



Our Ref: JWB/SLG/QUI0008/0007

Your Ref:

Mr J Freeman
Head of Planning
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent
ME10 3HT

10th March 2021

Dear Sir

Chestnut Street Conservation Area Extension

We have been instructed to write to you on behalf of A Hinge & Sons Limited ('Hinge') and the Trustees of the William Barrows Charity ('the Charity'). The Charity own land within the proposed Chestnut Street Conservation Area Extension yet was not made aware of the proposal to extend the conservation area or of the public consultation exercise into the proposed conservation area appraisal and management plan. Hinge own land within the vicinity of the conservation area, which lies within the area covered by the planning application that is currently before the Secretary of State on appeal and were also unaware of the proposals. That planning application is reliant upon highway works being undertaken within the area where the Council is now proposing to extend the conservation area.

Our client Quinn Estates also has concerns about the process that was employed and we set those concerns out below separately.

The Consultation is Prejudicial to Hinge and the Charity

We understand that the Council undertook a six week public consultation exercise, which ran from Monday 5 October 2020 until Sunday 15 November 2020 in respect of the proposed Chestnut Street Conservation Area Extension and the proposed conservation area appraisal and management plan. We further understand that all those parties with property either within or overlapping the current conservation area boundary were notified by the Council in writing of the proposals and were invited to comment upon them. It appears, however, that whilst the Council chose to consult persons who own property within the existing conservation area it did not consult with those who own property within the proposed extension to the conservation area. We find this oversight very concerning.

We understand that all the representations received by the Council were considered at the Local Plan Panel meeting on 18 February 2021. The Panel recognised that certain landowners had not been consulted, but nonetheless decided to recommend to proceed with the conservation area extension and this is to be considered by the Council's Cabinet on 17 March 2021. The Panel considered that any comments from landowners who had not been consulted could be reported, ad-hoc, to the Cabinet meeting of 17th March.

The clerk to the trustees of the Charity has been in touch with both yourself and Mr Algar of the Council regarding this oversight and we have been advised that Mr Algar has requested that the Charity should provide comments on the consultation by 12 March 2021, in advance of the Cabinet meeting. We note

however, that the consultation portal has been closed and the Conservation Area review documents are no longer available to access at this time.

Whilst there is no statutory duty for local authorities to consult in respect of conservation areas in advance of their designation or extension, the Council's own website sets out its policy on such matters as follows:-

Public consultation is required where the local planning authority wishes to designate a new conservation area, de-designate an existing conservation area, alter the boundaries of an existing conservation area, or it seeks to introduce additional control in the conservation area by means of a special mechanism called an Article 4 Direction. Public consultation is also required when character appraisal management strategy/plan documents are produced for particular conservation areas to help ensure that the documents properly capture the key characteristics of the area that lend it a special character, the issues affecting the special character and appearance of the area have been correctly identified, and that the management strategy/plan put forward to address these issues is appropriate.

Furthermore, Historic England advises in its advice note "Conservation Area Appraisal, Designation and Management" that owners should be consulted. In particular paragraph 28 of the advice note states that "by consulting local communities and owners on new designations, and when appraising and reviewing conservation areas consideration can be given to relevant information that either might present, helping to ensure decisions are robust. Local communities and owners will also be helpful in providing proactive assistance in identifying the general areas that merit conservation area status and defining the boundaries."

The statements on the Council's website concerning consultation and the purported 6 week consultation undertaken by the Council have created a legitimate expectation that the Council will consult all affected landowners.

Case law on the point is clear, namely that if a local authority embarks on a public consultation exercise it has to comply with the standards of a lawful consultation procedure – see *R (on the application of Silus Investments SA) v Hounslow LBC* and *Trillium (Prime) Property GP Limited v London Borough of Tower Hamlets*. In our view that requires treating all those affected equally both in terms of timescale and information.

Those most affected by the proposed extension are the owners of land within the proposed extension of the conservation area. However, the Council has failed to consult these owners at all, whereas it consulted all landowners within the existing conservation area and gave them 6 weeks within which to comment. The Council's Local Plan Panel then reached a decision on the extension knowing that it had not heard the views of the landowners who were most affected. When it was pointed out that these landowners had been overlooked by the Council's consultation exercise all the Council has suggested is that those who have complained prepare observations in advance of the next Cabinet meeting.

This is all highly unsatisfactory:

- These landowners have been given a much shorter period of informal consultation (22 days) than that afforded to the other consultees (42 days);
- The relevant documents are no longer available for these landowners to see;
- it appears that the Council has still not contacted all affected owners within the area to be extended;
- in view of the Local Plan Panel recommendation that it is apparent that the Council has already made up its mind on the issue.

In the circumstances, we consider that the only fair process now is for the Council to start once again on a proper consultation exercise, affording all interested parties (that is those initially consulted, the Charity and all other land owners within the proposed extension area) a full six-week period of consultation. Those comments should then be considered afresh by the Local Plan Panel. This will ensure that the recommendation made to Cabinet by the Local Plan Panel reflects the results of an appropriate consultation exercise and that the views of landowners form part of the consideration

We are not aware of any reason why the Council has to proceed urgently with its review: no buildings within the proposed extension area are under imminent threat of demolition. Therefore, we request that the Council

starts once again, with a fair procedure. A failure to do so will be exposing any decision to extend the conservation area to legal challenge. Can you therefore please confirm that the proposed extension will not be reported to Cabinet until a full and fair consultation exercise as outlined above has been undertaken.

Concerns of Quinn Estates

We have very serious concerns about the motives of the Council in deciding to extend the conservation area at this time. As you will be aware the Secretary of State is currently considering our client's appeal in respect of land at Wise's Lane, which includes part of the area to be extended.

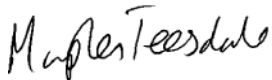
We note as follows:

- The Council published "A Heritage Strategy for Swale" in April 2020. Appendix I sets out the Council's Action Plan¹, which sets out the Council's proposed actions from between April 2020 and March 2023. Nowhere does the document mention any proposal to extend the Borden Chestnut Street Conservation Area.
- The importance of this area being included in the CA boundary was not raised at any time during the pre-application process on our client's planning application, during the determination of the application nor at the public inquiry which sat in November 2019. The public inquiry considered the issue of impacts on heritage assets, including the impact on the character and appearance of the existing Borden Chestnut Street Conservation Area.
- Our client's planning and heritage consultants, Montagu Evans, have requested details of the evidence base that justified the officer's recommendation in respect of the extension. From the report to the Local Plan Panel it appears that there is no such evidence base as "Background Papers" are listed as "None" in the report. Accordingly, the decision to proceed with the extension seems arbitrary, at the very least. If such evidence does exist it should have been identified as a background paper under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The failure to do so should be rectified and it should be made readily available to all interested parties immediately. Sufficient time should be afforded to them to review and comment upon the supporting information that has been used to justify the extension.

We therefore find the timing of this proposed extension to the Conservation Area to be highly irregular and we request a reasoned explanation in the light of the above points. In the absence of such explanation, we will have no option but to infer improper and vexatious motives on the Council's part in deciding to extend the Conservation Area in this way, exposing the Authority to legal challenge and further cost awards against public funds.

We are copying this letter to Ms Narebor, in the Council's legal team.

Yours faithfully



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