NORTH PLYMSTOCK AREA ACTION PLAN
INCLUDING MINERALS

Plymouth & South West Co-operative Society

Correspondence Relating to Bond Pearce
Letter of 02 February 2007
2 February 2007

Mr D Machin
C/o Christine Self (Programme Officer)
Plymouth LDF Examination
Hernefield House
Hernefield Road
Saltford
Bristol BS31 3EG

Dear Sir

South Hams District LDF - Sherford AAP

I am writing to you in connection with the North Plymstock AAP and recent events which have occurred at the examination into the South Hams Sherford AAP. As you will appreciate both of these AAP's are interlinked and indeed joint sessions for both examinations have been programmed.

Since you are represented at the Sherford AAP you will be aware that it has been accepted at that examination by South Hams District Council that their Sustainability Appraisal ("SA") is flawed by the failure to consider the reasonable alternatives to the AAP proposals including in particular the proposals which are being promoted by my clients. You will of course be aware that my clients proposals do not involve any road link through the King George V playing fields as contemplated by the AAP. In addition the current application made by Red Tree involves an alternative road link which is inconsistent with the proposals of the AAP.

I am therefore writing to enquire as to your proposals in respect of the SA and Strategic Environmental Assessment ("SEA") associated with the North Plymstock AAP which clearly is subject to the same defects afflicting the SA and SEA supporting the Sherford AAP. Our clients put you on notice that we shall be raising the same issues which we have raised at the Sherford AAP examination at the North Plymstock examination in respect of the clear deficiencies in the SEA and SA supporting that plan. As it stands the AAP is legally defective and cannot be lawfully adopted due to the clear breaches of both the EU Directive 2001/42/EC and the Environmental Assessment of Plans and Programmes Regulations 2004. The only appropriate way forward is for the AAP to be withdrawn.

Whilst writing I would advise that if there is any environmental information which you require in respect of my clients proposals I would be happy to provide it although as you know it is in fact all in the public...
domain already.

I look forward to hearing from you in due course.

Yours sincerely

Marcus Trinick
Partner
For and on behalf of Bond Pearce LLP

Copies to:
1. Paul Barnard, Plymouth City Council
2. Red Tree
3. Mr D Fletcher, PSW
4. Mr N Duckworth, PSW
5. Mr P Frampton, PSW
6. Mr I Dove QC
7. Mr K Williams, South Hams District Council
2 February 2007

Mr N Payne  
c/o Christine Self  
Programme Officer  
Plymouth LDF Examination  
Hernefield House  
Hernefield Road  
Saltford, Bristol  BS31 3EG

Dear Mr Payne

South Hams District LDF - Sherford AAP

I am writing to confirm the position of my clients in relation to recent developments in the proceedings of the Sherford AAP examination. I understand that in response to submissions made on behalf of my clients at the examination it has been accepted that there is a need for the Sustainability Assessment ("SA") of the AAP to be reviewed in the light of the absence of critical information in various respects and its failure to provide any sensible consideration of my clients' alternative proposal of Sherford Refined. I understand that this work is to be put in hand and that the Examination is to hold sessions to discuss this work when it is available.

My clients have agreed to provide environmental information in relation to their proposal to assist this process. However, it is important that I set out the basis of their co-operation in this exercise which is entirely without prejudice to their principal contentions in relation to the legality of the AAP procedure to date. My clients wish to reiterate to you the submissions that were made by counsel in particular on the first and second days of the examination which in concise form are as follows:

1. The LDD making process is fundamentally flawed by the failure of the Strategic Environmental Assessment ("SEA") and the SA to consider at all the proposals of my client for Sherford Refined. The revision of the SA will in any event do nothing to address this critical failure of the SEA accompanying the AAP making it unlawful for the AAP to be adopted following the current examination since it will be in breach of the Environmental Assessment of Plans and Programmes Regulations 2004.

2. It is further unlawful and in breach of those Regulations and the requirements of EU Directive 2001/42/EC for the consideration of alternatives to be embarked upon after the legislative procedures for examining the plan have commenced. An ex post facto consideration of alternatives cannot be undertaken with any legal integrity.

3. The only proper course is for the AAP to be withdrawn and for the Council to restart the SA and SEA process from scratch on the basis of a complete understanding of the environmental
information and the reasonable alternatives which are available, including of course those promoted by my client.

