

**Appendix 7: Representations received on behalf of The Stockvale Group  
(submitted by RPS) (Letters only)**

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**From:**  
**Sent:** 08 November 2019 13:13  
**To:**  
**Subject:** FW: 18/02302/BCM Seaway Development - Trees and access issue  
**Attachments:** 9809 L 191105 NGNL Seaway Objections\_final.pdf, JNY9057-10 Highway Layout Avoiding TPOs-A3.pdf, JNY9057-09 Highway Layout Avoiding TPOs-A3.pdf, 9809 Seaway\_Notes on Alternative Access Route.pdf

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

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**Sent:** 07 November 2019 06:47

**Subject:** Ref: 18/02302/BCM Seaway Development - Trees and access issue  
**Importance:** High

Dear

You may be aware of our recent objections to the above scheme. I attach these herewith. We have significant concerns regarding the proposal's compliance with respect to transport and parking related policies as you will read. We would be grateful for the opportunity to discuss these with you.

However, the purpose of my email is to draw your attention to the section under the sub-heading 'Trees'. Our objections set out clearly there are adopted Development Plan policies and material guidance that indicate the trees should be preserved. As well, you may be aware that the Council has adopted an interim tree policy, which indicates that the Council will not authorise the loss of Council-owned trees for private development where alternatives exist (referred to within both Section 2 and Section 3 of the Interim Policy). Indeed, the relevant Cabinet member announced on 29<sup>th</sup> July 2019 that all non-emergency tree removals will be stopped. The removal of trees at the Seaway Car Park is clearly a non-emergency activity. The land and trees will remain Council-owned with the proposed development and so the policy applies.

The Applicant has argued that there is no way to facilitate access to the site without the removal of two trees subject to recent Tree Preservation Orders (TPOs). We strongly dispute the applicant's claim. You will see under the trees section of our attached report that we indicate that there are alternatives. I attach two drawings which show how the access can be re-routed around the preserved trees, and this includes appropriate buffers for future growth. I also attach some notes to assist you. Of course the building shape and design is not fixed, and could be easily re-designed to save the TPO trees. Therefore, in accordance with Council's most recently adopted interim Tree Policy as well as adopted Local Plan policies (as referred to in our letter), the alternatives must be explored or the application must be refused on this reason alone.

I am also making you aware of this because I am sure you'll agree that there would be a serious public perception and relations issue if the Council goes ahead and authorises the removal of its owned – legally preserved – trees so recently after the Cabinet and the Portfolio Member issued an important policy regarding their preservation especially when easy alternatives exist We are all acutely aware of how Sheffield Council mis-handled the removal of Council owned trees, as set out in the Interim Tree Policy's background report.

We would be grateful for your review of this information, which I am sure you'll agree demonstrates that there is no justification for the loss of TPO trees and the developer's claims that no alternatives exist are wholly incorrect because they simply have not explored in any detail the available alternatives I have copied in Rick Milsom (tree officer), Clr Mulrone, the Cabinet Member for Planning and Environment (who made the policy announcement) and others to facilitate discussions.

I would be happy to discuss anything in our objections (either tree related or transport/parking related) at your earliest convenience. I am also happy to discuss this with the Cabinet Member or Tree Officer as appropriate.

I would also be grateful if you would kindly confirm receipt of this email as some emails are not going through to the Council

Kind regards,



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**Sent:** 08 November 2019

**Subject:** FW Seaway Application Ref 18/02302/BC4M - Landscaping & Heritage Objections  
**Attachments:** 9809 Seaway\_Heritage Statement\_reduced pdf

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

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**Sent:** 08 November 2019 09:31

**Subject:** RE. Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections  
**Importance:** High

Dear

I attach the Heritage Statement. The LVIA will be submitted in two parts in subsequent emails.

As I mentioned, I am very surprised that you did not receive my emails, as there was no indication that these were not successfully sent (e.g. by way of an undeliverable bounce back email). I note that NPA were copied in as an external party, and their email address also did not generate a bounce back that would suggest the email was not successfully sent. So from my perspective, both emails were sent.

The fact that you did not get either email nor I received a bounce back also raises questions of confidence in the Council's consultation procedures. How can anyone be certain that by submitting their objections, these will be duly received and considered? And of course, you would have no way of knowing someone has submitted such comments because you don't get them? So I have copied in [redacted], and I urge the Council to review its consultation procedures. I strongly believe that your policy of not publishing statutory and public comments regarding applications on the application website have been demonstrated to be prejudicial to the process. Since you are only one of a handful of Councils who do not do this, this also suggests there is no legal basis for SBC's current approach. Of course, if you did publish comments received online shortly after they were received (as is the practice with most other Councils across the UK), I would have had the opportunity to verify that you had received the documents that I submitted to you on our client's behalf on 20<sup>th</sup> September 2019. You would also be able to save costs regarding FOI requests, as interested parties could then access the information in an instant on your website.

With regards to my FOI request which prompted the discovery of these missing emails, for your benefit, I have now submitted a formal complaint to the Information Commissioner's Office. I have also requested that the ICO investigate whether the practice of withholding public comments and statutory consultee comments from the application website, as well as undertaking meetings with applicants without agenda and meeting notes, are lawful practices. I will come back to you regarding this as soon as I hear anything. Of course, your practice raises questions regarding whether any decision you make on the Seaway application could be subject to a successful judicial review based on procedural errors, and we are taking advice on this.



Turning to the EIA Screening Opinion you have made, it appears you have made this decision whilst overlooking our duly made representations made on 20<sup>th</sup> September, and which we referred to in both the body of the email and within our EIA Review document sent to you on 11<sup>th</sup> October 2019 @ 09 58 (see Paragraph 2.7), and also referred to in my email sent on 12<sup>th</sup> October 2019 @ 00 23. Of course, I actually have no confidence that you received these emails, as according to my email system, they were appropriately sent, but as we have clear evidence your email system appears faulty. We would therefore urge the Council to review their EIA Screening Opinion as a matter of urgency to reflect our comments. In this regard, we are investigating whether the Opinion can be challenged.

I will send you the LVIA in follow-up emails

Please would you confirm receipt of this email.

Kind regards,

Sent: 05 November 2019 16:15

Subject: RE: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections


CAUTION: This email originated from outside of RPS.


Dear


I refer to your email below. Unfortunately I did not receive either of your emails dated 11<sup>th</sup> October 2019 or 20<sup>th</sup> September 2019.


Please can you resend the objection email with the attachments which aren't attached to your latest email (noting that we cannot receive emails with attachments over 10MB). Please also note that the Council is unable to access documents via file transfers.

Regards,

 [Twitter@southendbc](https://twitter.com/southendbc)

 [Facebook.com/SouthendBCOfficial](https://www.facebook.com/SouthendBCOfficial)

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**Please note:** Any opinion given in this correspondence is that of an officer of the Council. It does not necessarily reflect the view that might be taken by the Council itself. Consequently any opinion expressed will not bind the Council.

