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Clive Betts MP
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Dear Clive,

WESTFERRY PRINTWORKS

I am writing in response to your letter of 16th June regarding the appeal decision to grant planning permission for a development at the Westferry Printworks site in the London Borough of Tower Hamlets, further to my letter of 19th June.

Alongside this letter, in line with the Select Committee's request, I am releasing all relevant information relating to this planning matter using the Freedom of Information Act as a benchmark. I recognise that there are higher standards of transparency expected in the quasi-judicial planning process, which is why I am releasing discussions and correspondence which the Government would not normally release.

The reasons for my decision to approve the appeal can be found at length in the Decision Letter, which is published on gov.uk, and is enclosed, including a copy of the Planning Inspector's reports and representations received by the Inspector.

As this is a contentious planning case, which has attracted media and Parliamentary scrutiny, I thought that it would be helpful to the Committee and others if I provided some further background and clarification in connection with my decision to approve the planning application for this development.

BACKGROUND

The application was received by Tower Hamlets on 24 July 2018, following the previous submission of an Environmental Impact Assessment. The council failed to determine the application by the statutory deadline and so the applicant exercised their right to appeal on the grounds of non-determination. The statutory deadline was November 2018; and the appeal was submitted in March 2019. The council had considerable time to process this application – indeed, a meeting of the Strategic Development Committee was cancelled in January 2019 due to lack of business. I

would suggest the failure of the council should be a matter of further scrutiny, why six months after the validation of the planning application nothing had happened.

My predecessor, on the advice of officials, “recovered” the application for decision by Ministers in line with the published recovery criteria. A recovery means that a Minister is the final decision-maker in a planning appeal, taking the decision in place of the Planning Inspectorate. In this case, the application was recovered on 10 April 2019 because it involved proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

It is disappointing that the council failed to meet its statutory requirements although that is not uncommon for this council. In the last five years, there have been 30 planning applications which have been decided at appeal because of non-determination by the council.

The Department therefore followed the usual procedure of appointing a Planning Inspector to prepare a report for the Secretary of State. That report was submitted to the department on 20 November 2019.

THE DECISION

Upon my reappointment as Secretary of State after the General Election, I received advice on seven planning cases for decision. I decided six of them swiftly but sought further advice with respect to Westferry, given its complexity.

My officials provided further advice over the subsequent weeks on a number of key elements of the case, such as the number of affordable homes, the local heritage impact on Greenwich (including, at my request, providing mock-up images from the inquiry documents for my review) and the impact upon the local sailing club. This was a thorough decision-making process, approached with an open mind, with no question of bias. I read the Inspector’s Report and representations from parties, including a letter I had received from the Mayor of Tower Hamlets.

My reasons for approving the application are set out at length in the Decision Letter, but were in summary:

1. That the benefit to the people of Tower Hamlets and London of the additional housing (1,524 homes), a new school and other amenities and the economic benefits (in terms of jobs) of a very significant development outweighed the concerns expressed about the height and design of the towers, important though I consider design to be.

2. This revised scheme would have more than doubled the number of affordable homes from a prior consented scheme to 282. These homes would be in one of the most deprived boroughs in London, itself a city suffering from an acute shortage of affordable housing, and this was urgently needed. If the application were declined, it was unclear that would result in new proposals for affordable housing. Indeed, the applicant might revert to the original consented scheme

with 142 fewer affordable homes, or the project would be further delayed with none coming forward at all in the foreseeable future – to the benefit of no one.

3. That the heritage impacts, such as the views of Greenwich were, in my opinion, outweighed by the benefits above, given the number of other existing and consented high rise buildings already in that part of the Isle of Dogs and visible from Greenwich. My personal interest in heritage preservation is well known and so I did not take this lightly.

More broadly, the scheme aligned with my well-documented view that there is a huge generational challenge to build more homes, of all types and tenures, particularly in London where home building targets have been consistently missed in recent years and that in order to meet that challenge we should seek to build where appropriate on brownfield land in urban areas. I also believe that, in general, tall buildings should be encouraged in areas of pre-existing high densification, such as the Isle of Dogs. This was an argument I made in responding to the Mayor of London's draft London Plan.

It is not unusual for Secretaries of State to come to a different conclusion to that of a local authority. Of course, in this case one reason the application came before me was because Tower Hamlets had failed to determine it themselves, in breach of their statutory duties.

Neither is it unusual for Secretaries of State to disagree with the recommendations of Planning Inspectors. Indeed, my predecessors have done so in approximately 20% of cases reviewed in the past three years.

