

REPRESENTATIONS CONCERNING THE PURPORTED STATUS OF PLANNING APPLICATIONS RELATING TO MONEYSTONE QUARRY SITE COVERING THE PERIOD 01/01/2014 AND THE DATE OF THESE REPRESENTATIONS (18/08/2022), TO INCLUDE APPLICATIONS SMD/2014/0682, SMD/2016/0378, SMD/2016/0388, SMD/2019/0646 (phased), SMD/2019/0716(phased), SMD/2019/0725 (phased and now withdrawn) AND SMD/2022/0014.(phased)

Preface.

The Localism Act 2011 became operational in law on the 01/01/2012. It was accompanied by the National Planning Policy Framework.(NPPF).

By virtue of the NPPF initiation date, the NPPF has direct applicability to **all** the above cited planning applications.

Planning is within the control and application of the Staffordshire Moorland Local Planning Authority (SMDC LPA). In planning matters the LPA is governed by

- (i) Its Constitution,
- (ii) The statutory planning procedures and provisions including,
- (iii) The Town and Country Planning Act 1990, and The Town and Country Planning (Development Management Procedure) (England) Order 2015, (phased development) (iv)statutory guidance,
- (v) the Common Law (see SMDC LPA Constitution) and
- (vi)various legal Case law decisions and
- (vii) the law of contract as applied to S106 Agreements.

In respect of all the above cited planning applications they all fall within the ambit of the current and extant legal and Constitutional provisions.

Planning Application SMD/2014/0682 (an Outline Application limited to Access issues only with all other matters reserved) and its link to an Appeal to PINS following its refusal in 2015 and the intentional linking of it to what became SMD/2016/0378 and SMD/2016/0388 (both Outline applications limited to access- see notice of Grant of Outline Planning Permission SMD/2016/0378 dated 26/10/2016 Condition 1 and its attached reasons namely '*because no particulars have been submitted with regard to the matters reserved in this permission (excepting access)*'. See also Informative 1. Page 17 of notice of outline permission *dated 26/10/2016*.

The Planning Application SMD/2014/0682 was refused by the SMDC LPA Planning Application Committee in 2015. The refusal of the application was appealed by the Applicants to PINS (just) within the six months time limit.

The Appellants asked PINS to hold-over the hearing of the Appeal in the hope and expectation that they would be able to negotiate an agreed basis to render the 0682 application acceptable to the SMDC LPA PAC. This expectation was met in part but ultimately did not to the satisfaction of PINS. The Appeal proceeded to a hearing by a PINS Inspector. On the 08/11/2017 the appeal was withdrawn.

The correspondence between SMDC LPA, its Officers and the Appellants as it related to the negotiations between SMDC LPA and the Appellants has not been fully disclosed but outstanding FOIA requests have been submitted seeking its disclosure.

The wording of the Appellants notice of appeal to PINS stresses the clear intention that if agreement could be reached with SMDC LPA and its PAC in what became the Applications SMD/2016/0378 and SMD/2016/0388 (both limited to issues of access with all other matters reserved) then the Appellants *would withdraw their Appeal. The record shows that despite obtaining the Outline planning permission set out in the terms of the notice dated 26/10/2016, the Appellants **reneged** upon their commitment to withdraw the Appeal. It was re- activated and the Appeal process continued until the 08/11/2017 when it was withdrawn.*

The Role of the SMDC LPA Constitution in Planning matters.

By the provisions of its Constitution LPA Officers owed a duty to the Council members characterised by ' **mutual respect honesty and trust**'.

In determining planning applications the Officers and Council members of the PAC were acting **as ' servants of the public '** (paragraph 2.1 of the SMDC Constitution Protocol on Councillors / Officers Relations) and owed a duty of candour, honesty and trust to the citizens and the Councillors it served.

In dealing with any aspects of the 0682 Appeal and the (refused) SMD/ 2016/0388 and SMD/2016/0378 (granted outline planning permission) and in

particular issues of access in both 2014 and 2016, SMDC LPA where bound by all relevant law, guidance and procedures. In a FOIA SMDC LPA have asserted that they have complied although further evidence and disclosures demonstrate that the LPA and some officers not

Two relevant omissions were,

(a) A duty to comply with the following provision of the NPPF,

' to ensure that the (MQ) site is suitable for its proposed use taking account of ground conditions and any risks arising from land stability and contamination.'

and (b) **' to properly weigh the planning balance '** and observe the legal test set out in the Wednesbury Case [1948] 1 KB 223, by ensuring that it acted in a way a reasonable planning authority, acting reasonably, would act.

