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Wednesday, 14<sup>th</sup> October 2009

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Your Ref:

Dear Mr White

### **Complaint of maladministration – demolition order – Swithland Barn**

I write in respect of your email dated 9<sup>th</sup> September regarding your complaint of maladministration by the Council in the processing of Prior Notification of Agricultural Development P/04/0373/2 and Enforcement Number E/08/0241, and in particular the specific nine numbered issues you raise in your email.

As mentioned in my acknowledgement email, we have dealt with your complaint at stage 3 of our complaints procedure, and an independent investigation has been carried out, the findings of which are detailed below.

For ease of reference, I attach a chronology of events from the time that complaints were first received from local residents in November 2003 and the service of Planning Enforcement Notice E/08/0241 on 13<sup>th</sup> November 2008 to the Appeal Decision on 25<sup>th</sup> August 2009.

I will answer the points you raise in the order that they are written in your email.

Paragraph 1:

You telephoned Helen Robinson on Friday 14<sup>th</sup> November 2008 (the day after Enforcement Notice E/08/0241 was served) and left a message for her to call you back, which she did on Monday 17<sup>th</sup> November. Attached to the chronology is a note of your conversation which indicates that you protested about the service of the Enforcement Notice and received a comprehensive verbal response at that time. You gave no indication at that time that you wished to make a formal complaint of maladministration. The Council received nothing further from you in respect of maladministration until your email dated 9<sup>th</sup> September 2009, after the outcome of your appeal against the Enforcement Notice.

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Paragraph 2:

The attached chronology details the planning procedural history in relation to the stone barn that you have erected. In summary, you submitted a Prior Notification of Agricultural Development (PN) on 3<sup>rd</sup> February 2004 (P04/0373/2) which was not determined by the Council as further information was considered necessary by the Council before it could consider the application.

The planning history was considered fully as part of the recent appeal proceedings under reference APP/X2410/C/09/2093440 and a copy of the Inspector's decision is attached to this letter for your ease of review. The Council considers that the Planning Inspector's Appeal Decision provides a useful summary of the events that took place. As you will be aware the Inspector's conclusion in respect of the planning procedural history is set out at paragraphs 4. to 7. inclusive of his decision letter. The Inspector concluded that your PN was validly made but the barn you constructed did not comply with the requirements of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995).

In particular, you relied on Part 6 Class A of Schedule 2 of the GPDO 1995 for authority to construct a barn on the land. Under the terms of the GPDO 1995, it is incumbent on the developer to ensure compliance with the conditions of the GPDO 1995 including demonstrating that the barn as proposed and subsequently built was reasonably required for and designed for the purposes of agriculture. The Council raised concerns with you, your agent, and your solicitor regarding the size, design, specification, and necessity for the building in relation to the GPDO 1995 a number of occasions either in writing or verbally, both before and during construction of the barn. The details of the specific concerns raised and the occasions on which they were raised are recorded in detail in the attached chronology.

In respect of Building Regulation approval, a person who carries out building work is required by law to employ a Building Control Body, which may be the local authority or a private sector Approved Inspector, to authorise and approve the work under the requirements of the The Building Act 1984 and Building Regulations made thereunder. In this instance, you chose to use the Council's Building Control Service, which operates as a separate business unit, to provide this service.

The Council's Building Control Service received an application showing the construction details of the barn. This application was considered by Building Control in relation to the Building Regulations and approval was granted.

It should be noted that the processing of applications for Building Regulations approval is unrelated to the determination of applications for planning permission, as it operates under separate legislation and technical guidelines. Approval under the Building Regulations does not therefore confer any rights under planning control legislation and doesn't mean that permission under planning legislation is also granted.

Note 1. of the Building Regulation Notice confirms that the approval is for the purposes of building regulations only and is not an approval under the Town and Country Planning Acts or for any other statutory provision.

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The Council's Building Control function also has to operate on a commercial basis as it endures competition from the private sector for the delivery of this service. One of the many consequences of this is that the Council has to ensure that the service is delivered independently from its Planning function, as evidence shows that perceived interaction between the two has the anti-competitive consequence that developers will ultimately tend to opt for private sector Building Control Bodies where this cannot happen.

Paragraph 3:

The Planning Inspector (PI) determined the Appeal taking into account the full facts of the case during the Inquiry process. It is the conclusion of the PI in paragraphs 9. to 27. inclusive of the Appeal Decision, that the conditions in Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 were not met.

Line 4:

A chronology of the case prepared by the Council is attached to this response.

