

Our Ref: JMR/AS/105404-1  
Your Ref:

The Treasury Solicitor  
Government Legal Department  
102 Petty France  
Westminster  
London  
SW1H 9GL  
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Date: 18 February 2026

Dear Sir/Madam

**Letter Before Claim**

**Re: The Secretary of State's Planning Inspector's Appeal Decision ref:  
APP/E3335/W/25/3365088 in respect of Land Adjacent Foxes Run, 13th January 2026**

We write on behalf of our client, Henry Hobhouse, in relation to the decision of the Secretary of State's Planning Inspector, C Butcher BSc MA MRTPI, on 13th January 2026 to grant planning permission for "*the erection of 27No. dwellings with associated access, roads, footways, parking, drainage and landscaping at Land Adjacent Foxes Run, Bridgwater Buildings, Castle Cary, Somerset BA7 7JU in accordance with the application Ref 24/01656/S73, without compliance with condition numbers 6 and 16 previously imposed on planning permission Ref 16/03447/FUL, dated 26th April 2019, subject to conditions in the attached schedule*" to that decision (ref: APP/E3335/W/25/3365088).

This is a formal letter before claim in support of an intended application to bring a claim for permission to apply for a statutory review pursuant to section 288 of the Town and Country Planning Act 1990 ('the 1990 Act') to quash the aforementioned decision.

Though the proposed action is not a judicial review, this letter follows the format of Annex A to the Pre-Action Protocol for Judicial Review and is sent in an effort to prompt helpful discussion in respect of the proposed claim prior to issue.

**1. The Claimant**

1.1 The proposed Claimant is Mr. Henry Hobhouse ('the Claimant') 1 The Courtyard, North Cadbury, Somerset, BA22 7DT.

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## **2. The Defendant's Reference Details**

- 2.1 The proposed First Defendant is the Secretary of State for Housing, Communities and Local Government ('the Secretary of State').
- 2.2 It is understood that the address for their legal representatives, Government Legal Department, is 102 Petty France, Westminster, London, SW1H 9GL.
- 2.3 The Appeal Decision reference is APP/E3335/W/25/3365088.
- 2.4 The proposed Second Defendant is Somerset Council ('the Council').
- 2.5 It is understood that the address for their legal representatives is Legal Services, County Hall, Taunton, Somerset, TA1 4DY. Their reference number in respect of the planning application the subject of the Decision is 24/01656/S73.
- 2.6 Confirmation of the correct addresses for service for each proposed Defendant would be greatly appreciated.

## **3. The details of the Claimant's legal advisers, if any, dealing with this claim**

- 3.1 The Claimant has instructed Jim Ryan, Consultant Partner at Acuity Law Limited, The Generator, Finzels Reach, Counterslip, Bristol, BS1 6BX to act on his behalf in respect of the proposed statutory review.

## **4. The details of the matter being challenged**

- 4.1 The Claimant intends to challenge the decision of the First Defendant's Planning Inspector, C Butcher BSc MA MRTPI, on 13<sup>th</sup> January 2026 to grant planning permission for "*the erection of 27No. dwellings with associated access, roads, footways, parking, drainage and landscaping at Land Adjacent Foxes Run, Bridgwater Buildings, Castle Cary, Somerset BA7 7JU in accordance with the application Ref 24/01656/S73, without compliance with condition numbers 6 and 16 previously imposed on planning permission Ref 16/03447/FUL, dated 26<sup>th</sup> April 2019, subject to conditions in the attached schedule*" to that decision (ref: APP/E3335/W/25/3365088).

## **5. The details of any Interested Parties**

- 5.1 We consider that Abri Group Limited (community benefit society registration number 8537) would be an Interested Party ('IP') in the proceedings.
- 5.2 If the Defendant is aware of any other interested party, please inform us.
- 5.3 The correspondence address we have for the Interested Party is Collins House, Bishopstoke Road, Eastleigh, SO50 6AD. Confirmation of the correct address for service would be greatly appreciated.

