencil test' had been removed from this third version since the directions hearing on the 27th.July 2017.
This act amounted in contract law terms to a further repudiation of the version 2 of the S106 Agreement which had on the 27th. July 2017 been formally entered onto the record of the Appeal of SMD/2014/0682. This action being within that appeal had thus become an integral part of the 0682 appeal process to be determined by the Inspector. Additionally the conditioned 0378 was by the process of the appeal and the directions given, contained within the shell of 0682 and thus within the jurisdiction of the Inspector.

On the 7th. November 2017 the Appellants were again represented by Mr. Tucker Q.C. The SMDC LPA were also represented by Counsel and were supporting the Appellants in their appeal.
On the first morning of the appeal Mr. Tucker Q.C. arranged to circulated a *<u>further</u>* and again revised S106 Agreement and was at pains to emphasise to the Inspector that this version(3) no longer contained a 'blue pencil test'.
It is unclear why the clause was removed and no documentation has been disclosed by SMDC LPA under the FOIA to explain if this was an agreed change and if so why.

At all events it represents a further act of repudiation by the Appellants of the 13th July version (2) S 106 Agreement.

The consequences of this replacement of version 2 of the S106 agreement with version 3 was based upon high quality legal advice. This left the PINS Inspector with only the version 3 S106 Agreement upon which to rely if he found later in the appeal process In favour of the Appellants.
This action on the 7th. November 2017 by the Appellants had the legal effect of amounting to a repudiation of the version (2) that had become part of the legal process of the appeal on the 27th. July 2017.

On the second day of the Appeal hearing, the 8th. November 2017, the Applicants sought the Inspectors leave to withdraw their Appeal of 0682. The Inspector granted leave and marked the appeal as withdrawn. Again a formal record of the Inspector's decision exists
With the formal withdrawal of the SMD/2014/0682 all the documents forming part of it which included the S106 Agreement (version 3) and the conditions required by the SMDC LPA PAC contained within the 0378 outline permission and which is evidenced in item 13 of PAC meeting of the 13th.July 2017 ceased to have any legal force.
As the SMDC LPA and it's PAC. was a complicity and contracting party to the change of basis upon which the 0682 appeal was to proceed they must have intended the legal consequences of the consent they gave.
As such they are, by equitable legal principles, planning law and procedure and contract law requirements, estopped with effect from the 8th. November 2011 from processing the three phased applications SMD/2019/0646, SMD/2019/0716, SMD/2019/0275 and SMD/2022/0014.
To do so would be an abuse of the applicable law and process, inequitable, a breach of the standards of the conduct to be expected of the holders of public office, contrary to public policy and ultra vires of their powers.
[see also Summary below].

Contract Law considerations as they applied to the application 0682, it's appeal and to 0378.
A FOIA request dated the 3rd January 2022 SMDC LPA requested information from SMDC LPA. This requested, inter alia, ' Please confirm that all dealings of the SMDC LPA in the processing of the outline planning application SMD/ 2016/0378 subsequent to the 27th. October 2017, SMDC LPA and it's Officers have applied all Public, Planning and Private law requirements and principles

including Government Planning Guidance to the exercise of its planning functions in the matter of the application SMD/2016/0378?
Although this FOIA request has been acknowledged and an apology received for its failure to provide the information the SMDC LPA are now beyond the stipulated time time to provide me with the information,
Because there are pressing time constraints relating to the hearing dates of the above cited planning applications and (only) for the purpose of completing and submitting these representations in a timely manner I have assumed that the answer when it arrives will confirm that it has complied with all legal and procedural, guidance, etc.
Should I subsequently receive a reply that admits to the contrary I will submit a separate representation making any corrections necessary. As listed planning hearing dates are now only 14days away I have decided that these representations must be submitted now.

The role of the Doctrine of Privity of Contract in the above cited planning applications.

It is trite but nonetheless wholly accurate to state that under the legal doctrine known as *Privity of Contract,* a Unilateral Undertaking/ Section 106 T&CPA 1990 is a private document and only a matter for the parties to it.*
On that basis the S106 version (1) was a matter between the Applicants/ Appellants and SMDC LPA.
It also follows that the S106 agreement made part of the Appeal directions process at Moorlands House on the 27th.July 2017 hearing before the Inspector David Cullingford (version 2) is also an inter parties document.
It became however also a matter for the Inspector Mr. Cullingford in the exercise of his discretion by virtue of his findings and the directions he gave at the hearing of the 27th. July 2017 and the powers vested in him and with the consent of the Appellants and SMDC LPA.(see later).