Paragraph 5:

The Council agrees that an enforcement notice was issued on 13th November 2008 in relation to land adjacent to 67 Main Street, Swithland which was registered to you on 6th January 2004 with title absolute under title number LT87821.

Line 6:

According to the Council's records, work started on site commencing with the clearance of the land in May 2007 which prompted a number of complaints from local residents. This led to a site visit by Council enforcement officers on 14<sup>th</sup> May 2007, at which time the land was being cleared and marked out for the building's foundations. Therefore, the Council does not agree with your statement that it was a progressive 5 year construction period.

Photographs:

At the time of service of the Enforcement Notice on 13<sup>th</sup> November 2008, the Council was told by the builder that the slate roof tiles were awaiting import into the country from China.

Line 7:

The Council's chronology is attached.

Paragraph 8 (your point 1):

You submitted a Prior Notification of Agricultural Development (PN), and not a Planning Determination form as you state, on the 28<sup>th</sup> January 2004 and it was registered by the Council on 3<sup>rd</sup> February 2004.

Paragraph 9 (your point 2):

The Council agrees with your statement.

Paragraph 10 (your point 3):

The Council agrees with your statement.

Contd over/...

Paragraph 11 (your point 4)

On 9<sup>th</sup> February a letter was sent to 52 Woodland Drive instead of 54 Woodland Drive as the PN had been entered on the Council's system under the incorrect address. This error came to light when you telephoned on 22<sup>nd</sup> March and a copy of this letter with the correct address but retaining the original date of 9<sup>th</sup> February was sent to the correct address on 22<sup>nd</sup> March. A file copy of the letter was annotated by hand with the details of what had happened and that is the letter that appears on the Council's website.

Paragraph 12:

The Council had not forgotten your PN; it had determined that it was incomplete and had written to you to that effect, albeit to the incorrect address. When you telephoned on 22<sup>nd</sup> March this error came to light and a copy of the letter was sent to you on that date. You relied on the Council's non-determination within the 28 day period for deemed consent.

Line 13:

The Council agrees with your statement. The letter on the left is the letter dated 9<sup>th</sup> February that was amended and sent to you on the 22<sup>nd</sup> March. The letter on the right is a copy of the Council file letter that was annotated by hand and appears on the Council's website.

Paragraph 14:

The address was altered so that it went to the correct address but since it was a copy of the original letter the date wasn't altered.

Paragraph 15:

Ms Robinson did not write the original letter of 9<sup>th</sup> February nor did she send the further copy of that letter on 22<sup>nd</sup> March 2004. You did not attach a copy of the letter you received to your evidence. In the circumstances, when preparing her statement, Ms Robinson relied on the annotated file copy (being the letter on the right as depicted in your letter of complaint) that is held on the Council's file which is also uploaded to the Council's website. You did later, however, produce a copy of the letter that you received on 22<sup>nd</sup> March dated 9<sup>th</sup> February which you showed to the Inspector.

Paragraph 16:

The Council agrees with your comment.

Paragraph 17:

The Council agrees with your comment.

Paragraph 18:

The Council agrees with your comment as this is the Council's file copy that was annotated by hand to indicate what had happened.

Paragraph 19:

The Council agrees that the formatting of the letter is slightly different; however, the meaning and substantive content of the letters are the same.

Contd over/...

Paragraph 20:

The Council does not agree with your assertion, and neither did the Planning Inspector, that the Council “attempted a ‘cover up’ of maladministration”. In cross examination you were expressly asked whether you were asserting that the letter had been fabricated and you indicated that you were not. I also understand that when your appointed counsel cross examined the Council’s witness, Mr Lewis-Roberts, he did not contend that the letter was a fabrication. The Council explained at the Inquiry and maintains that this was simply an error of inputting on to the Council’s computer system which the Council resolved when it became aware of the error. The Council agrees that it received a letter from your solicitor dated 31<sup>st</sup> March saying that you would be proceeding with the development.

Paragraph 21 (your point 5):

The Council agrees that a letter was sent to you on 5<sup>th</sup> April 2004 confirming that as the Council had not sent a response you had the right to proceed with the development. The letter also points out that the barn should be constructed to the dimensions set out in the PN and in the materials mentioned and that the barn should be used for agricultural purposes only. This letter again indicates that the conditions of the GPDO 1995 had to be complied with and that the responsibility rests with the developer to ensure that this is the case.

Paragraph 22:

The PI’s conclusion (paragraphs 4. to 8. of the Appeal Decision) was that the Council was right to ask for further information but he did not support the Council’s contention that the PN was invalid.