It is important to underline the point that this is a democratic check and balance: decisions being taken by Ministers who are accountable to the public and to Parliament. Indeed, since 2010, the Government through the Localism Act 2011 has intentionally increased the number of planning decisions that are made by Ministers rather than by unelected quangos. Constitutionally, Ministers take, and carefully consider, advice from officials. The decision is for Ministers to take, based on this advice.

Such practices are in line with those of previous administrations – including under the last Labour Government.

In the last three years, 14 substantive decisions have been made by Ministers in disagreement with the recommendation of the Inspector. In all cases, this process is transparent, as both the original Inspector's report and the Secretary of State's reasoning are published on gov.uk.

Challenges to decisions are not uncommon either. In the last three years there have been 26 challenges to planning casework decisions made by MHCLG Ministers. Of those, 16 were withdrawn or successfully defended, eight were conceded or lost, and two are yet to be concluded. My decision on the Westferry planning application was also consistent with the other decisions I have taken, such as:

1. In March 2020 I instructed South Oxfordshire District Council to adopt their Local Plan for 22,775 homes (2011-2034);

2. In March 2020 I approved plans for 400 homes in Newmarket, West Suffolk. Newmarket Town Council opposed the development (the District Council approved);

3. In April 2020 I approved plans for 150 dwellings at Long Melford, Suffolk. Babergh District Council had failed to determine the application; and

4. In April 2020 I approved plans for a 200-home development in Tiptree, Essex. Colchester council had originally refused permission.

In regards to the Westferry application, I am aware that there is some local opposition. I am a former resident and worker of Tower Hamlets and know and appreciate the area.

However, most planning decisions that fall to the Secretary of State are by nature, highly contentious, frequently complex and sometimes quite subjective. There is no escaping that reality. Furthermore, the local authority had an opportunity to make a determination on the application but had failed to do so, knowingly passing the difficult decision to the Secretary of State.

As you note in your letter, at the same time as considering Westferry, I also considered another application which was before Tower Hamlets, the development of the former Whitechapel Bell Foundry (where Big Ben was cast), and decided to call it in for a public inquiry to be held later this year.

In that case, my decision to call the application in was welcomed by local heritage campaigners and the local Member of Parliament. As my record shows, I make each planning decision on the facts of that case.

TIMINGS OF THE DECISION

This was a long-standing application, the determination of which had been delayed by Tower Hamlets failure to meet the statutory deadline and the resulting necessity of appeal to the Secretary of State.

It is my stated policy objective to seek to speed up the planning process and having been returned to Parliament with a mandate to do that, I was keen to see this, like other decisions, to be made thoughtfully, but swiftly. Indeed, of the seven planning decisions presented to me upon my appointment and described by the department as “urgent”, this is the one that took the longest time for me to determine.

I was aware that Tower Hamlets was due to adopt their new local plan on or around 15 January and that this included a Community Infrastructure Levy (CIL) schedule.

This was well known, in the public domain, reported widely and had been in train for many months.

The first advice that I received from my officials on this matter, provided on my return to the department following the General Election noted that if I chose to approve the application then timing was a legitimate consideration and "to avoid delay we will seek to issue before the council adopts a new local plan on 15 January 2020. This will require a decision by 7 January … [and the council] … anticipate adopting the Plan, which includes a CIL charging schedule, by 15 January 2020." Officials routinely draw Minister's attention to live and local issues such as this – for example whether local plans are about to be adopted, and the views of local MPs where they raise material planning issues (the local MP had not made a representation to me, for or against, in this case).

The timing and effect of a pending new Tariff under the Community Infrastructure Levy is a valid material consideration that a decision-maker may take into account. A new tariff may have an effect on the viability of a planning application, or the likelihood that the development will be built out in good time. Previous delays or maladministration may also be relevant in that consideration. For example, in 2012, delays caused in the internal processing of paperwork in the department on a planning case for the Thameslink rail development meant that the Thameslink scheme would be subject to a new Community Infrastructure Levy rate, making the financing of the scheme unviable. In that case Planning Ministers felt it important that the case was promptly processed to avoid this effective financial penalty, given the delays were not the fault of the applicant. This direction by Ministers was later scrutinised and upheld by the courts in a subsequent judicial review in the High Court

In the Westferry case, the Planning Inspector's Report also noted that if the decision was taken after the adoption of the new local plan and CIL schedule, the viability of the scheme might be compromised, an argument that had been made by the developer. In doing so there was no bias in favour of the developer, but a perfectly legitimate interest in making a decision, one way or the other, prior to the material change that was due to occur on 15 January. To characterise it otherwise is entirely wrong. Any personal financial benefit for the parties involved in the development played absolutely no part in my consideration of the application, or the time scale for approving it: the decision was restricted to the consideration of the material considerations in the planning system.