I understand that the Council and Red Tree may wish to respond to this, although it should be noted that all my clients intend through this letter is to set out their position for the record, and not to debate the issue by correspondence. They do however reserve the right to respond if necessary to any matters raised in correspondence.

Yours sincerely

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Marcus Trinick
Partner
For and on behalf of Bond Pearce LLP

Cc  D Fletcher, PSW
    J Carter, PSW
    N Duckworth, PSW
    P Frampton, PSW
    Ian Dove QC
    Kevin Williams, South Hams District Council
    Red Tree
Subject: FW: FAO Mr D Machin: South Hams District LDF - Sherford AAP
Date: Friday, February 9, 2007 18:37
From: Christine Self <ac.self@ntlworld.com>
To: Douglas Machin douglas.machin.jn@pins gsi.gov.uk

From: Barnard, Paul (DEVELOPMENT) [mailto:Paul.Barnard@plymouth.gov.uk]
Sent: 06 February 2007 23:59
To: Natalie Hollier; ac.self@ntlworld.com
Cc: Fletcher, Douglas; Carter, James; nduckworth@henryboot.co.uk; iand@no5.com; peter.frampton@framptons-planning.com; info@redtreellp.com; kevin.williams@southhams.gov.uk; karen.boyle@southhams.gov.uk; Alan Robinson (E-mail); Bell, Jonathan; Roberts, Andy (DEVELOPMENT)
Subject: RE: FAO Mr D Machin: South Hams District LDF - Sherford AAP
Importance: High

Dear Inspector Machin,

I refer to the attached letter, dated 2nd February 2007, but only received by the City Council on 5th February 2007. I was advised by Mr Dove on behalf of the Coop on 30th January 2007 that he "was likely to be writing to the City Council" for it to consider its position regarding SA and SEA matters discussed previously at the Public Examination into the Sherford AAP insofar as, in the opinion of his clients, there were similar issues with regard to the North Plymstock AAP. I note this letter entitled "South Hams LDF - Sherford AAP", is to you as Inspector and what appears to be an identical letter has been sent to Inspector Payne although the matters raised are clearly in relation to the North Plymstock AAP. I assume this is the letter that Mr Dove referred to on 30th January 2007. No doubt the Coop will assist you by clarifying this at some point.

Before I turn to the matters raised, it is clearly totally inaccurate to assert in the second paragraph of the letter that you, Inspector Payne, or for that matter South Hams District Council, let alone the City Council, accepts that SA and SEA work undertaken on either AAP "has been accepted" as flawed. For the avoidance of all doubt this has not been accepted by the City Council. Indeed the letter from Mr Robinson dated 1 February 2007 to Inspector Payne makes it absolutely clear (at the top of the second page) that without prejudice to further work being done for the Sherford AAP, South Hams District Council still considered the information produced for that AAP as appropriate.

It is the City Council's view that the work that we have undertaken for the North Plymstock AAP is appropriate and sound. We therefore do not accept that the work we have done for the North Plymstock AAP is flawed for the same reasons that the Coop have raised in relation to the Sherford AAP. I think both Inspectors are well aware of the fact that the Coop do not propose a road through KGV, but the commentary about the Red Tree planning application, and whether it is "inconsistent" with the North Plymstock AAP, is not in itself a matter before the hearings: that is a matter for the Plymouth Planning Committee in due course.

I also note that the Coop have not made any representations prior to this letter on the SA for the Submitted North Plymstock AAP and so I formally reserve the City Council's position given its relationship with the specific test of soundness on this matter.

The third paragraph of the letter appears to seek the "remedy" of withdrawing the AAP. The City
Council has absolutely no intention of doing that, both in terms of the relevant provisions of the 2004 Act, and specifically in relation to the issues raised by the Coop on the matter of the SA.

The City Council is anxious however to avoid any possibility of delay arising from some future unmeritorious challenge and so, without prejudice to its position set out above, is prepared, if you so require, to undertake additional work on the SA for the North Plymstock AAP. We will therefore consider following the approach that South Hams District Council are taking provided:

The Coop can advise us by Friday 9th February 2007 precisely what they are seeking us to address in the SA that they say need to be reconsidered in this additional work and precisely what points and options they are seeking us to assess in the refreshed SA. (Does this for example include all the items listed in Section 4 of Mr Robinson's letter? Given the fact that Sherford Refined is entirely within South Hams area, over which Plymouth has no jurisdiction, what exactly is the SA assessing inside the boundary of the city in terms of options for development.