## 6. The issue

### The Facts

6.1 The Claimant intends to bring the proposed action as a private individual with a direct interest in the proposed development and who engaged in both the appeal process leading to the Decision the subject of proposed challenge, and the planning application that preceded it. It is, however, noted that the Claimant is a Councillor at the Second Defendant and that his ward division is Castle Cary in which the Site is located.

6.2 On or about 5<sup>th</sup> August 2016, an application for planning permission was made in respect of Land Adjacent Foxes Run, Bridgwater Buildings, Castle Cary, BA7 7JU ('the Site') for the erection of 27No. dwellings with associated access, roads, footways, parking, drainage and landscaping (ref: 16/03446/FUL). The application was refused by the then local planning authority, South Somerset District Council, on or about 19<sup>th</sup> May 2017. The then applicant, Yarlinton Homes Ltd, appealed and on 26<sup>th</sup> April 2019 Inspector Andrew Dawe BSc (Hons) MSc MPhil MRTPI allowed the appeal granting planning permission subject to conditions ('the 2019 planning permission').

6.3 The conditions to the 2019 planning permission included conditions 6 and 16 which read as follows:

*6. No development shall commence unless a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in accordance with the approved CEMP. The CEMP shall include:*

- Construction vehicle movements;*
- Construction operation hours;*
- Construction vehicular routes to and from site;*
- Construction delivery hours;*
- Expected number of construction vehicles per day;*
- Car parking for contractors;*
- Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;*
- A scheme to encourage the use of public transport amongst contractors;*
- Measures to avoid traffic congestion impacting upon the Strategic Road Network;*
- For the access road culvert and associated structures and stream bank engineering, details of its design that ensures continued passage by badgers is made possible following completion of works, including the temporary site access arrangements to ensure suitable alternative badger passage routes remain available at all times;*
- A monitoring schedule during the work phases shall be carried out by a suitably qualified badger professional;*
- Measures for the treatment of Japanese Knotweed on the site;*

- *Measures relating to construction noise and vibration.*

*16. Prior to commencement of the development hereby approved, a highways agreement shall be entered into with the highway authority in connection with the vehicular access to the site and related highway works as shown on drawing number A094668-SK14 Rev G to include the requirement for the making and funding of any associated Traffic Regulation Orders.*

- 6.4 On or about 1<sup>st</sup> April 2023, four district councils in Somerset, including South Somerset District Council, were brought together to form a new unitary council resulting in Somerset Council ('the Council').
- 6.5 On or about 19<sup>th</sup> July 2024 Abri Group Limited made an application to the Council pursuant to section 73 of the Town and Country Planning Act ('the 1990 Act') to remove condition 16 (Highways Agreement) and vary condition 6 (CEMP) on planning permission 16/03445/FUL (the 2019 planning permission) (ref: 24/01656/S73).
- 6.6 The Council validated the application on or about 8<sup>th</sup> August 2024 however failed to determine the same within the prescribed period. Abri Group Limited therefore appealed on the grounds of non-determination.
- 6.7 The start letter for the appeal dated 8<sup>th</sup> May 2025 recorded, in respect of any person who was notified or consulted about the application and any other interested persons who made representations about the application, that "*any comments they made at application stage...will be considered by the Inspector (unless they withdraw them within the 5 week deadline*".
- 6.8 The representations made at the application stage included a letter provided by Paul Lacey, Chartered Engineer at LvW Highways, dated 28<sup>th</sup> November 2024 in which he advised (on instruction by local action group Care4Cary) as to the safety implications of removing condition 16 to the 2019 planning permission requiring the introduction of a one-way system on Mill Lane adjacent to Bridgwater Buildings. In short, he concluded that the condition should be maintained. Moreover, that the proposed revised CEMP should not be accepted (the variation of condition 6 was sought to allow for the same).
- 6.9 The representations made at the appeal stage included a letter dated 11<sup>th</sup> June 2025 submitted by the Claimant which raised concerns in respect of highways related to the proposed removal of condition 16 and amendment to condition 6 of the 2019 planning permission. Representations were also made by numerous neighbours raising highways-related concerns.
- 6.10 A further letter dated 11<sup>th</sup> June 2025 provided by Jim Ryan of this firm, on behalf of Care4Cary, raised concerns in respect of lawful commencement of the 2019 planning permission and thus the validity of the application. Representations were also made by neighbours questioning the date upon which it was said a material operation took place commencing development.