Access to Moneystone Quarry.
This was subject to findings and directions made by Mr. Cullingford with regard to access issues to Moneystone Quarry. His document contains an effective rebuttal of a position adopted in the 0682 appeal process by both the Appellants and SMDC LPA.
The Inspector's approach to the issue of MQ access arises from his reading of the Statement of Common Ground filed by both parties in the appeal.
With regard to access issues at MQ there is found in the direction document of

27th.July 2017 the following,
" **This intended modification (SMD/2016/ O378/0388- alteration at MQ entrance) will be considered in connection with the leisure scheme as a whole'**
This is a **formal determination,** making access at the quarry entrance a planning issue for determination by Inspector Cullingford *of the leisure development as a whole.*
It was a live issue at the time the appeal hearing was convened on the 7th. November 2017 and on that date became subject to the version 3 of the S106 Agreement as part of the 0682 appeal.

Version 2 made part of the Appeal process on 27th July 2 017 was, as Mr, Tucker QC stressed to the Inspector, a document containing a ' *blue pencil test'.*
The concept of the ' blue pencil test' is something known to all lawyers practising in the disciple of Contract Law.
The test is the contractual practice of modifying, narrowing or deleting an unenforceable contract or contract provision.
As early as 1890 the House of Lords in the **Nordenfelt** case ruled that the court had the power to remove or strike through(with an imaginary blue pencil) portions of a contractual clause that was unenforceable.
A more recent example is the case of **Goodlife Foods Ltd.-v- Hall Fire Protection Ltd.[2017]EWHC 767 (TCC)** that made it clear that there are strict limits to how and when the blue pencil test can be employed. The court '**must not use the blue pencil test to change the actual agreement between the parties**'. The clause(s) that remain **must** still reflect the provisions original **meaning** and the **parties intentions.***
This was thus also an issue for Inspector Cullingford to rule upon in the exercise of his discretion within the 0682 appeal.
*See also later as to ' intention'

Additionally any Section 106 agreement must meet the Regulation 122 test.

What a legal contract must contain.
A large body of case law has established with a high degree of certainty what elements are essential to a binding legal contract.
As a Council tax payer already funding the legal expenses of SMDC LPA and knowing that it's Officers and Councillors have access to legal advice at the expense of Council tax payers I do not intend to recite all the legal principles

that now shape and control a binding legal contract. I leave it to SMDC LPA to seek such legal guidance as they think this document gives rise to.
What I have set out below are those principles and case law together with recitals of factual events that are sufficient to support the conclusions I set out at the end of this representation.

All contracts **must** contain,
*__An Offer__
*__An Acceptance/ Agreement.__
*__An intention to be legally bound__ by the contracts terms and conditions.
*__Consideration.__ This is usually described as ‘ money or moneys worth’ but can also be other things that have ‘ value’. What amounts to consideration is to be found in reported cases of this aspect of contract law and in any decent legal text book on the topic.
*__Certainty__. This has developed as a result of long established case law to be also described as ‘ a meeting of minds.’ For example there is no meeting of minds if party ‘A’ thinks he is contracting to buy an iron bedstead and party ‘B’ is intending to sell a wooden bedstead. If the facts establish this dichotomy then there is no meeting of minds and thus no acceptance of the benefits and burdens of the ‘ contract’ and so no contract comes into existence.
Of relevance here is also the concept of ‘ a counter offer’. If the Offeror eg. states during the negotiation stage of the contracting process **‘ if I do not hear from you by 9 am tomorrow morning I will assume we have an agreement.’** [see eg ‘ The Bumper Hall pen case also known as Harvey -v- Facey 1893]* this does not amount to acceptance, as silence can never be acceptance sufficient to support the requirements of contract law.
It has long been established that a *counter offer* is in reality a rejection of the original offer and thus no offer survives that process because it is in reality a repudiation of the offer made which defeats the intention to be legally bound by it’s terms and so no contract results, unless or until the process of negotiation is resumed and continued until *complete* agreement is reached.

In the case of the SMD/2016/0378 the terms of the private S106 Agreement were set and affirmed by the notice of the Outline Planning Permission dated 26th. October 2016.
At page 17 of that document at Paragraph 2 it is made clear that the outline permission is dependent upon the Unilateral Undertaking/ S106 Agreement (version 1) on the same date.