Paragraph 23 (your point 6):

You submitted drawings to the Building Control service on 15<sup>th</sup> June 2006 and additional information was requested by the Building Control service which was submitted by you on 27<sup>th</sup> October 2006 and Approval was given under The Building Act 1984 and the Building Regulations thereunder on 11<sup>th</sup> December 2006.

The Building Regulations Inspection Report and the site visit of 14<sup>th</sup> May 2007 detailed in the chronology indicate that site clearance and marking out for the foundations did not commence until that point.

Line 24:

The Council agrees with your statement.

Paragraph 25 (your point 7):

No detailed plans had been submitted with the PN and therefore no details had been agreed in respect of the PN.

Planning Approval had not been granted for your development. You sought to rely on agricultural permitted development rights contained in Part 6 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 for authorisation for the development of the barn and therefore your development had to comply with the conditions of that legislation.

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The building length had not been agreed with the Council; it had been stated by you on the PN form that the building would measure 30 metres by 15 metres. The total area to which you refer is a condition of the GPDO 1995 that the total area should not exceed 465 square metres.

At the time of the Council's visit on 14<sup>th</sup> May 2007, clearance of the site and marking out of the foundations was taking place. The Council's view was that those works did not comply with the conditions of the GPDO 1995. The Council met your agent on 31<sup>st</sup> May and detailed those areas of non-compliance and wrote to your agent to advise that the development would require planning permission.

The Council received a letter from your solicitor dated 13<sup>th</sup> July 2007 stating that the development would be altered to the size indicated in the PN and the sleeping quarters would be removed.

The Council wrote to your solicitor on 23<sup>rd</sup> July 2007 noting your intention to reduce the size and remove the sleeping quarters. The letter goes on to explain the further concerns the Council had with regard to the design of the building and advised that although no further action would be taken at that time, the development would be closely monitored and action could be taken in future if necessary.

Therefore, the Council does not agree with your statement that planning approvals had been granted and considers that both you and your solicitor were aware of your responsibility to comply with the conditions of the GPDO 1995 and were aware of the Council's concerns in respect of the design of the building.

Paragraph 26:

The site visits in summer 2007 and 16<sup>th</sup> January 2008 are not disputed.

Paragraph 27:

The Council had received only limited details with the PN and had therefore raised no objections, although you were reminded of the need to comply with the conditions of the GPDO 1995 and in particular in respect of the conditions that the barn should be reasonably required for and designed for the purposes of agriculture.

Paragraph 28 (your point 8):

The decision to take enforcement action was taken following site visits in October 2008 and was taken in accordance with the Council's delegation decision procedure as set out in the Council's constitution (a copy of which can be found at: <http://www.charnwood.gov.uk/pages/constitution>).

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The Council does not agree that it came completely out of the blue as a number of warnings had been issued to you, your agent, and your solicitor as detailed above. When you telephoned the Council Ms Robinson offered a full explanation to you, and a copy of the file note of that conversation is attached to the chronology. You also spoke with Anna Eastgate, Locum Solicitor working for the Council who also offered an explanation to you.

Paragraph 29 (your point 9):

As you say, the PI concluded that the erection of the building was not permitted development and upheld the Enforcement Notice and refused to grant Planning Permission based on all the facts of the case and as set out in the Appeal Decision.

Paragraph 30:

The Council disagrees that it granted consent for the construction of the barn and had fully approved the siting, design, location, size, appearance and materials of the barn. The detailed plans of the development were not submitted as part of the PN, and those details were not made known to planning officers until the site visit on 14<sup>th</sup> May 2007.

The Council disagrees that there has been maladministration, and considers that you, as the developer, had responsibility for compliance with the conditions contained in Part 6 Class A of Schedule 2 of the GPDO 1995 and the Council reminded you of that responsibility on a number of occasions.

Whilst no action was proposed up until 2008, it was only when non agricultural features became more evident during construction of the building, that further questions were raised as to whether the building did comply with the GPDO 1995 conditions in respect of the building being designed for agricultural use and the need for agricultural use.

Site visits on 7<sup>th</sup> and 28<sup>th</sup> October 2008 concluded that there were features that became more evident during construction of the building, significantly the inner blockwork skin at floor level and positioning of Oak beams within the building. These features were not shown on the plans and they heightened the Council's concerns, particularly that the inner blockwork wall could have been used for an inner skin on the development and as a consequence cavity wall construction more in accordance with a dwelling than an agricultural building. The Oak beams inside the structure were positioned against this inner blockwork wall and the positioning of the beams suggested conversion at a later date could be more readily achieved and did not appear to be consistent with a building designed for the purposes of agriculture.