6.11 The appeal was determined by the First Defendant's Planning Inspector C Butcher BSc MA MRTPI under the written representations procedure. The Decision Letter ('DL') is dated 13<sup>th</sup> January 2026. In short, the Inspector allowed the appeal granting planning permission "*for the erection of 27No. dwellings with associated access, roads, footways, parking, drainage and landscaping at Land Adjacent Foxes Run, Bridgwater Buildings, Castle Cary, Somerset BA7 7JU in accordance with the application Ref 24/01656/S73, without compliance with condition numbers 6 and 16 previously imposed on planning permission Ref 16/03447/FUL, dated 26 April 2019, subject to the conditions in the attached schedule*" ('The Decision').

6.12 The reasons for the decision as set out in the DL are short and are not regurgitated here but are briefly referenced as appropriate below.

### Legal Framework

6.13 The general principles of law governing planning decisions are trite and well-known.

6.14 In St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643<sup>1</sup>, the Court summarised the principles that will guide a court in handling a challenge under section 288 of the 1990 Act. Those include:

- i) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28).
- ii) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the 'principal important controversial issues'. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration: see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council b Porter (No 2) [2004] 1 WLR 1953, 1964 B-G.
- iii) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever

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<sup>1</sup> 6-7 of the Judgment.

weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759, at p.780F–H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector’s decision (see the judgment of Sullivan J, as he then was, in Newsmith v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 74, at paragraph 6).

- iv) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But is it not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises: see, for example, the judgment of Pill LJ [in] Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government [2013] 1 P&CR 6, paras 12-14, citing the judgment of Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P&CR 137, 145.

6.15 In addition to the above, it is noted that:

- i) A material consideration is one which relates to the character of the use of the land, and which fairly and reasonably relates to the permitted development: R (Wright) v Resilient Energy Severndale Ltd [2019] UKSC 53.
- ii) The legal principles to be applied in respect of the standard of reasons were summarised in R (CPRE Kent) v Dover District Council [2017] UKSC 79, endorsing the Judgment of Lord Brown in South Bucks v Porter (No 2) [2004] 1 WLR 1953.
- iii) A reasons challenge will only succeed where the reasons leave genuine rather than forensic doubt as to what was decided: Clarke Homes Ltd v Secretary of State for the Environment [2017] PTSR 1081: see 1089J.

#### Proposed grounds of challenge

6.16 The Claimant proposes to make an application for permission to bring a claim for statutory review of the Decision on the following Grounds:

- i) **Ground 1:** The Inspector erred in law in failing to provide any or any sufficient reasons to explain how they satisfied themselves that they had jurisdiction to determine the section 73 application, it having been contended by third parties that the 2019 planning permission had not been lawfully implemented. In the alternative, the Inspector either erred in law or acted irrationally in concluding that said permission had been lawfully implemented.
- ii) **Ground 2:** The Inspector failed to take account, either sufficiently or at all, of a material consideration in having failed to address the evidence submitted by LvW Highways. In the alternative, the Council has failed to provide sufficient reasons as to how the aforementioned was considered in the determination of the Appeal.

- iii) **Ground 3:** The Inspector acted irrationally in concluding that it was appropriate to remove condition 16 and/or vary condition 6 of the 2019 planning permission.