For reasons never yet fully disclosed it is clear that ' behind the curtain' negotiations took place between SMDC LPA Officers, the Appellants and the PAC, that resulted in the PAC holding a meeting in March 2017 in which they purported to reach an agreement on the advice of SMDC Officer(s) *' to the substitution of the original scheme (0682) by the revised scheme approved by the Council,subject to the following conditions.'*
This March 2017 decision did not meet with the approval of PINS who ordered that the appeal be based upon the original 0682 scheme.
[see Agenda item 13 of meeting of the Planning Application Committee dated 13th July 2017 and a report by Executive Director Mr. D. Larner and especially paragraph 1.4- note also there is no evidence that any other interested parties were invited to make contributions to the PAC considerations of that day].
This was a breach of the condition set out at Paragraph 1.4 (iii) and which was required by the PAC and provided that *' those entitled to be consulted are told that the appellant proposes the substitution and given a further opportunity to make representations to the appeal inspector.]*

The determination by SMDC LPA PAC in March 2017, in law, amounted to a **repudiation** on its part of the S106 Agreement attaching to SMD/2016/0378.
This was subsequently refined by the decision of the PAC on the 13 th. July 2017 and which demonstrated another change of mind as to what they required in order to give their consent to any changes.
This resulted in in a replacement S106 Agreement containing the [additionally conditioned] blue pencil test in the 'Agreement' dated 13th. July 2017.
This was then placed officially on the record of the Appeal proceeding by Mr. Tucker Q.C. for the Appellants at the direction hearing on 27th July 2017.

In taking this action the Applicants endorsed the repudiation by SMDC LPA of the S106 Agreement (version 1) dated 26th. October 2016 and replaced it with version 2 (which contained a blue pencil test clause and which also required agreement to the conditionality set out at paragraph 1.4- (i)- (ii) and Paragraph 1.6 and 1.7 of the report of the Executive Director's report to the PAC and dated 13th. July 2017.

The proposal by, (seemingly) both parties, to the S106 (version 2) Agreement was predicated upon the Inspector finding in favour of the Appellant's in their appeal in the 0682 case and then moving on to consider other aspects of the refused planning application and specifically to consider the validity and merits on planning grounds of the amendments required by SMDC LPA PAC members

and as stipulated in their decision of the 13 th, July 2027. This was also itself to be the subject of a determination by the Inspector Mr, Cullingford at the hearing of the SMD/2014/0682 appeal.

That sequence of steps was of course intended to be taken at the conclusion of the Appeal if a decision was made in the Appellants favour. It was not.

The second procedural step was a clear and separate requirement which was itself the subject of evidenced determinations made by PINS prior to the commencement of the hearing on the 7th, November 2017.

The announcement made by Mr. Tucker Q.C. for the Appellants, early in the hearing of the 0682 appeal on the 7th. November 2017 as he caused to be handed to the Inspector a copy of a new version (version3) of a proposed S106 Agreement was surprising.
He stressed that this latest version *no longer contained a ' blue pencil test ' clause*. This was a radical change to the S106 Agreement of the 13th.July 2017 and was one of substance and not merely form. It amounted to a repudiation of the 13th. July 2017 version (2).

The SMDC LPA PAC had stipulated conditions to attach to the version 2 of the S106 Agreement as part of giving their approval to the proposed method of dealing with the 0682 appeal.
The centrally important conditionality is best expressed in the wording set out in paragraphs 1.6 and 1.7 to be found on page 84 of the Agenda item 13 of the PAC meeting on 13 th. July 2017. This is what is recorded,
Paragraph 1.6
' The Developer has therefore offered to enter into a Section 106 Agreement, which would, if accepted by the Inspector , commit Laver Leisure to bring forward the revised scheme in a way that addresses the Councils concerns with the original leisure planning application[SMD/ 2014/0682]. The s106 Agreement restricts the height of.....(etc)..*
*'Offered' in the context of a private law contract is a clear recital of one of the major **required** elements of a contract under English law. (see later)

and,
Paragraph 1.7 states,
*' In effect , therefore, the S106 Agreement, **if found necessary by the Inspector** would limit the scope of any permission granted by the Inspector*

to reflect the revised scheme which was approved by the Council.'
[See ibid document 13th. July 2017].

After a delayed start to the Appeal hearing on the 8th. November 2017 whilst Mr. Tucker Q.C. held consultations with his clients, he then invited the Inspector to mark the 0682 appeal as withdrawn. The Inspector gave his consent and so marked the ending of the 0682 appeal.

Consequences of the withdrawal of the 0682 Appeal.