*Please note I do not work Thursdays*

**Sent:** 05 November 2019 14.35

**Subject:** RE: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections

Do you know where this FOI request is? It is well overdue

**Sent:** 11 October 2019 19.27

**Subject:** FW Seaway Application Ref 18/02302/BC4M - Landscaping & Heritage Objections  
**Importance:** High

Dear

From this email below, you will note that I raised a FOI request, as follows: *"In the meantime, may I ask that you kindly initiate a new FOI request for copies of all correspondence between any planning officer (including the Group Planning Manager and yourself), any Conservation and Design officer (including \_\_\_\_\_), any Transport/Highways Officers (including \_\_\_\_\_), any Environmental Health officer, or any other third party acting on the Council's behalf (including Nicholas Pearson Associates and Town Legal (the latter of which we understand from recent FOI responses is acting for the Council but their bills may be paid by the Applicant)) and the applicant and/or their agents or consultants regarding this application or any technical matter related to this application (since we cannot see this online) I look forward to receiving an update on where the application is at present. Thank you "*

Can you confirm that this was been initiated immediately upon receipt and that I will receive the relevant responses within 30 days (i.e. by 20 October)? Please would you kindly let me know

Kind regards,

**Sent:** 20 September 2019 15:47

**Subject:** Seaway Application Ref 18/02302/BC4M - Landscaping & Heritage Objections  
**Importance:** High

critique, and a further Heritage Statement objection, which complement the objections we set out in February 2019 as well as other objections we have submitted. The versions attached to this email are reduced file size versions of the documents (for email purposes), but a high quality version can be downloaded via this link: <https://filetransfer.rpsgroup.com/link/5pMNAXcDp4i4zgMsQS0Yhc>

You will note that both documents explain why more detail is required as the information submitted thus far is substantially deficient to the extent that it would be difficult for the Council to rely on this to make any determination of the application on these key technical considerations. In particular, it is completely unclear how the Council could rely on the Applicant's Heritage Statement to discharge your responsibilities under the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Reliance on these documents would likely render any application at risk of a legal challenge, noting that until recently, the Council had no expert support on landscape matters to make any qualified judgments (as noted with our email on EIA matters set out below). I have copied in Nicholas Pearson Associates into this email, and I will forward our previous EIA screening email to them (see below) given these relate to landscape matters.

You will see that we maintain our objections that the proposed development fails to comply with the relevant landscape/townscape/design and heritage policies and the NPPF, and without obvious material considerations that clearly outweigh these policy conflicts, the Application should be refused on these grounds alone (one could argue that the negotiation of the application should have already stopped until all relevant information is supplied to avoid waste of resources, or simply refuse the application on a lack of information, among other reasons).

In more detail, the applicant's submitted Heritage Statement indicates that there would be 'no harm' caused by the proposed development. As you will see from our own assessment set out in Table 5 of the attached, it is clear that there would be at least 'less than substantial' harm, if not 'substantial harm' caused by the proposed development to designated and non-designated heritage assets. Historic England has raised similar concerns, and so it can be certain that our objections have significant bearing as being on the same side as the statutory consultee. The fact remains that the relevant policy tests have not been complied with, but regardless, the information submitted by the Applicant certainly fails to comply with NPPF Paragraph 189, particularly that not all sensitive receptors have been assessed (e.g. Clifftown Conservation Area), and without such information, you cannot make informed heritage related decisions.

With regards the Landscape and Visual Appraisal (LVA) document submitted by the applicant, both it and the DAS fail to report in clear terms the heights of the various parts of the buildings proposed, which makes it difficult to assess the impact of the buildings on its surrounds, and in particular, impossible to verify if any visualisations prepared are indeed accurate. The LVA's study area of only 1km is well below the expected study area of 5km according to normal practice. Furthermore, it omits assessments on direct and indirect effects, there are no winter assessments at Year 1, nor are there night time assessments of landscape character or visual amenity. There are no photomontages of the locations of the most sensitive receptors to provide details of what is being assessed. The LVA assessed simply does not comply with industry guidance and thus cannot be relied on as part of the considerations of a proposal of this scale, and which the Council can then draw a conclusion as to whether the proposals comply with policy, etc. Indeed, RPS's own assessment indicates that the proposals are contrary to relevant policy and without appropriate justification, the application should be refused. We welcome the appointment of Nicholas Pearson Associates, who will confirm that the submitted LVA is far short of what is required to comply with industry guidance on the landscape/townscape impact matter.

As I set out above, we note that Historic England have picked up on our objections and concerns, particularly the impact of the proposed development on the interrelationship between key historic landmarks within the town. In this regard, we will be forwarding these reports to Essex County Council Landscape team, Historic England, and other parties, for their interest and comment, since the Council continues to refuse to publish comments made on the application and enable there to be a clear and transparent audit trail regarding its decision making on this project (noting the Council's own potential for conflicts because it is also the land owner and has arranged contracts with the applicant and its associated parties).

We would be happy to discuss any of the details found within this reports, although I believe it is clear that along with matters of principle, transport and parking, trees, landscape/townscape, heritage, environmental health, and Environmental Impact Assessment, the application fails policy and statutory requirements related to landscape and heritage considerations and therefore the application should be refused. As set out in my email below, we thoroughly expect the Council to request an Environmental Statement from the Applicant before continuing to process the application, as the EIA Screening process previously undertaken was flawed, and this would likely revisit the landscape and heritage matters within that context

In the meantime, may I ask that you kindly initiate a new FOI request for copies of all correspondence between any planning officer (including the Group Planning Manager and yourself), any Conservation and Design officer (including \_\_\_\_\_), any Transport/Highways Officers (including \_\_\_\_\_), any Environmental Health officer, or any other third party acting on the Council's behalf (including Nicholas Pearson Associates and Town Legal (the latter of which we understand from recent FOI responses is acting for the Council but their bills may be paid by the Applicant)) and the applicant and/or their agents or consultants regarding this application or any technical matter related to this application (since we cannot see this online) I look forward to receiving an update on where the application is at present Thank you

I will write to you separately regarding the TPO trees shortly

I look forward to hearing from you

Kind regards,

Sent: 27 August 2019 15:07

**Subject:** Application Ref. 18/02302/BC4M - EIA Screening Opinion Assessment

**Importance:** High

Dear

In our original objection letter dated 7<sup>th</sup> February 2019, we promised to write to you regarding Environmental Impact Assessment (EIA) matters. In light of the planning application documentation and recent consultee responses, we have re-assessed the proposed development associated with the above application against the Town And Country Planning (Environmental Impact Assessment) 2017 Regulations, as amended. We are pleased to provide you with our report, which concludes that the Council should revisit its Opinion due to a number of shortcomings with its approach and with the information that it previously relied on to make its determination that the proposed Seaway development was not EIA development. I set out some key points regarding it below.

- In relation to landscape/townscape, the information accompanying the Opinion clearly stated that up to substantial effects on local views are possible. These could be considered 'significant' in EIA terms. However, with the application, the assessed effects were lowered, because there was a downgrading of the sensitivity of residential receptors. It is not clear how this downgrading was determined, noting good practice and the author's methodology, but it does raise questions regarding whether the developer has sought to underplay the potential effects without justification. In addition, some of the trees on site are now confirmed to be valuable. We have not seen any drawings which suggest they will be retained with the proposed development, and their loss with the proposed development has to be considered in the EIA context. This alone warrants a revisit of the Opinion.