It has been suggested that I made the decision on the eve of Tower Hamlets' adoption of their new local plan. That is not the case. I first received advice on this before the Christmas recess, and considered the further advice that I had requested over the Christmas period. I initially indicated on 28 December 2019 that I was minded to approve the application after reviewing these documents and confirmed this decision in a meeting with officials, on 6 January 2020, where we discussed a number of planning cases.

The decision letter from the department was sent on 14 January.

Again, it should be noted that the applicant made their original planning application in 2018. There is a manifest unfairness for any applicant to be financially disadvantaged because of maladministration by a local planning authority (failing to consider the application within statutory deadlines). It would be against public law principles of

natural justice and fairness for a public authority to benefit financially by deliberately slowing down planning applications. Planning is a quasi-judicial process: justice delayed is justice denied.

CONSERVATIVE PARTY EVENT

It is a matter of public record that I was seated on the same table as the applicant and his associates, Richard Martin and representatives from Mace, at a Conservative event in November of last year, during the General Election campaign. I attended at the invitation of the Conservative Party, as Ministers of the governing party do. I was not aware of seating plans, or the developer's attendance, prior to arriving at the venue. Conservative Central Headquarters had sent a copy of the seating arrangements to my special advisers on their departmental email account, which they had no access to as they had resigned on 6th November to work on the General Election Campaign, and therefore (rightly) had no access to no departmental IT. I therefore had no prior knowledge of the seating arrangements. Had I been aware, and realised that planning might be raised, this would have been helpful in allowing me to be clearer from the start that I would not discuss the live case at the dinner.

This was the first time I had met Mr Desmond. He raised the application and has publicly said that he recalls showing me an extract of the scheme's promotional video and says I watched it for a few moments before interrupting him. He also mentioned the impending adoption of the new Local Plan, which I was already aware of. I informed him that it would not be appropriate to discuss the matter of his planning application and the conversation moved on to other topics. At some point before departing he invited me on a site visit. In the normal way I mentioned to the department that I would like advice on the matter should I be reappointed after the General Election. I was in the office periodically as I was responding to winter flooding in my role as Secretary of State, although I did not take any planning decisions at this time due to purdah. On my first full day in the office after my reappointment, I told my private office that I had met Mr Desmond at the dinner, that he had raised the application and that I said I could not discuss it. An earlier email chain from Mr Desmond's office referencing the dinner and requesting a site visit was also discussed.

I would observe that all decision-makers in the planning process (from councillors to Ministers) receive unsolicited oral and written representations from time to time. Advice given to all is to ensure that any final decision is made with an open-mind, based on the material considerations of the case, in light of all the material evidence and formal representations. This was the case here.

It would be perverse if any decision-maker was barred from taking a decision because of any unsolicited representation (for example, a councillor who was stopped in the street and asked about a planning application for a household extension, being barred from sitting on that case in a Planning Committee). Indeed, Section 25 of the Localism Act 2011 also clarified the law on pre-determination in planning – precisely to protect decision-makers from over-zealous application of the planning rules. Such a re-balancing was welcomed by councillors across the political spectrum.

CONTACT WITH APPLICANT AND THE COUNCIL

I received a number of text messages from Mr Desmond following the dinner on 18 November 2019. For full disclosure, I have included a transcript of these messages with this letter. As the transcript demonstrates, I refused to discuss the matter. His messages played no part in my decision-making process. He also tried to contact me by phone, but I did not answer his calls.

I made very clear in reply to Mr Desmond that I would not discuss the matter:

"As Secretary of State it is important not to give any appearance of being influenced by applicants of cases that I may have a role in or to have predetermined them and so I think it is best that we don't meet until after the matter has been decided, one way of [sic] another - and I can't provide any advice to you on that, other than to say that I will receive advice from my officials after the general election assuming I remain in office and will consider it carefully in accordance with the rules and guidance."

I mentioned to my private office that I had been in contact with Mr Desmond by text and had made clear that I would not discuss the matter. I was not asked to share the content of those texts at the time nor were any concerns raised.

It is not unusual for a Secretary of State in MHCLG to be contacted by house builders, developers, planners, council leaders or others involved in the planning process. It happens all the time, as I am sure that former housing secretaries will attest.

The Mayor of Tower Hamlets had also contacted me making representations about the application and asking for a site visit.

Site visits are usually permitted in the Department's planning propriety guidance (subject to advice on how the site visit should be conducted), and I indicated that I would in principle accept Mr Desmond's invitation, as the email chain I have released demonstrates.