The introduction on the morning of 7th. September 2017 of a new version of a Section 106 Agreement (version 3) had the legal contractual effect of repudiating the version 2 introduced at the directions hearing on the 27th. July 2017.
It will be understood that this version 2 introduction to the process of the 0682 appeal , again by operation of law, amounted to a **repudiation** of version 1 of the S106 agreement upon which the Outline Planning permission 0378 was based on the 26th. October 2016.
The Moneystone Quarry leisure development, already rendered unstable on the shifting and sinking quicksands across the whole of the MQ site, was finally sunk by the Applicants own actions at the Appeal hearing on the 8th.November 2017.

By the 8th. November 2017 0682 and by then the entombed 0378 within it ceased to exist, washing away with it almost all but not quite everything pertaining to the 0682 appeal process. The washing away swept away the Appellants agreement to be compliant with the contents of any extant S106 Agreement.
The effect of the Applicants withdrawing the 0682 appeal removed from the Inspector any mechanism by which he could approve, refuse or adapt the 0682 application [and the conditioned 0378 within the shell of the outline permission]. These were,
(i) the conditions upon which he was mandated by the Applicants and SMDC LPA to consider and if appropriate to approve the conditions arising by virtue of the decision of the SMDC LPA PAC, and as evidenced by the document of the 13th. July 2017 and which is embodied in his directions of 27th July 2017.
That prolonged state of legal indecision can no longer be rectified because, inter alia, the provision of Conditions 2 and 3 as to time limits within the Outline planning permission of 0378 can no longer be complied with, having now

lapsed.
(ii) additionally it prevented the Inspector considering the issue set out in the parties Statement of Common Grounds and which was described by the Inspector as ' **the intended modification to the access arrangements at MQ to be considered in connection with the leisure facility as a whole. '**

Conclusion.
In his response to my FOIA request of 11th. November 2021 Mr. B. Haywood replied on the 10th. December 2021 stating that **' the current status of SMD/ 2016/0378 is an extant outline planning permission'.**
I submit that it is not and has not been since the 8th.November 2017.

This arises by virtue of the unilateral action of the Applicants of withdrawing from the Inspector Mr. Cullingford the determination of issues made central to the SMDC LPA PAC in their conditional approval of the substitution of the 0378 outline planning permission dated 13th. July 2017 into the 0682 appeal process. Also additionally the finding by the Inspector that it was necessary for him to consider the issue of Quarry **access** as part of development ' **as a whole.'**

Having chosen to sweep away the 0682 Appeal by seeking and obtaining leave to withdraw the 0682 appeal, the Appellants also removed, by a combination of legal planning and contract principles, central requirements of the 0378 outline planning permission and the only basis upon which the subsequent phased applications, namely SMD/2019/0646, SMD/2019/0716, SMD/2019/0725 (now withdrawn) and SMD/2022/0014 rested for their phased validity.

It is and has been accepted by SMDC LPA and the Applicants that the Outline Planning permission SMD/2016/0378 was a necessary foundation upon which to build the future phased developmental plans.
Once the 0378 outline permission ceases to have legal validity there is no power available to SMDC LPA to process and determine any subsequent phased development plans.
At various times I have drawn to the attention of SMDC LPA that they have repeatedly acted ultra vires of their powers.

This state of affairs arises, as I have demonstrated above, by a combination of law, procedure guidance and other factors and factual events.

The legal basis of the outline planning permission is set out in the statutory

required notice of grant of outline permission dated 26th. October 2016.
This document contains all the conditions and reasons that limit and regulate how the outline permission will be conditioned and the reasons for the conditions.

One of the **fundamental** conditions is found at page 17 of the permission at paragraph 2 which requires the permission *to be read in conjunction with what is called a Unilateral Undertaking.*
This unilateral undertaking has been clarified by a response from SMDC LPA to my FOIA, to be, in fact and form, a S106 Legal Agreement dated 26th. October 2016 [although I note it has been signed by the LDC on the 25th October 2016.].

At item 5 of the 0378 Outline planning permission is a condition that sets and in reality follows a national legal planning time limit constraints that requires compliance with the provisions of Section 91 of the Town & Country Planning Act 1990. (see above)

However important, that is an incidental consideration when set against other factual events and failings by both Laver Leisure(Oakamoor) Ltd., and SMDC LPA.