It is submitted below that SMDC LPA in dealing with the three applications SMD/2014/0682 (and its appeal) SMD/2016/0378 and SMD/2016/0388 failed to meet all these essential criteria (see below).

The state of knowledge of SMDC LPA, its Officers and some identified Councillors from 2010 onwards.

Following an order by the Information Commissioner under the Freedom of Information Act some (but not all those items ordered to be disclosed) including minutes of meetings held between the Applicants, and their Agents and arising in 2010 and there after continuing , FOIA disclosures made it known that the Applicants had held a meeting, with the then CEO and other named Officers and four named Councillors, at Moorlands House in October 2010 to discuss the **known state of land instability at Moneystone Quarry.**

Additionally on the 11th and 12th November 2012 the proposed Developers at MQ wrote letters to SMDC Councillors described as ' Key Stakeholders ' in the proposed development. These Councillors were, Sybil Ralphs(Leader), Andrew Hart, Edwin Wain, Josie Clowes and Elsie Fallows concerning ' the need to ensure the long term stability of Moneystone Quarry.'

NB. Officers and Councillors also had available national government guidance (eg. See PPG 14 (paragraphs 25-30) - which outlines the approach that LPA should follow in dealing with land instability issues. [Mineral Planning Guidance 5 dated 05/05/2006]. This advice was obviously ignored as subsequent events demonstrate.

Further and subsequently documentary evidence also came to light adding details to the nature, extent and details of the instability at Moneystone Quarry. These include (i) A copy of a letter sent on behalf of the Proposed Developers and dated October 2010 by Planning agents acting on their behalf to SMDC LPA, setting out the details of agreement reached at 'various levels of seniority within the LPA' as to the proposed development of a Leisure Development at MQ.* (*A copy of the letter was delivered through my letter box by some unknown person overnight in 2013.

It seemed clear to me that it was from within SMDC from various date stamps etc on its face)

(ii) Other details of the October 2010 meeting at Moorlands House were revealed by a circular informative letter originating with a Public Relations Agent appointed to act on behalf of the Applicants.

(iii) following an ongoing series of FOIA requests continuing up to the present date other details have been revealed that clearly establish the state of SMDC LPA's knowledge of MQ Instability issues since 2010 onwards by SMDC LPA and its planning officers. This included report by Abbeydale dated 2011 and a further report dated 2018*

*See my representations on these matters in 2020 and 2021 written as more documentary evidence was progressively uncovered.

A search of paper and electronic records between 2010 and the present date.

With specific regard to SMD/2014/0682, careful checks have been made of the LPA records. These establish that planning officers did not reveal to members of the PAC that sat to determine the 0682 application in 2015 the state of their knowledge as to the extent and nature of the instability issues at MQ. From January 2012 they have been bound by the requirement set out in the NPPF 'to ensure the MQ site was suitable for its proposed use'....* (see above).

There is no on the record evidence that Officers discharged this duty.

I submit that this amounted to a failure to comply with the NPPF and statutory obligations.

I further submit that this failure amounted to a breach of the LPA's duty of candour owed to Councillor members of the PAC and to the public whose servants they were in the discharge of their duties as Planning Officers and was additionally a failure of the 'essential ingredient of mutual respect, honesty and trust' that was

owed by them' by virtue of the SMDC LPA Constitution.

Arising from these failings it is impossible to rationally conclude that the Case officer in the SMD/2014/0682 application was ever in a position to properly '**weigh the planning balance and neither was the Officer acting in accordance with the standard of reasonableness established by the Wednesbury case cited above.**

The links between SMD/2014/0682 and SMD/2016/0378 and SMD/2016/0388

It is known- (because the Case Officer has admitted that it was so)- that she was asked to advise the Applicants with regard to the wisdom of submitting late in the planning process an additional planning application which became SMD/2016/0388. As can be seen from examination of the filed plans and documents, 0388 was exclusively for the purpose of access and regulating traffic seeking access to and from the MQ site in the event that the PAC committee approved the outline application.

The recommendation of the Officer to the PAC was that both 0378 and 0388 should receive outline permission. The report that dealt with both 0378 and 0388 made no mention of the state of the Officers knowledge on issues of instability at MQ and was an omission of the duty to ensure that the site was suitable for its intended use (NPPF).

On that basis it is again submitted that there was a failure to identify to the members of the PAC the nature and the extent of the known MQ instability and thus an inability of the Case Officer *to properly weigh the planning balance in* making recommendations to the Committee with regard to both application SMD/2016/0378 and SMD/2016/0388.