More importantly, we are also unclear how the Council was able to assess the 'substantial' effects identified by the developer's own team and conclude these were not significant when no professional landscape/townscape person was in the employ of the Council at that time to take a professional view on the matter. This alone suggests that there have been procedural errors with the Opinion issued by the Council and alone this warrants its revisiting. In this regard, RPS is preparing a LVIA which looks at these issues, and this will be issued shortly, but we also understand that the Council has now employed such professionals (we welcome such a move). You are now in a position to revisit what was reported during the Screening process versus what is being reported at applicant stage, to determine if there has been errors in the developer teams approach.

Separately, we would appreciate if you are able to let us know which firm has been appointed and the lead contact there, noting it is a public contract (please treat this as a FOI request, if necessary).

- In terms of Heritage matters, it is clear that Historic England has indicated there would be effects on heritage assets (including non-designated ones). These may be significant given the concerns raised by Historic England, and warrants a revisit of the information from a EIA context. In this regard, RPS is preparing a Heritage Assessment which in our view, better complies with NPPF Paragraph 189 (the submitted assessment is, in our view, inadequate and does not discharge the requirements of NPPF Paragraph 189). We will be issuing this shortly, and which we'll share this with Historic England and other bodies to ensure others can comment as well. With this information, the Council should revisit whether there would be significant effects on both designated and non-designated heritage assets.
- It is clear from the evidence that there would be significant effects arising from the development with regards to economic matters. We also note that in our comments on the economic assessment submitted with the application (prepared by Aventia Consulting and submitted with our main objection letter dated 7<sup>th</sup> February 2019) that there was a lack of information on some of the other potential effects, so there is certainly a need to revisit this from a EIA perspective once a comprehensive assessment has been carried out.
- In terms of transport effects, the information relied upon at Screening Opinion stage appears to underplay the level of traffic generation (the model split) and the temporary effects on parking has not been addressed. We understand your transport team are in discussions with the applicant regarding the provision of such additional information. The proposed development should be re-screened once appropriate transport information has been provided to ensure there would be no significant effects arising from traffic, parking and transport matters.
- It is also noted that no information was provided which lends to the Council's conclusion that significant operational noise effects are not likely, so it is unclear how this conclusion was reached. Indeed, your Environment health team's comments on the application clearly reflect our view that there is a lack of information to assess effects. This alone warrants a revisit of the Opinion once such information is provided.
- There is also no information regarding cumulative effects.

You will see from the above and attached that there are serious issues regarding the way in which the Opinion was reached, and which a proper assessment may have concluded that the development is EIA development. If the Council relies on the current Opinion as it stands, it is quite possible that any decision is challengeable from an EIA perspective, as we have demonstrated. We therefore urge the Council to revisit the EIA Screening Opinion once the relevant information is available, and halt the processing of the application until such information is available (or ask that the application is withdrawn until such information is available).

We note that once you have revisited the Opinion, if you conclude the development is EIA development, EIA Regulations 11 and 20 set out how you can then consider a validly made application that is subsequently found to be EIA development. We trust that these regulations will be followed as appropriate, and we look forward to participating in the process.

We would be more than happy to provide any clarifications with regards to our report and conclusions, should it be necessary I'll be in touch shortly with the LVIA and Heritage Assessment

Kind regards,



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**Sent:** 08 November 2019 13 16

**Subject:** FW [EXT] RE Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref No 18/02302/BC4M )

**Attachments:** 9809 L 191105 NGNL Seaway Objections\_final.pdf, 9809 Seaway\_November Objection Letter Enclosures pdf

**Importance:** High

**Follow Up Flag:** Follow up

**Flag Status:** Flagged

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**Sent:** 08 November 2019 12 54

**Subject:** FW: [EXT] RE. Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref. No: 18/02302/BC4M )

**Importance:** High

Dear

You will see from an abbreviated version of the email chain below that your sustainability officer has been quite concerned about the lack of sustainability and energy features of the proposed Turnstone Development, against policy requirements. As you will have seen in sub-heading 'Sustainability' of our attached recent representations that we had re-iterated our concerns that the proposals fail to comply with your adopted sustainability policies

I have copied [redacted] into this email, because whilst he was kind enough to converse with us about the concerns that he shares with our sustainability team (we are all seeking the same result – a highly sustainable development), he was unfortunately not requested to provide comment by you back in February and may not have been approached now (we have no clue, as you continue to refuse to publish statutory consultee comments). We are surprised by this given that we had already indicated to you that it would be inappropriate not to consult with him because of the requirements of Policies KP2, Point 11, DM2 and DM4 and others, and the scheme's conflicts with those matters. You should be aware of his comments anyway, which represent his professional view

If you conclude that the proposal complies with such policies without obtaining the professional advice of your sustainability officer, may I ask why the Council appoints a professional whose job it is to advise on these matters? It certainly puts [redacted] into a difficult position, which is not my intention with this email. However, the Council has the unique ability to insist on a high level of sustainability as the land owner (and LPA) in accordance with your own policies, to demonstrate that you take sustainability seriously (your adopted policies state you should). We are in 2019 and there is a climate emergency, and which Southend being a coastal resort, should be well aware of, making even more important for future developments to take the right steps to mitigate against anything that may be coming. I am also aware of [redacted] recent motion on carbon neutrality, and the 2050 goal that exists regardless. If the Turnstone scheme is approved which fails to achieve such levels, I can't see how [redacted] or the LPA as a whole can continue to insist on policy adherence with other schemes that come forward when SBC officers have been clear that this scheme represents a key future for Southend. Questions of precedent and missed opportunity come to mind

The applicant has also failed to provide a Sustainability Statement, which is a clear requirement of your validation check list, so we are unclear how you could have validated the application without it. Are officers provide favourable treatment because the site is owned by itself? Continued processing of this application does raise that question, as if I had submitted an application for a similar scheme on a client's behalf, my client would have been strictly held to the validation check list by the LPA (its purpose, of course, is to ensure that appropriate evidence is supplied to determine any application). This question may be raised if there is any Judicial Review of any positive decision, and which you have overrode your adopted policies in granting permission. Something for you to bear in mind as you consider the application.

I would be happy to discuss this matter with you, along with any other matter, at your earliest convenience. Feel free to call on

As with current practice, I would be grateful if you would confirm receipt of this email, noting the 'missing' emails incidents

Kind regards,

**Sent:** 07 November 2019 18:13

**Subject:** RE [EXT] RE: Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref No 18/02302/BC4M )

Hi

I didn't hear back from you on this, so I am unclear whether you were consulted on the application. We assume you haven't been consulted on this application without any other indication otherwise, and we do wonder how the case officer can conclude that the application is meeting sustainability targets without consulting with you

However, for your benefit, I attach our submitted representations. You can see under the 'Sustainability' section that we are objecting to the scheme. I also attach our more detailed comments in the enclosures. As I am sure you are aware, Council's Policy DM4 clearly states that tall and large buildings should exceed requirements for sustainability features, and we have strong doubts regarding whether the scheme could ever achieve such levels of sustainability

The lack of engagement on this matter raises questions regarding whether sustainability is really anywhere on the Council's agenda, if they can't even get developers of their own land to push for the highest levels. That doesn't say much about the Council's ambitions regarding the climate emergency either, it seems

We would welcome any discussion regarding our objections

Kind regards,

**Sent:** 07 February 2019 17.03

**Subject:** RE. [EXT] RE Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref No: 18/02302/BC4M )

As I wrote to you yesterday on energy, I will be happy for you to recommend to the planners that they consult with me on this and I am happy to help. What I cannot do is to address the issue directly without their invitation.