6.17 For the purposes of this letter, the Claimant sets out the basis for each Ground briefly below:

**Ground 1: The Inspector erred in law in failing to provide any or any sufficient reasons to explain how they satisfied themselves that they had jurisdiction to determine the section 73 application, it having been contended by third parties that the 2019 planning permission had not been lawfully implemented. In the alternative, the Inspector acted irrationally in concluding that said permission had been lawfully implemented.**

6.18 Section 73(1) of the 1990 Act applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. However, it does not apply (pursuant to subsection 4) “*if the previous planning permission was granted subject to a condition as to the time within which the development to which it was related was to be begun and that time has expired without the development having been begun*”.

6.19 Section 56(2) of the 1990 Act deals with the time when development has begun and states that:

**56 Time when development begun.**

(1) *Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—*

(a) *if the development consists of the carrying out of operations, at the time when those operations are begun;*

(b) *if the development consists of a change in use, at the time when the new use is instituted;*

(c) *if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).*

(2) *For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.*

6.20 What constitutes a ‘material operation’ is set out at subsection 4.

6.21 Condition 1 to the 2019 planning permission states that “*the development hereby permitted shall be begun before the expiration of three years from the date of this permission*”. It is not understood to be in contention that the relevant date is therefore before 26<sup>th</sup> April 2022.

6.22 The commencement of development which is unauthorised cannot amount to lawful commencement: see [FG Whitley & Sons Co Ltd v Secretary of State for Wales \(1992\) 64 P.&C.R. 296](#). True conditions precedent must have been discharged before works of commencement are undertaken. Such conditions are those which go to the heart of the planning permission: see [R \(Hart Aggregates Limited\) v Hartlepool Borough Council \[2005\] EWHC 840 \(Admin\)](#); [Bedford Borough Council v Secretary of](#)

State for Communities and Local Government and Murzyn [2008] EWHC 2304 (Admin); Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011] EWCA Civ 908.

- 6.23 It is acknowledged that it is a matter of planning judgement as to whether or not a pre-commencement condition is a true condition precedent; however, the Court may intervene where an Inspector's decision on the issue is *Wednesbury* unreasonable: see Meisels v Secretary of State for Housing Communities and Local Government [2019] EWHC 1987 (Admin); Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223.
- 6.24 The extent to which the 2019 planning permission had been lawfully commenced and was extant was plainly a matter in issue. It had been raised by and on behalf of interested parties, in particular in Jim Ryan's letter of 11<sup>th</sup> June 2025 referenced at paragraph 6.10 above.
- 6.25 As set out above, a section 73 application can only be made where the previous planning permission to which it relates is extant, as the development to which it relates has begun before it has time expired. Accordingly, the extent to which the previous permission has been lawfully implemented is plainly a principal important controversial issue. If it has not been lawfully implemented, the Inspector would have no jurisdictional basis upon which to determine the section 73 application.
- 6.26 It is therefore curious that the Inspector in coming to their Decision did not include this as a main issue (see paragraph 2 of the DL) despite it plainly having been raised, and despite the consequences of any conclusion.
- 6.27 It is acknowledged that the Inspector states at paragraph 10 of the DL that "*a large number of third parties have objected to this appeal*" and suggests that they have "*carefully considered all of the comments made*", before stating that "*I note that evidence has been provided by the main parties which confirms that the proposal has already been lawfully implemented and therefore that the permission remains extant*". However, this does not constitute intelligible and adequate reasons which enable the Claimant (or anyone else) to properly understand why the appeal was decided as it was and what conclusions were reached on this issue. Moreover, and importantly, the extremely brief conclusion drawn gives rise to a substantial doubt as to whether the Inspector went wrong in law.
- 6.28 First, it is not at all clear from the one line attributed to the issue whether the Inspector considered both the question of whether a material operation had occurred within the requisite time period and the question of whether any of the pre commencement conditions that had not been complied with by that date went to the heart of the planning permission so as to render any material operation incapable of constituting lawful commencement.
- 6.29 Second, Jim Ryan and two residents (Adam Timberley and Jean Joy) raised concerns as to the extent to which the Appellant's contractors carried out works on the site on 25<sup>th</sup> April 2022 querying the suggestion that a material operation had occurred. It is not denied that a material operation occurred but suggested that this happened on 26<sup>th</sup> April 2022 and was out of time. Without more (and it is not

suggested that an overly detailed forensic assessment is required), the conclusion reached leaves genuine doubt as to the extent to which the evidence of third parties was considered and why that of the Council and Appellant was preferred.