It is an oddity still virtually incapable of reconciling, the more so given HHJ Pilling's finding of fact in his Judgement in July 2017 that the plans forming part of the 0378 application and the 0388 were identical.

Be that as it may be the SMDC LPA PAC granted the 0378 application but proceeded to refuse the 0388 application on a basis that seems irreconcilable with its decision minutes earlier in the 0378 application.

During the High Court Hearing of a Judicial Review of the SMD/2016/0378 application before His Honour Judge Pilling on 20/07/2017, SMDC LPA through the representations of Counsel acting for the Authority, urged upon his lordship

the argument that the legal issue raised in the case was to be determined on the basis that the only or main consideration was the 'weighing of the planning balance' by Mrs. J. Curley the case officer.

By way of a statement submitted in the JR hearing Mrs Curley presented herself as having 'properly weighed the planning balance in the 0378 case.' HHJ Pilling sought express confirmation on this point and Counsel for SMDC LPA supplied it.

As HHJ. Pilling judgement shows the case was determined on that narrow basis.

A number of points arise from the above history.

(i) The SMDC LPA which it will be understood owed to the PAC and later the Court a duty of candour, and in effect misled the both by failing to disclose that it had known since October 2010 that MQ was unstable.

By this act of commission or omission the SMDC LPA was not in a position through the Case Officer to properly 'weigh the planning balance' in compliance with the standard set by the Wednesbury case(1948).

By that failure all proper facts were not disclosed by the LPA to the Court.

[see also the advice in the **Earl report to Parliament** given by the Information Commissioner as to the effects and consequences of making 'judgements based inaccurate data and information and biased assumptions. Additionally the ICO comments that ' the manner and time which it takes to effectively respond to FOIA requests can raise serious questions about the efficiency and reliability of processes and procedures. He goes on to state ' Openness and transparency are essential in order to ensure accountability and promote trust and confidence.'] [see also my earlier representations based on the Earl case and the legitimate questions about the consequences of maladministration.]

(ii) The SMDC LPA had failed in the 0378 case at both the PAC hearing of the application in July 2016 and at the Judicial Review hearing in July 2017 to comply with the NPPF in that it had either suppressed its long held knowledge that MQ was unstable or had incompetently failed in its duty to ensure that the development site was '**suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.**' [NPPF]

(iii) As the Wardle Armstrong Peer Review report on the stability of MQ, makes clear and which was commissioned on the 04/05/2022 by SMDC LPA after

sustained pressure from concerned residents and was issued on the 01/06/2022, demonstrates *beyond any possibility of doubt* that the case officer in respect of all the cited planning applications submitted by the Applicants in respect of MQ and despite her knowing from 2010 that the Applicants own experts had asserted to the LPA that MQ was unstable, was never at any stage of any of the Applications cited above in a position to properly 'weigh in the planning balance to 'ensure that the site was suitable for its proposed use...' This amounted to a very serious failure **of procedure and substance** [see later as to the findings in the People Over Wind judgement below.]

(iv) Such a glaring failure is not only fatal to the claimed validity of the outline planning permission SMD/2016/0378 but the ex post facto actions of the SMDC LPA and in particular those actions between 26/10/2016 and the 08/11/2017, of the Officers of the LPA and members of the PAC. who met, -in what was in reality two secret conclaves- at the behest of Mr. D. Larner Executive Director, - in March and July 2017 further demonstrates an intention to change, several times, the factual, legal, and procedural basis upon which the original outline permission had been granted.*

[*for fuller details see the details of my earlier and formal complaints about the actions of Officers and the SMDC LPA in regard to the evidence, which complaints remain outstanding, plus see the extant **three** versions of Section 106 signed agreements dated 26/10/2016, 13/07/2017 and 07/11/2017].

The further consequences of the actions of SMDC LPA and its Officers between 26/10/2016 and 08/11/2017.

In 2017 the European Court of Justice [CJEU] which had immediate and direct legal applicability as part of the adopted law of the United Kingdom issued its decision in a case entitled,

' People over Wind and Sweetman-v- Coilette Tevranta (C 323/ 17) which had in 2017 and continues to have wide ranging consequences upon all Planning Authorities and specifically upon SMDC LPA in respect of all cited planning applications.

Additionally In cases titled **Gladman Developments Ltd.-v- Secretary of State for Housing, Communities and Local Government and Medway Council [2019*] EWHC 2001 [Admin]** and **'Canterbury City Council-v- Secretary of State for Housing, Communities and Local Government [2019]EWHC 1211[Admin]** both cases upheld the judgement in the ' People Over Wind' case.

