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Please mark all correspondence  
**For the attention of**  
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26 April 2017

Dear Sir or Madam

**Russell Armer application dwellings Land South of Underbarrow Road, Kendal  
SL/2016/0413**

We write with regard to the above planning application on land south of Underbarrow Road, Kendal ('the RA scheme') which was the subject of a resolution to grant permission by the Council at committee on 24 November 2016 subject to the signing of a s.106 planning obligation and which is now to be brought back before the Council's planning committee on Thursday 27 April 2017.

As the Council is aware we represent [REDACTED] which lies adjacent to the southern boundary of the application site at the bottom of this steeply sloping site. They have raised a number of key matters with regard to the adequacy of the applicant's assessment and proposed drainage solutions in a series of representations (including expert advice from Dossor MCA).

We write in particular to the matter raised in our letter dated 8 February 2017 which highlighted the fact that a last minute amendment to the proposal which was not the subject of any assessment or acknowledgement had been submitted on the day of the committee meeting. This is Drainage Layout Plan Drawing No K31324-A1-100 revision F (REV F).

The legal consequences of this were pointed out and we do not repeat them herein but simply attach our letter of 8 February 2017 and ask the committee to read it with care.

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To date we have not received any response to this letter other than a holding letter dated 17 February 2017. We also received a letter dated 18 April merely stating that the application was to be reheard on committee at 27 April.

We have seen and noted the content of the independent analysis that the LLFA commissioned which (whilst not acknowledged) appears to seek to deal with the concern raised by our clients and their expert. This report undertaken by WSP ("the WSP Report") of the evidence presented by the applicants in respect of the surface water drainage proposals notably concluded that:

*"A key issue for the site is quantification of off-site flood risk in exceedance events and whether this is acceptable .....*

*Susceptibility of off-site properties to flooding has not been assessed .....*

*Therefore the likelihood and severity of increased flood risk to off-site properties cannot be assessed, and the adequacy of the proposed mitigation."*

The WSP Report made a number of findings and recommendations to which the applicants made a response following a discussion with the LLFA on 17 March 2017. In that response, the applicants' consultant RG Parkins seems to dismiss a number of WSP's recommendations and the LLFA in its own subsequent response accedes to this without any explanation.

It is correct that some additional evidence and plans have been submitted. These were only very recently made available. As such and as pointed out in an email sent to the Council on 20 April 2017, given the significance of this issue to our clients, let alone as a matter of public consultation given the change wrought to the scheme by the addition of this bund at this stage, there has not been fair, adequate and lawful consultation. The Council in its response to this email which **relies** solely upon requirements as to notification of the committee meeting as being adequate meeting clearly and singularly fails to recognise the appropriate lawful response to material (and indeed last minute) amendments to the scheme let alone new evidence. That response should have been to have a formal public consultation at a minimum.

This has not happened.

Our clients have, despite the short length of time, been able to gain preliminary advice from Dossor MCA which we convey herein however it is our intention to submit a full response unless the Council decides to refuse the application. We return to this latter point below.

Dossor MCA has advised that it notes that the LLFA has confirmed that "the issues raised in the independent technical review have now been satisfactorily addressed" however there is no reference to WSP's own views of the applicants' response subsequent to their assessment and which, given the clear view expressed (see above), is any extraordinary omission.

Dossor MCA has advised that in any event the additional evidence is not adequate and does not give the degree of assurance to the adjacent property owners of [REDACTED] in relation to flood risk.

Significant technical matters that remain according to Dossor MCA's advice include:





- The soil type and topography are not conducive to infiltration techniques across the development site, the areas of least permeability are immediately upslope of [REDACTED].
- The topography of the development site is steeply sloping towards the rear of [REDACTED] and soil bunds may provide only transient relief to overland flow of surface water. Sufficient flow, e.g. similar to that from Storm Desmond may outflank or overwhelm the bunds.
- The drainage designs do not take account of events similar to Storm Desmond, and therefore have not been tested rigorously, and flood routing modelled to provide assurance of mitigation to downslope properties.
- Only a temporary bund is proposed at the potential access to future development immediately to the rear and upslope of [REDACTED].
- The proposed development will entail substantial cut and fill earthworks operations. Therefore, existing infiltration testing of soils will be superseded and rendered invalid. There will be the risk of changed groundwater regimes due to earthworks in particular through soils used in filling.