6.30 Third, Jim Ryan made submissions in his letter of 11<sup>th</sup> June 2025, which was before the Inspector, as to the extent to which conditions 16 in particular amounted to a true condition precedent such that even were a material operation to have occurred prior to the expiration of the 2019 planning permission, it could not have amounted to lawful implementation. To have properly considered the same, the Inspector would have had to have considered relevant case law such as is set out above. No discussion, at all, is included in the DL, however brief, to suggest that the Inspector applied their mind in any way to the same. This leaves genuine doubt as to the extent to which these issues were considered and places the Claimant in a position whereby not only can they not properly understand the basis for the Inspector's conclusion but importantly cannot assess the extent to which the Inspector may have erred in law.

6.31 In the alternative, the Claimant intends to argue that the Inspector in any event erred acted irrationally in concluding that the 2019 planning permission was lawfully implemented broadly for the reasons set out in Jim Ryan's letter of 11<sup>th</sup> June 2025.

**Ground 2: The Inspector failed to take account, either sufficiently or at all, of a material consideration in having failed to address the evidence submitted by LvW Highways. In the alternative, the Council has failed to provide sufficient reasons as to how the aforementioned was considered in the determination of the Appeal.**

6.32 As set out at paragraph 6.8 above, at application stage the representations included a letter provided by Paul Lacey, Chartered Engineer at LvW Highways, dated 28<sup>th</sup> November 2024.

6.33 Whilst it is acknowledged that at paragraph 10 of the DL the Inspector refers to having considered comments made by third parties, this is in the context of 'other matters' as opposed to in the context of the main body of reasons relating to the effect of the amended CEMP and the removal of the need to agree a TRO on living conditions and highway safety dealt with at paragraphs 3-9 of the DL.

6.34 Though the Claimant is aware of the need to read DL as a whole, even when doing so it is not clear that the Inspector has either taken account at all, or in any event sufficiently, of the LvW Highways letter.

6.35 Indeed, the Inspector's comments include that:

- i) "...it is clear that, at present, vehicles are able to use Mill Lane to access the properties along it, including service vehicles such as refuse lorries" (paragraph 4)
- ii) "...there is no substantive evidence before me that would lead me to conclude that the effect of the amended CEMP would result in an unacceptable level of harm in terms of general noise or disruption" (paragraph 4)

- iii) "...allowing larger vehicles to utilise the lane during the construction phase is likely to be inconvenient to residents for a temporary period" (paragraph 4)
- iv) "...while I acknowledge that Mill Lane is fairly narrow and has no pavement, I am satisfied that the envisaged increase in vehicular movements along the lane would not be sufficient so as to be unacceptable in highway safety terms"
- v) "...the Council, including in its role as Highway Authority, has not objected"

6.36 These comments, when read together, do not make clear that the Inspector has properly engaged with LvW Highways' comments. That is particularly so given that the evidence was from an expert who was clear as to his view that there would be safety implications of removing condition 16 to the 2019 planning permission and that the proposed revised CEMP should not be accepted (relating to the proposed variation of condition 6).

6.37 Further, or in the alternative, the Inspector has plainly failed to give and or any adequate reasons as to why the evidence of the Appellant and/or Council was preferred over that provided by LvW Highways. This makes it difficult for the Claimant (and others) to properly understand the basis for the conclusions reached and, more importantly, the extent to which the Inspector may have erred.