Further these decisions found that 'the domestic law line of authority based upon **Hart** is no longer good law.'

**Another matter of significance gives rise to consequences for the MQ proposed phased developments is the date of the People Over Power case (2017) and Gladman and Canterbury City cases (07/08/2019)*

As SMD/2019/0646, SMD/2019/0716, SMD/2019/ 0725, SMD/2022/ 0014 were validated by Case Officer Jane Curley, an expert in planning law and procedure, in November 2019 she and SMDC LPA were bound by the reaffirmation of the People and Wind Judicial finding in Gladman and Canterbury City Council decisions which was published on the 07/08/2019 and were thus binding upon the SMDC LPA on the date of validation in November 2019.

There cannot be found anywhere within the documentation of the phased planning applications SMD/2019/0646, SMD/2019/0716, SMD/2019/0725 (now replaced by SMD/2022/0014) any evidence that the dictum in the People Over Power case has featured in the procedural and substantive legal requirements and considerations of Officers of SMDC LPA and in particular with regard to,

(a) The Habitat and the Flora and Fauna of the Whiston SSSI.

(b) The compliance with the SMDC LPA Core Strategy policies on Climate Change and Global Warming and how the cited planning applications meet the criteria of the NPPF 'to ensure that the MQ site is suitable for its proposed use taking account of ground conditions and any risks arising from land stability and contamination.'

(c) How the cited phased applications - based as they are on a seemingly constantly changing set of proposals and documentation- meet or are intended at some undefined future date to meet the Peer Reviewed critiques of the Wardell Armstrong (Stability) report, and those issues identified in (b) above.

The invalidity of Outline Planning Permission SMD/2016/0378.

My detailed complaints about the actions of SMDC LPA and its Officers is the subject of a formal complaint that is (seemingly and only notionally) being investigated by Mr. N. Rogers and encompasses purported finding by both Mr. A.Stokes CEO and Mr. B. Haywood perhaps best characterised shortly as 'SMD/2016/0378 is an extant outline planning permission'.

My complaints, not recited again herein but available to the SMDC LPA, seem at present to be best represented as the players ' marking their own home work'.

I suspend my judgement and incredulity until such time as Mr. Rogers produces his report and findings.

I ask that he is copied into these representations as they include evidence about which at least some of the SMDC LPA Officers seem to have been unaware.

I have in my complaint expressly drawn to Mr. Rogers' attention the advice and guidance given to Authorities about bias and making decisions of the basis of incorrect or inaccurate facts as well as the delays in providing responses to FOIA requests and the adverse effects on public trust and confidence. [see the EARL case available in UK GOV.COM. and which contained detailed advice and commentary of failures of the FOIA processes from the Information Commissioner.]

I turn now to a matter of major importance in the handling and outcome of SMD/2016/0378.

The facts now established beyond doubt and which are evidence based, show that between 2010 and the 26/10/2016 the LPA via not less than

- (i) four [then] Councillors,
- (ii) the Authorities [then] Chief Executive Officer, Mr. S. Baker
- (iii) The then senior Planning Officers Mr. P. Wardle and Mr. G. Clarke,
- (iv) Mr. D. Larner the [then] Executive Director (Place) -who was required by the SMDC MPA Leader to attend and to participate in a meeting with the [then long term] Leader of SMDC in her office in 2015 at which myself and two other local residents were invited to participate and which, inter alia, discussed issues of MQ instability and suitability for the soon to be determined SMD/2014/0682 then awaiting to be heard by the PAC.

Documentary evidence demonstrates that during this time SMDC LPA Officers were repeatedly attempting to satisfy the pressure upon it imposed by the Applicants in respect of the perhaps understandable anxiety to obtain Officer approval for their constantly changing plans for developments at MQ.

After 26/10/2016 and continuing through the 0682 appeal and continued into the hearing of the Appeal against the refusal of SMD/2014/0682 and the evidenced and demonstrable conjoining of the 0682 Appeal with SMD/2016/0378, the LPA has been under an obligation to comply with the requirements established by the CJEU in the People Over Wind case ruling as

well as the provisions of the Town and Country Planning Act 1990 (T&CPA) and all other legal and procedural requirements [see below the findings in the People Over Power judgement about the Habitat Directive being both '*procedural and substantive*'.