Regards

**Sent:** 06 February 2019 18 17

**Subject:** RE [EXT] RE Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref No: 18/02302/BC4M )

As previously mentioned by my colleague , please find attached a letter detailing our key concerns with regards to sustainability for the planning application (Ref. No: 18/02302/BC4M). In short concerns include

- A Sustainability Statement has not been produced in accordance with the Validation Checklist.
- In the absence of a formal Sustainability Statement, sustainability has not been adequately addressed within the submitted planning application reports and drawing in accordance with the adopted planning policy and supporting SPDs.
- The way the BREEAM Pre-Assessment has been produced is unclear, confusing and doesn't provide a clear picture of what is achievable in terms of BREEAM. One BREEAM Fully Fit Pre-Assessment has been produced for the whole site even though there are three different building types. For a development of this kind, the BRE requires three assessments to be carried out based on the building mix and assessment types. The BREEAM report does state that the assessment will be subdivided further with the BRE for registration and that percentage weighting will differ. However, the BREEAM Pre-Assessment submitted provides a distorted

picture of what is achievable and does not fully account for the relevant requirements for the different buildings and assessment types. There is also potential for further BREEAM assessments to be required based on the final mix of building uses and depending on whether some building can be assessed under BREEAM similar buildings principles

- Following a critical review of the BREEAM Pre-Assessment and associated Planning Application reports we believe the development is at risk of not achieving BREEAM 'Very Good'

Overall, we believe Sustainability and BREEAM have not been adequately addressed

If you require further clarifications based on the above and the attached letter, please do not hesitate to contact me.

Kind regards



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Sent: 06 February 2019 11:18

**Subject:** RE: [EXT] RE: Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref. No: 18/02302/BC4M )

Thank you for your email and for your complimentary words around expertise.

You will appreciate that in their role as the Planning Authority, the team retain a fierce independence from the functions of the Local Authority. As such they choose who they seek comment from and this is mainly dictated by the statutory consultees. In the case of Energy, most of this discussion is centred on the Building Regs and the 10% renewables rule (which is local) and these discussions are usually handled by building control

I am more than happy for you to suggest that [redacted] refers to me but that is her decision and not mine. Likewise, I would be happy to consult with the Developer to improve their Environmental response and, ironically, I would be able to propose some actions which, in my view, would make a very strong net electricity generation case more viable than traditional energy solutions with maybe a full net energy block being appropriate.

I appreciate that this is frustrating but, unless invited, I cannot get involved with this once the planning application has been submitted.



Regards

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**Sent:** 05 February 2019 18:24

**Subject:** RE: [EXT] RE: Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref. No: 18/02302/BC4M )

Dear Jeremy,

Thank you for your response. We will of course draw this to [redacted] attention as the planning case officer that the proposed development falls short of the Council's policies on energy. The reason we have contacted you is of course [redacted] like myself, are planners and we are not specialists in technical matters. We rely on the comments of specialists like yourself to inform of us of technical compliance, etc along with policy compliance of proposed developments when we weigh up the planning balance of all matters relevant to the scheme.

In this regard, [redacted] has already consulted with a number of your colleagues in various departments in the Council who will make comment on their areas of expertise (I attach the extract of the list from the application website, for your benefit). Our contact to you is that we believe that you have a vital role to play in ensuring key developments in Southend going forward match the ambitions of the Council as set out in adopted sustainability and energy policies, so Southend takes a step forward in this regard. This is a key regeneration site so it should be an exemplar (if not here, then when?). Unfortunately, you were over looked in the list

The development as proposed does not comply with the requirements, and the best person to tell [redacted] about this is you, given your role within the Council. Hence we are asking you to forward our comments to [redacted] with your own analysis - i.e. that the proposed development will not comply with policy so further enhancements should be sought. We would imagine that if the applicant is unwilling to bring forward key energy-related features, the application should be refused as it fails to comply with the Council's own adopted policies.

We will be providing comments from a BREEAM and sustainability perspective shortly. I trust you would be happy to receive them.

I would be happy to discuss this further. Please call me on [redacted], or speak with [redacted], who knows the technical details.

Kind regards,



Sent: 05 February 2019 16:41

**Subject:** [EXT] RE Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref No 18/02302/BC4M )

Thank you for your email and your interesting analysis of the Seaway proposal. I have to advise you that neither I nor my team are involved in assessing planning applications although we are available to advise both the planning team and the developer should they choose to approach us and we are bringing forward work that might assist both to achieve their obligations.

Accordingly, I have to advise you that I cannot act on your objection and you should instead submit this to the Planning Authority directly.

I am sorry not to be able to assist in this matter

Regards

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Sent: 05 February 2019 15:57

**Subject:** Seaway Car Park - Planning Application objection on the submitted Energy Report (Ref. No: 18/02302/BC4M )

Dear

We have been asked by our client to object to a planning application (Ref No. 18/02302/BC4M ) for a proposed leisure-led redevelopment of the main car park supporting the tourist area of Southend (**Seaway Car Park, Seaway Southend-On-Sea, Essex, SS1 3DS**) We have been appointed to critically review the planning submitted Energy Strategy Report produced on 6<sup>th</sup> December 2018 for the development and assess the methodology used, identify any shortcomings and omissions, non-compliance with adopted policy, Government guidance or best practice.

Therefore, I would like to draw your attention on our main concerns, outlined below, with regards to non-compliance with the planning policy targets.

After reviewing the study, the following conclusions have been drawn:

- 1 Development Management Document (July 2015) Policy DM2, requires the energy hierarchy to be followed (be lean, be clean, be green). There is a specific reference under section 2.12 and 2.15 of the same document stating the following *'Policy DM2 should be read in conjunction with KP2 and these policies will*

*collectively set the planning framework .* Relevant formatting and detailed calculations at each stage of the Energy Hierarchy have not been provided within the report, showing calculations for each stage of the Energy Hierarchy (in CO<sub>2</sub>/yr and kWh/yr), therefore it is not clear how the proposed development meets Policy DM2

- 2 The report does not outline how the good passive measures have been examined and applied (thermal mass, internal/ external shading etc ) as per point 1 (i) of the Policy DM2 and sections 2 18 and 2 19.
3. Reference to decentralised renewable or low carbon energy sources is not made within the report. This is a requirement in line with Policy KP2, which requires the following *'At least 10% of the energy needs of new development should come from on-site renewable options (and/or decentralised renewable or low carbon energy sources), such as those set out in SPD 1 Design and Townscape Guide, wherever feasible'*. Reference is only made to ASHP and PVs There are many options available for renewable power generation, listed in Appendix 7 of the SPD1 Design and Townscape Guide, however these have not been examined or discussed within the report
- 4 It is not clear from the Discussion section of the report which option is suggested for the proposed development to meet the Local Council's target, as two options have been presented.
- 5 Policy CP4 of the Core Strategy states *' ensuring design solutions that maximise the use of sustainable and renewable resources in the construction of development and resource and energy conservation (including water) in developments . '* Roof plans for each building type have not been provided to confirm whether the use of renewable resources has been maximised
- 6 Document 'Southend Central Area Action Plan DPD (SCAAP), adopted February 2018' Policy CS1 Central Seafront Policy Area Development Principles is applicable to the proposal, however this does not seem to have been taken into account for this report Under point 1-g, the SCAAP states the following *'promote energy efficiency as appropriate, including opportunity for decentralised energy supply, and the retrofit of existing development in line with local policy'*, Section 1 4 of the same document states that *'All policies within this Area Action Plan should be read in conjunction with relevant national and local planning policies and guidance'* The opportunity for decentralised energy supply has not been examined within the report
- 7 The percentages presented from energy demand supplied by ASHP heating for Iteration 3 in Tables 8, 12 and 4 3 1 are incorrect These results should be identical to the percentages provided in Iterations 1 and 2 on each table as the only difference in Iteration 3 is the increase of PV panels, which does not affect the performance of the ASHP
- 8 The report concludes that either Iteration 2 or 3 could be a feasible option However, the report does not seem to be compliant with the policy target (Policy KP2) of 10% of the energy needs of new development to come from on-site renewable options, for Iteration 2 For the calculation of the percentages, the assessor seemed to have added the heating (from ASHP) and the renewables (from PV) of the Actual column, in Tables 10, 14 and 17 and compared to the total actual number to determine the savings However, the figure of heating is referring to heating consumption not savings, as it represents the energy consumption by the use of ASHP If the assessor wanted to present savings from heat pump they should have compared this with a notional building using gas boilers not ASHP By comparing to a building using an ASHP, the savings are down to the efficiency of the system not the actual use of the system