This is because since the 8th. November 2017 there has not been in existence a valid S106 Agreement which could ie '*should be read in conjunction with the corresponding Unilateral Undertaking [for which read S106 legal agreement] dated 26th October 2016'*
By it's own actions and supported by the Officers of SMDC LPA and PAC, the required S106 Agreement transmuted from version 1 (dated [in fact 25/10/2017 but expressed in the Notice of Outline Permission as] the 26th.October 2016, into version 2 dated 13th. July 2017 then containing a ' blue pencil test'- the only logical purpose of which was to give to the PINS Inspector the power to approve the conditioned consent of the SMDC LPA PAC, which is evidenced in the Agenda item and report dated 13/07/2017 (ibid).

Version 2 of the S106 Legal Agreement was subsequently repudiated by the Appellants on the 7th. November 2017 when Mr. Tucker Q.C. introduced version 3 and explained to the Inspector that the blue pencil test had been removed from this version.

On the 8th. November 2017 the Appellants withdrew the 0682 appeal and with

it version 3 of S106 Agreement, by obtaining leave of the Inspector to withdraw the Appeal.
The overall effect of this action, coupled to the essential contractual ingredient of 'agreement' to the essential element in a contract was the removal of the concomitant and compromised and conditioned version 2 of a S106 Agreement.

These sequential actions left the Outline Planning Permission dated 26th. October 2016 with no extant S106 agreement upon which the Applicants could comply with the Informative at paragraph 2 on page 17 of the outline permission a state of affairs that has remained unaddressed since the 8th. November 2017.

The SMDC LPA have in a succession of answers to FOIA requests confirmed that the **only** S106 Agreement they have entered into with the Applicant/ Appellants is version 1 dated 26th.October 2016. The record shows this assertion to be incorrect and misleading. Fortunately I have retained copies of all of them.

Unfortunately for the LPA and the Applicants and by the operation of contract law requirements, coupled with the Applicants decision to withdraw the 0682 appeal no valid Unilateral Undertaking/ S106 Agreement *has existed since the 8th. November 2017.*

Highway and Access issues.

At paragraph 3 on page 17 of the 0378 outline permission is to be found this,

' Condition 22 above requiring off- site highway works shall[imperative] require Major Works Agreement with Staffordshire County Council and the Applicant is therefore requested to contact Staffordshire County. Council in respect of securing the Agreement.*'.....
*As a result of the contents and consequence of appeal correspondence between the Appellants with PINS and following the Appointment of Mr. Cullingford and thereafter further correspondence between PINS and Officers of SMDC LPA, directions were given to both parties (and others) to regulate the conduct of the 0682 appeal.
The correspondence makes it clear that the Appellants and SMDC LPA had ' hitched the planning wagon that was the outline permission 0378' to the 0682 Appeal process'.

However Inspector Cullingwood had made at the direction hearing on the 27th.July 2017the following finding and in consequence made a ruling that bound the parties.

After reading the required *Statements of Common Ground* filed in the 0682 Appeal process Inspector Mr. Collingwood made this ruling which was formalised in his order of the 27th. July 2017.
In addressing his role in respect of access issues to the MQ site he said,
‘ This intended modification will be considered in connection with the leisure scheme as a whole’.

This finding, in the exercise of the Inspector’s discretion has the effect of a juridical decision and was thus binding on the Appellants and the SMDC LPA. This ruling was made at a date when both parties had already settled and submitted their Statements of Common Ground thereby demonstrating that the the Inspector had evidence and a basis for making an informed decision on reasonable grounds for ruling as he did as to access to the site ...’ *with the leisure scheme as a whole’*

By the actions of the Appellants on the 8th. November 2017 in withdrawing from the Inspector their appeal, and this done with the consent of the SMDC LPA, this gave rise to a consequence that meant the Applicants were not only unable to comply with requirements set out in the documents dated both the 26th,October 2016, and 16th.July 2017 but more importantly left unresolved the legal finding of Inspector Cullingford in these terms ‘ the intended modification (of the MQ access junction) will be considered in connection with the leisure scheme as a **whole**.’
It also reveals that SMDC LPA has failed to take any action to resolve this important planning issue and now no longer have the means to remedy it within the now long lapsed and invalid 0378.
This dangling and irredeemable irregularity makes it impossible for the Applicants to comply Condition 22 of the now lapsed outline permission SMD/ 2016/0378. It is yet further proof that there is no’ extant outline planning permission’.
In the circumstances I seek your urgent assurances that you will put an end to the ongoing waste of public expenditure by rejecting forthwith all planning matters relating to Moneystone Quarry.

Dated,
etc.