As the Judgement of the CJEU decision in People Over Wind case is widely available on line for consideration, as are the decisions of the more recent judicial support for that judgement and found in the Gladman Development Ltd and the Canterbury City Council decisions (dated 07/08/2018 - see *ibid*) I do not recite them in detail, believing that Professional Planners would have made themselves familiar with these judgements and the implications for their every day working duties.

However if readers feel the need to study these cases they are easily found by Googling the titles.

Set out below I provide an extract of all the important findings in the **People Over Wind case** and the later reaffirmation of its range and legal validity in the Gladman and Canterbury City decisions in 2019, thus,

The Courts findings [see the Gladman Development Ltd case for ease of reference where the finding are conveniently summarised towards the end of the Judgement] and that are as follows,

'A full and precise analysis of the effects of a [planning *my addition*] proposal **must** inform the decision under Article 6(3) of the Habitat Directive which reflects a consistent line of authority in the CJEU, emphasising these features of the requirements of the Habitat Directive and which is clearly derived from the language of Article 6[3]'

*'The rationale is that taking account of mitigation measures at the screening stage would compromise the practical effect of the Habitat Directive by circumventing the full and precise analysis required by the Appropriate Assessment'

*'The Appropriate Assessment must not have lacunae and must remove all reasonable scientific doubt in relation to the effects of the proposal [see paragraphs 36-38 of the People Over Wind]'

*'The provisions of Article 6[3] of the Habitat Directive are **procedural as well as substantive** (my emphasis) since Appropriate Assessment includes the requirement that the competent national authority will not agree to the plan or project until it has been ascertained that it will not adversely affect the habitat and, if appropriate, after having consulted with the general public'[see paragraph 39 of People Over Wind]

*'The taking account of mitigation measures and exclusion of the Appropriate Assessment process *may also deprive the public of a right to participate*(* my emphasis) in the decision taking process'.

*'The domestic law line of authority based upon *Hart* is no longer good law.'

Conclusions.

(a).At the date of these submissions it is impossible to understand how any of the above cited MQ applications can be determined by the SMDC LPA PAC in view of the findings and requirements of the Wardle Armstrong Peer Reviewed Moneystone Quarry (Stability) report of June 2022 which, it must be understood, was (only lately-04/05/2022-) Commissioned by SMDC LPA itself.

(b) Because the SMDC LPA and (some of) its PAC members were encouraged by the Executive Director (Place) Mr. D. Larner to become involved in ' *behind the curtain*'* decision-taking, that resulted in the intermingling of the Appeal Case of SMD/2014/0682 with the Outline case of SMD/2016/0378 and to do so ex post facto, with the result that the hands of the SMD LPA and its PAC were and are now tied [see law of contract requirements] for the future, as a consequence of decisions taken at meetings that took place in March and July 2017. The result is that SMDC now finds itself bound by the CJEU Judgement of People Over Wind, judgement.

This judgement has now been forcefully *reconfirmed* by the UK courts in the Gladman Development and Canturbury City Council cases of 07/08/2019.

Additionally the LPA's attention is drawn to the express finding in the People Over Wind judgement about the ' *process may also deprive the public of a right to participate in the decision.*

For all the above reasons I submit that the SMD/2016/0378 is no longer a valid outline planning permission because of the actions of Officers of the SMDC LPA and some members of the PAC ex post facto the issuance of the Notice dated 26/10/2016.

Additionally and because of the failure of Officers to explain the state of their knowledge as to the instability issues at MQ, the Case Officer in the 0378 case was never in a position to 'properly weigh the planning balance' in any of the cases SMD/2014/0682, SMD/2016/0378, and SMD/2016/0388 because although she knew there was instability - (the Applicants had told her so and the LPA in 2010 and had provided an inadequate ' expert' report setting out an admittedly incomplete and, as the Peer Review Stability report of June 2022 now makes clear an inaccurate report) she had failed to inform herself of the nature, extent and dangers of those instability factors.

The record also shows that the Case Officer resisted between 26/10/2016 and the 04/05/2022 the urging of worried residents to obtain appropriate expert advice to assist in any future need to properly ' weigh the planning balance'. The consequence is that there is no ' extant Outline Planning Permission' as asserted by both Mr.B. Heywood and Mr.A.Stokes.

Without the basis of a valid Outline Planning permission (SMD/2016/0378) the ' phased' applications cited above have no valid status upon which they can base their proposals.

I invite the SMDC LPA to reconsider its position with regard to any proposals to develop a leisure facility at MQ and stop the wasted costs of Council taxpayers money it has so far expended.

Paul Housiaux

Resident,

Whiston.

19/08/2022