Overall, we believe that this Energy Strategy Report is not compliant with the relevant planning policies and mandatory elements have been missed or are deficient

Please feel free to contact me should you require any further clarification on the above mentioned points

I look forward to hearing back from you.

Kind Regards



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INCOMING EMAIL

Date: 11/10/2019 08:13:11

Subject: FW: Application Ref: 18/02302/BC4M - Objections on behalf of The Stockvale Group

Attachments:

- (1) image001.png(1 B)
- (2) Extracts from Original PEA November 2018.pdf(2 KB)
- (3) Extracts from Revised PEA July 2019.pdf(4 KB)

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**Sent:** 10 October 2019 00:33

**Subject:** RE: Application Ref: 18/02302/BC4M - Objections on behalf of The Stockvale Group

Dear

Straight to the point, it is come to light that the Applicant has failed to complete all relevant bat emergence surveys, and therefore the application cannot be determined before this information is submitted. The information can only be collected between May and August, and therefore it can only be provided next summer. Any decision before this is provided is likely to result in a successful legal challenge because the Council cannot be certain to have discharged its statutory duties. I set out the reasons for this below.

As set out in the email below, you may recall that we objected to the Applicant's proposals on the basis that there was a lack of ecology information (bat emergence surveys), and which are required in order for the Council to discharge its responsibilities regarding protected species (I come to this again below). We were clear that the Council should have invalidated the application due to a lack of ecology information, given it would take many months before the information could be provided. We were disappointed that you did not do this, even though it was clearly contrary to your own Local Validation List. That said, we are where we are now, which brings me to the current point.

The original Preliminary Ecological Appraisal (PEA) Report (November 2019) indicated that they surveyed the site on 19 October 2018 by Polly Lockyer. At Paragraphs 3.22 and Paragraph 4.10, it was identified that Buildings 1 (29 Herbert Grove), 3 (1&3 Herbert Grove), and 7 (public toilet block) had LOW value for roosting bats, and thus should be surveyed (see attached extracts). We indicated in our objection letter (see Page 8 of our Cover Letter dated 7<sup>th</sup> February 2019) that further bat emergence surveys will be required. Figure 3.1 indicates the Building 7 was of 'low' potential, along with Buildings 1 and 3 and therefore a survey should be carried out within the recognised period of 'May-August' according to the relevant guidance.

11/10/2019

The Applicant has now submitted a revised PEA, dated 26<sup>th</sup> July 2019. A number of key points

- Paragraph 2.12 confirms that a bat roost emergence survey was carried out on the evening of 29<sup>th</sup> May 2019 on Buildings 1 and 3 (1-3 and 29 Herbert Grove). No record was noted of any survey or examination of Building 7.
- Paragraph 3.22 confirms that the same Buildings 1, 3 and 7 are still assigned LOW value to roosting bats.
- Paragraph 5.8 indicates that *"The site was of limited overall value to protected species, with interest relating predominantly to the potential value of Buildings 1 and 3 (see Figure 3.3) to building – roosting bats, all of which were assessed as being of Low potential according to current best practice guidelines for assessing building for their bat roost potential. Follow-up bat activity survey has been completed that confirms bat roost absence from both buildings."*

Again, there is no mention of a survey for Building No 7, the toilet block. The absence of emergence survey information is a substantial omission and which means the Council cannot be confident of discharging its responsibilities related to protected species until this survey is completed. I come to this again below.

- Indeed, the update PEA's Figure 3.3 sets out which building locations have value to roosting bats, and which require further surveys. The record on this drawing has been changed to refer to 'negligible' although the description in revised PEA Paragraph 3.22 remains the same as it was recorded in the original PEA (see attached extracts). It is wholly misleading change therefore, and its LOW value requires the requisite emergence surveys.
- We note that [redacted] was the same ecologist who undertook both the 19<sup>th</sup> October 2018 survey and the 29<sup>th</sup> May 2019 surveys, and is a Natural England Level 2 licenced bat worker, so capable of identifying relevant roosts.
- Importantly, the PEA was substantially updated in July 2019 without any change to Building 7's description and features, so this would strongly indicate that the potential for bat roosts remains.
- A survey of the building is therefore required to be conducted between May and August (optimal) or April/September (sub-optimal) 2020 before the Council can determine the application.
- RPS notes that in Paragraph 2.16 that the surveys recorded 2 bats foraging in the church yard and back gardens of Herbert Grove, and 30 minutes after sunset (which suggests they may have come from elsewhere). Indeed, as these did not emerge from Buildings 1 & 3 which were being surveyed at the time, their roosts are likely elsewhere. Noting the identified potential of Building 7, it is not unreasonable to conclude that these bats possibly came from the toilet block (which if the ecologist had surveyed it, they would have known for certain, but in the absence, it cannot be excluded given it has features that would support bat roosts). Approving its demolition of these buildings as part of this application without relevant emergence surveys would be an unreasonable risk to take.

Indeed, on the above basis, a precautionary approach regarding the presence of a bat roost in the toilet block is required. Indeed, this is set out clearly in 'Circular 06/05 BIODIVERSITY AND GEOLOGICAL CONSERVATION – STATUTORY OBLIGATIONS AND THEIR IMPACT WITHIN THE PLANNING SYSTEM'. It states at Paragraph 99

*"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being*

*present and affected by the development Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted. In appropriate circumstances the permission may also impose a condition preventing the development from proceeding without the prior acquisition of a licence under the procedure set out in section C below."*

There are no exceptional circumstances in this scenario. There was clear evidence that a survey was required for Building 7, as identified in the original PEA (Paragraph 4.10). The building's description was not changed between the original PEA and revised PEA, despite there being numerous other changes between the two reports. The same ecologist, who is bat licenced, identified the potential. The omission of the survey by the Applicant's team is not an exceptional circumstance. The Council must therefore conclude that there remains a need for this survey, and the change to Figure 3.3 in the revised PEA must be treated as a substantial error. On the above basis, the Council cannot categorically state that they would be able to discharge its statutory obligations with respect to protected species and enable them to grant planning permission for the development **until they have evidence of the bat emergence survey for Building 7. The survey cannot be undertaken until next May at the earliest.**

The error arising from Figure 3.3 raises substantial questions regarding the PEA's accuracy and evidence as the change is not substantiated by the written evidence (so the reason for the change is unclear)

In this circumstance, the Council has no professional ecologists that can verify either PEA's data and has not sought consultation from Essex County Council's ecologists. It would be wholly prudent and appropriate of the Council to independently engage a certified ecologist to verify the whole of the evidence within the PEA given this substantial oversight between the two versions of the PEA (in the same way as the Council has now engaged a landscape architect following RPS's concerns). Any other action (i.e. granting of planning permission without the additional survey) would likely result in a legal challenge given the Council would have failed to comply with Circular 06/05, and which the Council would not be able to professionally defend.