At the time the Enforcement Notice was served the land claimed to be in use by you for agricultural purposes was no longer being used and despite the evidence provided by you in the past of the 5.01ha holding, no agricultural activity had been witnessed on the site for some months. It was questionable as to whether the building was needed for agricultural purposes.

The Council understands from the Inquiry process that it was only in February 2009 immediately prior to the Public Inquiry, that you obtained the land at Cropston and this fact was commented on by the PI in the Appeal Decision (paragraph 15).

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These factors led officers to consider taking formal action and, despite the fact there was felt to be a risk involved, it was considered expedient to challenge the position on the grounds of whether or not the building was designed for agricultural purposes and whether there was indeed a need for such a structure. In order to allow the Inspectorate to consider the situation formally, the Director of Governance and Procurement at that time took the decision to pursue formal enforcement action.

The PI acknowledged that the Council did not raise any objections to the siting of the barn at the time of the PN and has also acknowledged that the plans were not precise but found that they were not materially different to the location of the current building. The PI, however, concludes that this in itself does not mean that the development benefits from permitted development rights.

Paragraph 31:

As detailed in paragraph 30, the Council disagrees that there has been maladministration and therefore has no responsibility for the costs associated with the construction or demolition of the barn development. Had the PI found that lesser steps other than the demolition of the barn would have been sufficient to overcome the planning objections to it he could have specified these in his Decision Notice. However, at paragraph 39 the PI held that the requirements of the notice represent a reasonable response to the breach of planning control and did not consider them to be excessive. It was of course open to you to apply for costs against the Council on the grounds that you considered its behavior to be 'unreasonable', however, it is noted that you were legally represented at the Inquiry and that no application for costs was made.

Paragraph 32:

The PI concluded (paragraphs 4. to 8. of the Appeal Decision) that the Council was right to ask for further information but that it had not responded within the time specified within the GPDO 1995. In that context the PN represented a valid application which was subject to the requirements detailed in the GPDO 1995 and that position is consistent with Ms Robinson's letter of 5th April 2004.

Paragraph 33:

As requested, the Council has investigated your allegation of maladministration and has found no evidence to substantiate that allegation. The Secretary of State's decision, which is focused on the planning issues relating to the breach of development control, upholding the Enforcement Notice and whether or not planning permission should be granted, is that the barn should be demolished and the land reinstated to its former condition and the Council has no power to overturn that decision. You were made aware in the supporting paperwork to the Appeal Decision of your right to Appeal to the High Court and it was your decision not to pursue that course of action. You do have the right to ask the Local Government Ombudsman to consider your allegation of maladministration should you consider that the Council has not answered your allegation to your satisfaction.

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Paragraph 34:

As detailed above, the Council has no powers to reach an alternative agreement with you with regard to the demolition of the barn as ordered by the Secretary of State.

Since the Appeal Decision, you have on the 21st September 2009 submitted a further prior notification of Agricultural Development for 'Alterations to building to retain barn and erection of a hay store' which the Council has declined to accept as it does not meet the requirements of the legislation. You have subsequently submitted a further complaint to the Council which is being dealt with as a separate issue.

You have also submitted a further prior notification of Agricultural Development on 30<sup>th</sup> September 2009 for 'Main operations site of Swithland Agricultural Holdings located at the Holdings land at Main Street Swithland' and the Council registered that application on 7<sup>th</sup> October 2009. The Council will deal with that application in accordance with the GPDO 1995 procedure.

Paragraph 35:

As the Council considers that there has been no maladministration, it is unable to offer you compensation for any of the items you list.

Paragraph 36:

As stated previously, at the time the Enforcement Notice was served, the slate roofing tiles were not on site and the builder was awaiting delivery of the tiles into the country from China. The liability for contracts you had previously agreed is a matter for you and your contractors and is not the responsibility of the Council.

Paragraph 37:

Again, the completion of contracts is a matter for you and your contractor and not the Council.

Paragraph 38:

Again, the Council can find no evidence of maladministration.

As mentioned above, if you remain dissatisfied with the response of the Council, you have the right to ask the Local Government Ombudsman to consider the matter further and their contact details are: The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH, [www.lgo.org.uk](http://www.lgo.org.uk), telephone 0300 061 0614.

Yours sincerely

Caroline Marshall(Mrs)  
**Corporate Service Development Officer**