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By email

Our ref BRO004/0001/4128-6818-8486/1/EH
31 March 2023

Dear Sir or Madam

**Cuerden Strategic Site, East of Stanifield Lane, North of Clayton Farm, West of Wigan Road, Lostock Hall -
Planning Application LCC/2022/0044**

We act for the Brookhouse Group Limited.

We have previously objected to the above application on behalf of Brookhouse Group Limited, most recently on 23 February 2023. As noted in its final paragraph, that letter did not address the further tranche of application documentation supplied by the applicant dated 22 to 24 February which has now been uploaded onto the planning portal.

Our client and its advisers have reviewed this additional documentation. Significant concerns remain both as to the proposals and as to the adequacy of the information provided, which still does not form any proper basis for positive determination. In headline terms, its objections remain grouped around the following over-riding concerns:

- (a) The proposals do not accord with the local plan which requires a comprehensive approach to development of the Cuerden strategic site, particularly given the lack of any commitment whatsoever in the applicant's documentation that our client will not be ransomed when it seeks to bring forward the remaining elements of the allocation.

Our client has made clear to the applicant its willingness to make reasonable contributions to funding the linkage infrastructure.

- (b) The piecemeal approach to development within the Cuerden strategic site is unnecessarily wasteful in terms of land-use and in terms of compromising the ability of the strategic site to accommodate larger space requirements.

To illustrate this point, without a collaborative approach to the southern land, 76% less development might be achieved; put another way, that would be lost development to the site of circa 91,000 m². One of the consequences of this is that in order to meet South Ribble's employment land needs, then additional pressure will be placed on green belt areas within the borough and beyond.

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- (c) The viability case for the enabling use proposed is not made out, contrary to the requirements of policy C4.

When assessing the previous planning application for the site, the local planning authority in that instance, South Ribble Borough Council, responsible for the local plan and policy C4, appointed independent assessors to evaluate the applicant's viability claims, in order to be clear that the entire site could be delivered, and to be clear that the enabling development was proportionate. Even if the applicant's site-wide (ie including our client's land) viability case were to be proven, there is no commitment from the applicant to deliver infrastructure to our client's land; the clear consequence is that enabling uses on the applicant's land would not relate to the delivery of employment uses on our client's land; as such, excess enabling uses would be permitted on the applicant's land and further enabling uses would likely be needed on my client's land; in effect funding the same infrastructure.

- (d) There are significant flaws in the technical assessments submitted.

For example, the approach to the Transport Assessment (TA) has been to assess the strategic site as a whole, entirely relying on a link road connecting the M65 to Stanifield Lane: the flaw in this approach is that a link road has not been applied for by the applicant. In another example, the TA appears to rely on 'trip-rates' that have been manipulated to suit the applicant's objectives, rather than objectively assess the development and its impacts. Similarly, flaws are identified by Brookhouse's agency Jones Lang Lassalle (JLL), who advise that the site being developed in the piecemeal manner proposed by the applicant ensures that either a) the site's unique market potential for very large units is missed, or b) considerable floorspace potential is lost through layout inefficiencies (illustrated by the SMR layout report enclosed). In addition, JLL advise that piecemeal development costs are higher (services must be re-routed to avoid Brookhouse land, adding cost), necessitating more enabling development and therefore less of the C4 Strategic Site delivering employment uses; all of which is contrary to the applicant's agent's claims.

This letter and its appendices comprise our client's updated objections to the application, still without prejudice to the procedural concern that we have previously raised as to use of Regulation 3:

- Alyn Nicholls' statement on the response of Barton Willmore to representations by Brookhouse
- Alyn Nicholls' accompanying commentary, 28 March 2023
- Mode's table responding to WSP's comments on their previous work
- Ecus' technical note dated 28 March 2023
- SMR's assessment of site capacity
- JLL's Letter dated 27 March 2023 commenting on the market for employment land

In relation to concern (a) summarised above, in addition to what is set out in the accompanying documents, we would make the further additional points:

1. We note that the concern is reflected in South Ribble Borough Council's representations to you dated 18 November 2023:

"That the submitted application on only part of the allocated site will not prejudice the development of the other parcels of the allocated site (owned by Brookhouse Group Limited)

The site was allocated as a 'Major Site for Development' under Policy C4 in order to deliver a significant proportion of the Council's employment land requirements. It is noted that the application

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excludes three parcels of land within the Cuerden Strategic Site Local Plan allocation that are under separate ownership (by Brookhouse Group Limited). In order for the allocated site to be capable of delivering the whole of the allocation it is paramount that the application does not prejudice the development of other parcels of the allocated site."

2. Without prejudice to our client's wider objections to the application, given the overriding requirement in the site allocation to ensure that comprehensive development of the overall site is not prejudiced, we wish to make it clear we expect your council to rule out any possibility for ransom, which can be achieved lawfully and in a manner which is straight-forward, by way of a section 106 planning obligation. There are various examples of "anti-ransom" provisions imposed by local planning authorities around the country in equivalent circumstances but we commend to you as a template the following wording from a section 106 agreement dated 23 August 2018 in relation to the Newell Green South development, north of Bracknell. It provides as follows:

"NON-RANSOM

1.1 Subject to Paragraph 1.2 below the Owners covenant that once constructed free and unfettered access along the on-site roads and pavements (only) will be provided up to and including the respective boundaries of the Parcel 1 Site, the Parcel 2 Site and the Parcel 3 Site and the Adjoining Land to facilitate the development of the Adjoining Land subject to the grant of planning permission and that such rights of access and egress and such other easements as may reasonably be necessary for the full and proper enjoyment of the Adjoining Land will be provided for the future development of such land or purpose for which it is intended to be used.

1.2 The grant of any easements or any other agreements which grant rights of access and egress or other easements or rights for the benefit of the Adjoining Land shall be subject to:

(a) the grantee paying the grantor's reasonable costs of preparing and entering into such documentation;

(b) available capacity in the case of services and limited to those as may reasonably be necessary for the full and proper enjoyment of the Adjoining Land for which planning permission has been granted; and

(c) the grantor and grantee entering into appropriate deeds of easement on terms reasonably acceptable to the grantor for no consideration and no adverse impacts on the Planning Permissions."

Given the need in planning terms not to prejudice comprehensive development within the allocation, such an obligation would meet the tests within regulation 122 of the Community Infrastructure Levy Regulations 2010. Our client wrote to the applicants on 21 March 2023 proposing a meeting to discuss exactly this proposal but disappointingly the offer has not so far been accepted.

3. Finally, you will recall that the 2017 planning permission (reference 07/2017/0211/ORM) for the allocation included within condition 3 ("phasing") the specific requirement that the "highways infrastructure for Phase 1 shall provide unfettered access to the remaining development phases." For the avoidance of doubt, in addition to the planning obligation referred to above, we expect an equivalent condition to be imposed on any planning permission, to the effect that the approved highways infrastructure shall provide unfettered access to the remaining parts of the Cuerden allocation.

The issue underlying the problems with this application is that the applicants have chosen to promote development alone, and solely on their land, despite commitments from my client as the other majority landowner to work fairly and openly in collaboration. The consequences of this approach are plain to see.

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Please place this letter on the planning portal.

Yours faithfully

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