Indeed, I have copied in both Natural England consultations and Essex County Council ecologists, who I am sure would agree with RPS that there is a precautionary need to delay any decision until the Applicant has completed the relevant emergence in the correct period and verified its PEA data on the whole. Since Southend has no in-house ecologists, Essex County Council is the closest relevant statutory consultee.

Returning to my point that the application has insufficient information to determine it on ecology grounds, the Council must either refuse the application **now** due to a lack of information on ecology, or deem that the application is invalid and take action to force the application's withdrawal. It would be wholly unreasonable to hold an application in abeyance (although we'd argue there are many other reasons to refuse permission until this survey can be completed) given the blight that will occur to residents and land owners of the surrounding properties whilst the application remains on hold for what is another 7-8 months until the next survey season.

There are also question marks regarding ecology matters in EIA terms noting the outstanding risk to habitats.

I formally request that you provide me with a response as to what action the Council will take with regards to this substantial error, prior to making any decision on the application.

I will write you again shortly with our other objections to the EIA Screening Opinion Request and planning applications. However, as you'll see from those errors, and others we have already identified, it is becoming increasingly clear that the Council may want to fully re-think its relationship with Turnstone Southend Ltd at the earliest opportunity, since such basic errors are being committed.

I would be willing to discuss this further as required.

Kind regards,

Sent: 28 February 2019 10:56

**Subject:** Application Ref: 18/02302/BC4M - Objections on behalf of The Stockvale Group  
**Importance:** High

Dear

Simply following up on the email below and our ecology objections to the above. According to the application website, the above application is still under consideration. I am very surprised by that this noting the lack of ecology information makes it invalid.

As we wrote in our ecology objection, the application should be withdrawn, as it fails to provide necessary ecology information (bat emergence surveys, as acknowledged in the submitted Preliminary Ecological Appraisal's Paragraph 4.10) in accordance with Item L10 of your adopted Local Validation List. The applicant is unable to provide this information before the statutory determination date, which is 16<sup>th</sup> April 2019, but emergence surveys can only be taken in May 2019 (and since two surveys are required, and must be taken at least two weeks apart, the information will not be ready until late May at the earliest). This is confirmed in the Planning Practice Guidance Page: <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications>, under the Table 'When to carry out a survey' and look for 'Bats (Summer Roosts): May to mid-September.

It is such a fundamental error in the application, so if you have not yet made this request to invalidate the application, please would you kindly explain why you have not done so. Indeed, there is even a statutory process that enables you to take such action. It is set out in the Town and Country Planning (Development Management Procedure) Order 2015 (DMPO, as amended) Section 11(5), which states: "*Where, after sending an acknowledgement as required by paragraph (2), the local planning authority consider that the application is invalid, they must as soon as reasonably practicable notify the applicant that the application is invalid.*"

We strongly believe that any action other than a request to have the application withdrawn as invalid (e.g. allowing the applicant to extend the period to determination) renders any decision likely to be legally challengeable. This is for two reasons:

- Your local validation list is clear that such surveys are required before an application can be considered valid. It is obvious from the above dates that the applicant has no way of providing this information within the statutory determination date. The Planning Practice Guidance is clear on this:

*"The local list is prepared by the local planning authority to clarify what information is usually required for applications of a particular type, scale or location. In addition to being specified on an up-to-date local list published on the local planning authority's website, information requested with a particular planning application must be:*

- *reasonable having regard, in particular, to the nature and scale of the proposed development; and*
- *about a matter which it is reasonable to think will be a material consideration in the determination of the application*

*These statutory tests are set out in section 62 (4A) of the Town and Country Planning Act 1990 (inserted by the Growth and Infrastructure Act) and article 11(3)(c) of the Town and Country*



*Planning (Development Management Procedure) (England) (Order) 2015  
Paragraph: 040 Reference ID: 14-040-20140306"*

Impact on protected species is always a material consideration (there is a legal requirement of the authority in this regard) Indeed, if you follow the Government's Protected Species Checklist for planning applications (see attached), you'll see that you have to answer 'No' to Question 3. Your options are to ask for the surveys, which would take you beyond the determination time period (which you can't do, obviously), or refuse the application I take this opportunity to remind you that the damage or destruction of breeding or resting places for bats is a criminal offence that is subject to either a prison sentence or unlimited fine (<https://www.gov.uk/guidance/bats-protection-surveys-and-licences>), hence we are seeking formal evidence that there are no bats within the buildings to be demolished before the application has been determined.

The application as it stands cannot be seen to fall within the spirit of the Town and Country Planning Act 1990 Section 62 or the DMPO. To continue to process the application without such evidence before you seems to disregard the purpose of adopting validation lists, unless you can kindly explain why an exception should be granted in this case to simply allow an extension. It would also make a complete mockery of the consultation period that has just recently closed as the Council willing engages in this knowing there is key information missing. Otherwise the actions of the Council are highly questionable and possibly subject to a legal challenge.

- The Council is the landowner, has strong financial interest in the outcome of the application, and thus has a strong responsibility to ensure that there is no actual or perceived favouritism with regards to the processing of the planning application. From my our experience, it is extremely rare for Councils to continue processing such applications without requisite ecology information, particularly that which cannot be provided within the statutory determination period for the application, and this follows legal authorities on the matter. As such, if you do not take action, I think that it is extremely imperative that you explain in writing why this application warrants special treatment not in accordance with standard practices and your own validation list. We note that Council's own failings with regards to biodiversity surveys for the same site (see below).

There are already question marks regarding validation. Here, I draw your attention to the fact that the application was submitted on 7<sup>th</sup> December 2018 and only validated on 15<sup>th</sup> January 2019 It is usual that an application has been held for validation for such a long period of time, noting that there are still obvious mistakes with validation. Can you explain the delay?

As a separate, but not completely unrelated issue, the submitted Preliminary Ecological Appraisal with the Seaway Car Park application indicates that there is a potential for bats at 29 Herbert Grove We are quite concerned that the Council has failed in its own duties to ensure that there was no harm caused to protected species with the removal of the immediate adjacent former Rossi Ice Cream Factory, which used to site within the application site and was removed to facilitate the development subject to the above application (the link between the demolition and this application has been confirmed by the Council in writing). We have reviewed the information with the application Ref: 17/00902/DEM, and following a Freedom of Information Request, we understand that no ecology information has been prepared prior to the demolition taking place Indeed, the officer's report for that application makes no reference to Biodiversity. As removal took place between August and November 2018, and the PEA for the Seaway Car Park development was undertaken around the same time and clear notes that there is potential for bats on the adjacent site, we are unclear how the Council could be 100% certain that they have complied with the Wildlife and Countryside Act 1981 as well as The Conservation of Habitats and Species Regs 2012 without evidence of a protected species survey taken place during the correct time. As such, we urgently request that you investigate the omission of biodiversity information with the demolition of the former Rossi Ice Cream factory, and halt any processing of the Seaway Car Park planning application (notwithstanding our point that it is invalid) until the Council can confirm it has not taken actions to facilitate that development without due care to protected species We will be contacting the relevant authorities to alert them to the potential offence under the Countryside and Wildlife Act and

Habitats Regulations

I look forward to receiving notification that the Seaway Car Park application has been made invalid. In the meantime, I would be more than happy to discuss anything set out in the above, or our objection letters, including at a meeting.