**Ground 3: The Inspector acted irrationally in concluding that it was appropriate to remove condition 16 and/or vary condition 6 of the 2019 planning permission. In the alternative, the principle of consistency in decision making is engaged and the Inspector failed to give reasons that are insufficiently clear and cogent insofar as justifying why they came to a different view.**

6.38 Previous Planning Inspector, Andrew Dawe, considered it appropriate to attach conditions 6 and 19 to the 2019 planning permission. The main issues in the appeal resulting in said permission are set out at paragraph 4 of the 2019 DL and include the effect of the proposed development on highway and pedestrian safety in Mill Lane, relating to the arrangements to alter it from a cul-de-sac to through road, and in Brookfields relating to additional traffic, as well as the provision for service vehicles (among other matters). Moreover, the effect of the proposed development on living conditions.

6.39 Inspector Dawe considered highways and pedestrian safety at paragraphs 8-20 of the 2019 DL, which are not repeated. However, it is clear that he considered that:

- i) "A TRO would ensure that provisions for opening up the end of Mill Lane and related highway works would be safe, including in terms of preventing direct access to and from the site via Mill Lane and preventing obstructive parking at the junction at its western end" (paragraph 8).
- ii) "Mill Lane is a narrow cul-de-sac without any footways and, with residents of Bridgewater Buildings reliant on on-street parking, this generally restricts the road to a single lane of traffic flow. The carriageway is therefore currently

*shared by vehicles and pedestrians, with refuges reliant on any gaps between parked vehicles” (paragraph 9).*

- iii) *There are “poor current arrangements for pedestrians” such that “any significant increase in vehicle movements along the lane would increase the risk of conflicts between vehicles and pedestrians with limited refuge space, dependent on the extent of on-street parking at any one time” (paragraph 10).*
- iv) *If Mill Lane were opened up for through traffic, “there would be potential for an increase in vehicle numbers relating to occupiers of and visitors to Brookfields” (paragraph 11).*
- v) *“In light of the potential for both increased traffic and pedestrian movements, albeit likely to be limited to a degree by the above mitigating factors, a TRO could, as discussed and agreed at the Hearing, therefore also be utilised, through the provision of appropriate signage, to prevent the use of Mill Lane for traffic other than related to properties along that lane” (paragraph 12).*
- vi) *It was “on that basis” that the Inspector concluded that “it would be unlikely that the safety of pedestrians, or other people using Mill Lane such as for repairs to Bridgewater Buildings, would be materially worsened” (paragraph 13).*

6.40 The above (and the remainder of the cited paragraphs) fed into the ultimate conclusion on the issue that the proposed development would be unlikely to pose a risk to highway and pedestrian safety in Mill Lane, relating to the arrangements to alter it from a cul-de-sac to through road, and in Brookfields relating to additional traffic (among other things) (paragraph 20).

6.41 It is apparent that TROs were envisaged to prevent direct access to and from the site via Mill Lane and prevent obstructive parking at the junction. Plainly the previous Inspector considered the requisite tests for a condition to be met, and it is understood that the then applicant and Council agreed regarding the imposition of condition 16.

6.42 The Inspector determining the 2026 appeal focused on the effect of the amended CEMP and removal of the need to agree a TRO on living conditions and highway safety (main issue at paragraph 2 of the DL) with reasons set out at paragraphs 3-9 of the DL. Those are not restated.

6.43 No part of the Inspector’s reasons relates to the extent to which condition 16 did not meet the test for necessity in the NPPF and NPPG as contended by the Appellant. Therefore, though the Claimant takes a different view, the intended challenge rightly focuses upon the actual basis for the Inspector’s decision.

6.44 It is acknowledged at paragraph 5 that the previous Inspector “*felt it necessary at the time to require the preparation and agreement of a TRO*”, however the Inspector states that “*as part of this appeal process, new evidence has been provided*” (paragraph 5).