Contrary to the applicants views as expressed in their response to WSP, the level of detail and assurance expected by WSP is entirely in line with the risk presented by a development as large scale as this immediately upslope of residential properties. It remains unclear why the LLFA is seemingly prepared to accede to the applicants views and not those of its own independent advisers.

In addition, the conditions proposed to be attached to the planning approval do not adequately provide protection and reasonable assurance against the risks of flooding of [REDACTED] from the proposed development.

To that end the Council, despite the LLFA's expressed view, cannot reasonably conclude that the proposed development presents anything other than a very high risk strategy in relation to the provision of surface water drainage and mitigation of flooding to downslope properties. It is clear still that the likelihood and severity of increased flood risk to the downslope properties has not been assessed.

Returning to what is proposed for the Council's committee to consider on 27 April 2017 we note, on the one hand, that the officer's recommendation is only to consider whether to resolve to grant permission again. We further note this is despite the fact that on Tuesday 25 April the Council posted its agreement to extend time to determine the application in any event to 31 May 2017.

The legal nature therefore of the purpose and outcome of the meeting is clearly in question.

There is no power that we are aware of for the Council's committee simply to 'resolve' again without having the option to consider the application afresh. In particular, it must have the option to refuse the application (it clearly cannot 'resolve' to refuse). If therefore determination has now been

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extended to 31 May it would appear that the committee's discretion is being fettered if it is being advised that it can only resolve to grant permission without an alternative.

To this end we suggest that the Council must accept that the best way forward is either to refuse the application or to defer the final determination and which must be by the committee and not by delegated authority at least to 31 May.

Setting aside the lawfulness of the approach as set out above, the principal, indeed the only reason that this is being brought back before the Council's committee at all is because of the serious issues that we have raised in our previous correspondence and representations on the part of our clients. It cannot be suggested that there has been anything like sufficient time to consider and respond in the circumstances to the implications of the Council's and the LLFA's position.

Our clients have given the Council every opportunity to address the ongoing problems with this application and the consequences they have upon any position taken by the Council other than to refuse the application in the current circumstances.

What is more, even if the committee somehow resolves again to grant the application on Thursday (which it is not clear is a lawful decision as set out above) it will be in no better position legally than it was in November 2016.

To be clear, the anomalies and the lacunae within the evidence with regard to the proposed drainage associated with the proposed development and in particular the serious implications that has upon our clients and other properties adjacent to the southern boundary of the application site have not been addressed. What is more, any approval by the Council as the application will be in the face of independent advice that the LLFA has received that the scheme does not work. To that end in fact the Council's position in support of this application is in our view and that of planning counsel quite evidently worsened from a legal standpoint than before.

We trust that the Council and its committee will give the appropriate consideration to these representations and the advice contained herein. Our clients wish to emphasise, as they have from the start, that their concern lies with the adequacy of evidence in respect of the base data and thereafter the proposed means of addressing an acknowledged and serious risk to property out with the application site in respect of future drainage of the proposal.

Any attempt on the part of the applicants to characterise or dismiss the matters raised herein and by our clients' earlier representations as mere 'threats' of judicial review in the event that the council finally approves this application fails fundamentally to understand the position that our clients have been forced to take.

To wit, the applicants have been found wanting in their approach by the LLFA's own independent consultants and then only after the matter was raised by our clients. The position is now seemingly being rushed through committee without any further or formal consultation with the public let alone our clients.

Our advice remains that the council should defer consideration of this application until it has given sufficient time for our clients and the public to consider the amendments to the scheme which had not been noticed in November and which has only been the subject of recent evidence let alone





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acknowledgement. If it is to prepared to defer consideration, despite the agreed extension of time, then the only appropriate response should be to refuse this application.

Yours faithfully



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