Kind regards,

Sent: 07 February 2019 23:58

Subject: Application Ref: 18/02302/BC4M - Objections on behalf of The Stockvale Group

Dear

Please find attached our objection regarding ecology in relation to the above application.

I would be grateful if you would kindly confirm receipt.

Regards,

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INCOMING EMAIL

Date: 11/10/2019 10:02:11

Subject: FW: Seaway Development EIA Screening Request (Ref: 19/1706/RSE) - Seaway Development is EIA Development

Attachments:

- (1) image001.png(1 B)
- (2) 11279 EIA Review 191010.pdf(209 B)
- (3) Notes on Heritage Statement September 2019 submission.pdf(129 B)
- (4) Notes on LVIA and Screening Statement September 2019 submission.pdf(135 B)

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**Sent:** 11 October 2019 09:58

**Subject:** RE: Seaway Development EIA Screening Request (Ref: 19/1706/RSE) - Seaway Development is EIA Development

Dear All – please disregard the previous email. One email address was incorrect ( ) and there was an error in the air quality section of the previous email.

Dear

To the point, the development is likely to be considered EIA Development and requires the submission of an Environmental Statement. You should conclude such as you have no evidence not to. We set out reasons for this below, but if the Council is unwilling to draw this conclusion for any reason, then our client will request a Screening Direction from the Secretary of State, who may take the same view as RPS. This will result in a further substantial delay to the planning application for the same development (Ref: 18/02302/BC4M). In fact, RPS would argue the current application should be withdrawn because the submission of an Environmental Statement is too substantial and this would amount to a material change to the application so it should not be considered under the 2018 application.

Please find attached a report setting out the EIA considerations in relation to the Applicant's request for a new EIA Screening Opinion. It is an updated version of the report which you received on 27<sup>th</sup> August 2019 based on information submitted by the Applicant. Its conclusions are no different, however, and the

11/10/2019

development will likely give rise to significant effects and therefore should be considered EIA Development I also attach specific commentary on landscape and heritage matters (prepared before Appendix 3 was provided, but which is unlikely to change the conclusions) that are relevant to the EIA matters, and completement the reports submitted to you on 20<sup>th</sup> September 2019

In summary, RPS's view is that the proposed development should be found to be EIA development as it will give rise to significant effects, as follows

- Landscape/townscape/visual impact – there are numerous errors with the LVIA report, including assessments of sensitivity or attempts to downplay effects, and so the approach fails to comply with relevant GLVIA guidance The cumulative effects fails to assess filling and incremental change. The Applicant has already acknowledged that the development will give rise to substantial effects as you are already aware The Opinion Statement argues these are local and not significant in the round, but there is simply no test for that approach. The question is whether it would give rise to significant environmental effects (anywhere or altogether), and that question on these grounds must be answered as 'yes' An Environment Statement assessing those effects must be prepared See Paragraph 69 of our RPS Notes on LVIA and Screening Statement attached to this email for more details, as well as our previous submission sent to you on 27<sup>th</sup> August and 20<sup>th</sup> September 2019.
- Heritage - the proposed development has the potential to adversely affect a number of heritage assets in the area, both designated and non-designated ones Indeed, the Heritage Assessment acknowledges on Page 4.35 that there will be 'considerable change' to the Conservation Area, which might well be classified as a significant effect (Paragraph 20 of the RPS Notes on the Heritage Statement). Furthermore, it acknowledges in Heritage Assessment Paragraph 4.32 that the 'biggest change' - which must be more than 'considerable', will arise from the Pier looking back at the development The Heritage Assessment is not clear as to whether the building would be seen from the Conservation Area, but this is a 'is or is it not' (Paragraph 17 of the RPS Notes on Heritage Statement) It appears to fail to assess the cumulative impact of the development on heritage assets (see Paragraph 19 of RPS Notes in Heritage Statement regarding the historic townscape character). An EIA is required on heritage impact grounds alone, given the likely effect on listed buildings (the Pier, the Kursaal), the Conservation Area and locally listed buildings, and the cumulative effect on all of these assets arising from the proposed development.
- The assessment of the impact on the views from the Pier both in terms of landscape/townscape/visual impact and heritage considerations is misleading/erroneous in both the LVIA and Heritage Assessment, noting both RPS and Historic England have raised substantial concerns regarding this There are other conflicts between the two submitted documents, such as in relation to the long views of the Palace Hotel (see Paragraph 16 of the Notes on Heritage Statement).
- There will be significant socio-economic effects with the proposed development This is acknowledged in the planning application documentation, but which was not submitted to you as part of the EIA Screening Request application. See Page 8 of the Carter Jonas Cover Letter related to the planning application, along with the Economic Benefits Assessment and Addendums (Lambert Smith Hampton) submitted by the Applicant, which include references to the significant effects
- There could be a significant effect on the habitat of protected species, given the absence of emergence surveys regarding roosts at the toilet block (Building 7 in the Preliminary Ecological Appraisal) I refer to my email from yesterday on this point
- There may be a significant effect arising from air quality, taking into account the cumulative effects arising from traffic generation from all allocated sites RPS has only received a copy of the Air Quality Technical Note because it was not published on the website until Wednesday 9<sup>th</sup> October, 2019, so we will update this section shortly
- The Habitat Regulations Assessment (HRA) fails to properly assess the impact of dog walking activities from hotel visitors, particularly in the winter time, which could add pressure to the European designated sites The report inadequately demonstrates how it concluded that there would not be

significant effects. Specifically, RPS notes there are far fewer visitors to Southend in winter periods, the key period for the habitat and species, and so the extent of change arising from the hotel and increased visitors to close proximity of the European Site could substantially increase pressure and potentially have a significant effect. Without providing any details of a winter time visitor impact assessment, the conclusions of the HRA are questionable and a precautionary approach should be applied by the Council.

There may be other effects which are significant (e.g. noise). The appropriate Environmental Statement topics will obviously be determined at scoping stage, and will enable a full consideration of alternatives (e.g. to protect the TPO trees).

Based on the Applicant's own assessments as well as RPS's own view, if the Council reaches any other conclusion than the proposed development is EIA Development which requires an Environmental Statement to be prepared to adequately assess relevant effects, our client will test the Council's view and seek a Screening Direction from the Secretary of State using much of the information provided by the Applicant as well as our own research (some of which is provided herewith). This will result in substantial delay to the processing of the planning application. It may also shed clear light on the Council's incorrect determination of the EIA Screening Request in November 2017, when they drew conclusions contrary to professional opinion without any basis (the substantial effects identified by the Applicant's landscape consultant at that time).