- 6.45 The only 'new evidence' then referenced at paragraph 6 of the DL is that "*the Highway Authority has set out that the 27 proposed dwellings would generate between 12 – 15 vehicular journeys in the peak hour which would translate to one movement every four to five minutes on average. Furthermore, the Highway Authority has also confirmed that Mill Lane itself would only be subject to an additional 3 – 4 movements in the peak hour, or one every fifteen to twenty minutes on average*". The Inspector then refers to evidence which was already before the previous Inspector in making his decision in 2019.
- 6.46 The previous Inspector had already considered (see paragraph 11 of the previous DL) that "*there would be a limit to the extent of any increased traffic flow in Mill Lane to some degree*" in, in any event, considering that a TRO was necessary. It is therefore unclear why the Inspector considered this 'new evidence' to materially change matters so as to justify the removal of condition 16.
- 6.47 Moreover, as already stated in the context of Ground 2, the Inspector did not engage with the clear expert evidence of LvW Highways that condition 16 should be maintained for the reasons set out in the letter of 28<sup>th</sup> November 2024. Nor with the evidence of numerous local residents in their comments of objection.
- 6.48 In the alternative, it will be averred that the principle of consistency in decision making is engaged. Though it is acknowledged that some reasons have been provided, they are insufficiently clear and cogent insofar as justifying why the Inspector came to a view which is in direct opposition with the previous Inspector's decision.
- 6.49 Turning to condition 6, paragraph 41 of the previous Inspector's decision is noted in explaining the rationale behind the imposition of the same referring to the living conditions of surrounding occupiers as well as other matters.
- 6.50 The Inspector deals with this condition at paragraphs 3-4 of the DL in the main (but see also through to paragraph 9). In short, it is noted that a CEMP was previously agreed by the Council to discharge the condition, but an updated CEMP has been provided which proposes some construction traffic accessing the site via Mill Lane (also known as Bridgwater Buildings though that is not referenced by the Inspector) in the early stages of the development.
- 6.51 The Claimant will contend that it was irrational of the Inspector to conclude that this was feasible in light of the comments from objectors which make plain the difficulties with such access, and the evidence of LvW Highways in their letter of 28<sup>th</sup> November 2024. In brief, it is clear from that evidence that this is a very narrow road unsuitable for construction traffic. The LvW Highways letter provides photographs and measurements which supports this contention. The Inspector does not explain why they discounted this evidence (which ties in with Ground 2 above).

#### Proposed Costs Protection

- 6.52 The Claimant considers that this matter would constitute an Aarhus Convention claim, the Decision constituting environmental decision-making falling within Article 9

of the Aarhus Convention. Accordingly, it is intended to make an application for such protection: see CPR r.46.24-46.28.

6.53 The Claimant is a private individual. Engaging in the proposed proceedings would plainly be prohibitively expensive for him but for the availability of costs protection.

6.54 As per the above, the Claimant intends to set out his financial resources in due course, illustrating how the proceedings would otherwise be prohibitively expensive.

## **7. The details of the action that the Defendants are expected to take**

7.1 For the reasons set out above, the Decision should be quashed. The Defendants are respectfully requested to consent to such an order in appropriate terms.

## **8. ADR Proposals**

8.1 The Claimant is open to discussions with the Defendants but notes that statutory review is the only available action to achieve a quashing and redetermination of the Decision.

## **9. The details of any information sought**

9.1 As set out at above, confirmation of the correct addresses for service would be greatly appreciated.

## **10. The details of any documents that are considered relevant and necessary**

10.1 The relevant appeal documents appear to be available on the Council's website.

## **11. The address for reply and service of court documents**

11.1 Per paragraph 3.1 above, please direct the same to Jim Ryan, Consultant Partner at Acuity Law Limited, The Generator, Finzels Reach, Counterslip, Bristol, BS1 6BX.

## **12. Proposed reply date**

12.1 Please reply by **12 noon** on Monday **23<sup>rd</sup> February 2026**.

12.2 The Defendants will note that the Claimant must issue proceedings by 25<sup>th</sup> February 2026 and therefore it is the interest of the parties for a reply to be provided sooner where possible.

Yours faithfully

*Acuity Law Limited*

**Acuity Law Limited**

cc by email only:

Client

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