The Coop provide us by Friday 9th February 2007 with all the information they wish us to assess in the refreshed SA, and confirm that this is consistent with the material requested by South Hams.

The Coop confirm by Friday 9th February 2007 that they wish us to undertake a similar compare and contrast exercise as set out in Mr Robinson's letter at Section 4.

The Coop confirm their acceptance, as in the letter by Mr Robinson, to the timetable for the refreshed North Plymstock AAP SA being the same as that for the refreshed SA being prepared for the Sherford AAP.

In relation to the discussions on this matter concerning the Sherford AAP, and referred to in Section 6 of Mr Robinson's letter, Inspector Payne indicated the intention to reconvene the Sherford AAP on 24th and 25th April 2007. In order to avoid further delay, the City Council is of the view that these dates should be considered as joint AAP sessions to cover all the SA matters on both AAPs, obviously allowing the refreshed work to be debated. If this is not possible, then certainly the North Plymstock AAP should be reconvened in that same week. This would allow the production of the AAP reports to still be produced at the end of May as stated by Inspector Payne at the Sherford AAP on 30th January 2007.

I am assuming that you will wish to discuss this at the start of the joint session day on 13th February 2007 and trust the above comments are of assistance to you.

Paul Barnard

Paul Barnard
Assistant Director of Development
(Planning & Regeneration)
Planning & Regeneration Service
email: paul.barnard@plymouth.gov.uk
Direct Line: 01752 30 43 05
Mobile: 0771 332 9765
Fax: 01752 30 48 52
Web: www.plymouth.gov.uk
13 February 2007
By Post and Email: (paul.barnard@plymouth.gov.uk)

Mr P Barnard
Assistant Director of Development (Planning and Regeneration)
Planning and Regeneration Service
Plymouth City Council
Civic Centre
Plymouth PL1 2AA

Dear Mr Barnard

Plymouth LDF – Plymstock AAP

Thank you for sending me a copy of your email of 6 February to Mr Machin. You will have received my interim response of 9 February.

In your email you request that my clients take certain action. I have already dealt with the timescale for taking any action in my email of 9 February. However, as to the action requested, it is not appropriate for the City Council to require the Co-op to do anything at all. What happened at the South Hams LDF inquiry was determined by Inspector in response to submissions by the Co-op. It is not for the City Council or the Co-op to determine what may happen in the context of the Sustainability Appraisal relating to the Plymstock AAP: that will be a matter for Mr Machin in due course.

The Sustainability Appraisal relating to the Plymstock AAP is your Council’s document, and until and if the Inspector makes a direction, it is for you to decide what to do with it. The purposes of my letter of 2 February were to signal to all parties that difficulties might arise similar to those which have arisen in South Hams, and give the opportunity for these difficulties to be considered at an early date. To that extent my letter has clearly succeeded.

I think we now both await hearing from the Inspector, although I would urge your Council to consider the adequacy of its Sustainability Appraisal on the basis that any remedial action taken now will certainly save time later.

Best wishes.

Yours sincerely

Marcus Trinick
Partner
for and on behalf of Bond Pearce LLP

CC:-
Mr Machin, C/O Christine Self (Programme Officer), Plymouth LDF Examination
Mr M Trinick  
Bond Pearce LLP  
Oceana House  
39-49 Commercial Road  
Southampton SO15 1GA

Dear Sir,

Thank you for your letter dated 2 February 2007. The Inspector has considered the matter you raise, but is not prepared to recommend to Plymouth City Council that the North Plymstock AAP be withdrawn pending the outcome of the further work South Hams DC is carrying out in respect of the Sherford AAP.

As far as the North Plymstock AAP is concerned, he intends to proceed on the basis that the Plan is sound. It is for those who maintain otherwise to produce the evidence to demonstrate that the Plan is unsound. There is no substantial evidence before him as yet that Plymouth City Council has not carried out sufficient work to justify the provisions made in the Plan for the North Plymstock area.

However, if the Council feels it would be helpful to provide additional justification in the light of the South Hams decision, then that is a matter for that Council’s consideration and not something the Inspector feels he would be justified in influencing at this stage."

Yours faithfully,

Christine Self  
Programme Officer

cc: Douglas Machin  
    Nigel Payne  
    Paul Barnard