While I initially thought it would be a way of considering the local concerns at the site in person for myself, I swiftly concluded against. I discussed this suggestion further with officials during my first full day back in the office after the General Election. They explained that while a site visit was possible in some circumstances, they would tend to advise against proceeding with site visits as a general matter of course with all planning applications.

On that basis, neither request was taken up.

Whilst this situation, I believe, has been politicised by the Opposition , I do appreciate the strong argument that things could and should have been handled in a different manner.

On reflection, I would not have exchanged numbers given the live planning matter, but at the time I considered the matter closed as I have clearly told Mr Desmond I could not and would not discuss it. I regret that that action has created such difficulty, even though neither the dinner nor his messages had any bearing on my decision whatsoever. The dinner, and the contact that followed, has allowed for baseless

innuendo and false accusations to be spread. I consider later in this letter how lessons can be learnt for the future.

SEPARATION WITH POLITICAL PARTIES

There is no question here of any individual influencing Government decisions by virtue of any donations they may give to the Party or their attendance at Party events, and it was certainly not the case here. There is a complete separation between Ministers and donations to political parties. It has been mentioned in the press that Mr Desmond made a £12,000 payment to the Conservative Party on 28 January 2020. The Conservative Party has subsequently confirmed that this was for a number of tickets to a Conservative social event.

The first I knew of this payment was when it was reported in the press in June 2020, after being included in the most recent First Quarter Electoral Commission returns. Donations to the Conservative Party are properly and transparently declared to the Electoral Commission, published by them, and comply fully with the law.

Thanks to that transparency, I would observe that the Labour Party also reported donations from those with property interests in the same quarter. Indeed, Mr Desmond previously made a significant donation to the Labour Party under the last Labour Government – that is his right as a private citizen on the UK electoral roll.

LEGAL CHALLENGE

It is important to set out the process that led to all sides agreeing to redetermine the planning application. When I informed my department of the contact with the developer immediately upon my reappointment, I made clear that I told Mr Desmond that I was unable to discuss the matter, as is required by the Planning Propriety Guidance. At no point did any officials in my Department advise me to recuse myself from the decision or ask for further information. Had I been advised to do so, I would have done.

When the department were challenged in court, my intention was to robustly defend the decision we had taken. However, the advice to me stated that the timing of the decision and extent of contact with the developer meant it was possible that the case would be lost on the grounds of *perception* of bias, even though there was no bias in the decision making process at any stage. I hope the documentation I have released today explains this dilemma – there was no bias, no favours, no special treatment. But an independent observer might infer that there was an appearance of bias.

Upholding the integrity of the planning system was my priority. I did not wish for there to be any inference of bias due to the timing of the decision, nor an unnecessary and lengthy legal case at the cost of the taxpayer. I requested that the decision be taken afresh in the usual way, thereby guaranteeing the complete integrity of the planning system in the eyes of all concerned. That was agreed by all parties, including Tower Hamlets Council, the developer and the Mayor of London. The judge accepted this, and the case was closed. Such re-determinations do happen from time to time, and reflect the quasi-judicial nature of the planning process.

RE-DETERMINATION

This is a live planning matter, and all parties involved will shortly receive a letter from the department setting out the next steps in this process. It will be for a different Minister to decide whether it should be approved or not, and I will not take part in any conversations on the matter. I can confirm that due to my decision to quash the case, the CIL charge introduced by the local authority as part of their Local Plan introduced earlier this year will be applicable if the developer decides to proceed with the application.

TRANSPARENCY PUBLICATION

With this letter, I am releasing a package of material, as requested by the Committee. I am also placing the associated documentation on gov.uk and in the Libraries of the House.

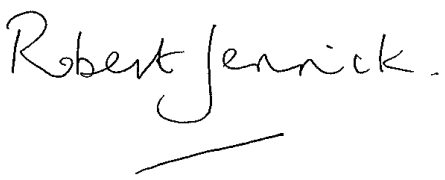
I recognise that there are higher standards of transparency expected in the quasi-judicial planning process, which is why I am releasing discussions and correspondence which the Government would not normally release.

The redaction of material in line with Freedom of Information exemptions is consistent with the approach outlined in the Government Response to the Public Administration and Constitutional Affairs Committee Report on 'Status of Resolutions of the House of Commons' (January 2019).[1]

LESSONS LEARNT

I have also asked my Department to review the extant Planning Propriety Guidance to see how there can be clearer, practical guidance to Ministers and civil servants. This will help ensure the highest standards of conduct in public life, whilst recognising the need for interested parties – including local Members of Parliament – to be able to make representations on the public interest. Any representations from the Select Committee in this regard would be welcomed.

Yours sincerely,



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[1] https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/2066/206602.htm