Indeed the whole purpose of undertaking a Screening exercise for Schedule 2 developments is because of the scale of development, there is a good chance it can give rise to significant effects. In the case of Turnstone's proposed development at Seaway Car Park, both the Applicant and RPS already agree that **there will be significant effects, so the logical conclusion is that these require further assessment under the EIA Regulations. The Council must conclude the same.** Whilst it is acknowledged that other similar Schedule 2 leisure developments (those located on the edge of towns) may not have such sensitive receptors so close to the development site (existing residential properties, heritage assets, European Sites, etc) and could be screened out, this is simply not the case here.

I formally request that you send me a copy of your Screening Opinion as soon as it is made public, so we can review and determine the next course of action (e.g. Direction request to the Secretary of State). I look forward to reading that you have finally confirmed that the development is EIA Development and an Environmental Statement is required. We can then all turn to the Scoping process. In the meantime, the planning application process should certainly be paused whilst this is concluded, but there is certainly an argument to state that the planning application should be entirely withdrawn until the EIA matter is wholly and adequately resolved (by the Secretary of State if necessary).

I would be more than happy to discuss anything found within this email at your earliest convenience.

Kind regards,

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INCOMING EMAIL

Date: 14/10/2019 07:48 14

Subject: FW: Application Ref. 18/02302/BC4M - Objections on behalf of The Stockvale Group

Attachments

(1) image001.png(1 B)

(2) Notes on Heritage Statement September 2019 submission.pdf(129 B)

(3) Notes on LVIA and Screening Statement September 2019 submission.pdf(135 B)

(4) Response to SBC Design March 2019.pdf(147 B)

**Sent:** 12 October 2019 00:20

**Subject:** RE: Application Ref 18/02302/BC4M - Objections on behalf of The Stockvale Group

Dear

ther to the email below, I attach key documents in relation to notes on the Landscape and Visual Impact EIA Screening Request application earlier this week. I also attach a landscape/townscape comments on the Conservation and Design Officer's consultee response to the application, and I have copied the Officer in this email for her benefit. Summaries of the comments can be found below. The documents must be read in conjunction with our Outline LVIA and Heritage Assessment critique reports submitted in an email to you on 20<sup>th</sup> September 2019.

*Heritage Statement Comments*

A revised Heritage Assessment has been submitted to the LPA, dated September 2019, and thus supersedes the previous Heritage Statement dated November 2018. It has been prepared by the same consultants (Heritage Collective). RPS has provided a note on the updated Heritage Assessment (Heritage Collective, September 2019), and this is enclosed.

As a general point, we have noted little substantive difference between the newly submitted document and the previous one, and important sections are missing (notably Appendix 3). We still consider it to be a serious omission for this document not to consider archaeological and historic landscape/townscape issues.

The enclosed RPS note identifies a large number of issues and contradictions within this document, including a surprising number of statements that are clearly incorrect. Key issues raised include a misunderstanding of the importance of the relationships between key historic buildings on Southend seafront and a failure to assess the effects on the historic townscape character and fine grain of the Southend Old Town character area, the HCHA underplays the impacts of the scheme on the overall historic environment. Our response also points out some very serious omissions, which mean that the document, as it currently stands, is not fit for purpose. As such, the conclusions drawn within the HCHA cannot be relied upon by the decision-maker.

*Landscape and Visual Impact Assessment Comments*

The advice of Nicholas Pearson Associates appears to have been taken and a full Landscape and Visual



Impact Assessment (LVIA) has been carried out. It is surprising that this was not carried out and submitted when the planning application was first submitted. The RPS response to the Landscape and Visual Impact Assessment (Richard Morrish Associates, September 2019) is in the enclosed note. These are issues that will need to be addressed by the applicant, although fundamentally the RPS landscape architect is concerned that this generic out of town multiplex and hotel is inappropriate in this fine grained seaside town. In our view, significant amendments to the scheme will need to be made to resolve these issues.

In both regards, you will already be aware that the proposed development will cause significant effects related to landscape and heritage matters, which means the development is EIA development and requires an Environmental Statement covering both topics.

In any event, the scheme should be refused on these points as well as others as there are clear policy conflicts regarding landscape, design and heritage matters.

I would be happy to discuss the above at your earliest convenience.

Kind regards,

**Sent:** 11 October 2019 23:59

**Subject:** RE Application Ref. 18/02302/BC4M - Objections on behalf of The Stockvale Group

Dear

Please find attached our first set out objections to the planning application by Turnstone Southend Ltd for a revised leisure-led scheme at the Seaway Car Park. As noted below and in previous emails, substantial key information has been missing from the application website, and therefore we reserve the right to provide further responses, particularly related to technical matters, upon receipt of all relevant information.

In the meantime, you'll see that the proposals fail to comply with Policy CS1.2 of the Southend Central Area Action Plan and KP2 of the Core Strategy. There are limited material considerations that weigh in favour of the conflicts with the policy, which are numerous.

If the Council seeks to approve the development, it must consider it a Departure from the Development Plan and process it as such. Otherwise, the Council is at risk of having any decision challenged in the courts on procedural grounds, given the conflicts.

Of course, the proposed development will be found to be EIA Development, and in any event, there needs to be further ecology surveys that must be prepared in May at the earliest. So there is plenty of time to make further comment, and so I'll be in touch again soon.

I would be happy to discuss as required.

Kind regards

15/10/2019

Sent: 11 October 2019 21:26

**Subject:** Application Ref 18/02302/BC4M - Objections on behalf of The Stockvale Group  
**Importance:** High

Dear

Regarding the above, the Planning Statement Addendum sets out in Paragraph 1.4 a list of the uses in units in Table 1, but also refers to a 'precise schedule of areas' for the scheme in Appendix 2 at the start of the paragraph. Turning to Appendix 2 of the Planning Statement Addendum, the schedule is not found but in fact Appendix 2 is represented by a Surrounding Land Uses plan (as per the title of that Appendix). I can find no Appendix (or elsewhere within the report) that sets out the 'precise schedule of areas' within the Planning Statement Addendum. As this schedule is fundamental to the proposals (the potential floorspace of the uses of the scheme), it is quite difficult to make meaningful comment on the application, as the schedule has implications on parking, transport, jobs, design (active frontages), environmental health (noise) and many other key aspects of the scheme, and which the Applicant relies on to explain why permission should be given. The public consultation must be extended and only restarted when this becomes available.

I also note that the Planning Issue Sheet and the Extract Ventilation Statement Addendum were only uploaded to the application website today, and which by chance I only just noticed (no notification was given of another key document becoming available). So it seems to be a re-occurring pattern. I would strongly suggest that you halt the consultation process, submit a request to the Applicant's team to verify that all documents, Appendices, drawings, diagrams, schedules, etc are actually available to the public, and then only restart the process once you have firm from the Applicant that it is all available.

I have copied in \_\_\_\_\_, along with \_\_\_\_\_ and \_\_\_\_\_, as they may have the power to extend consultation periods to avoid prejudicing the public process.

Kind regards,

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**Sent:** 28 August 2019 15 07  
**To:** Planning Registration Team  
**Subject:** FW Application Ref 18/02302/BC4M - EIA Screening Opinion Assessment  
**Attachments:** 9809 Seaway EIA Technical Review 190808 FV pdf  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed  
**Categories:** Green Category

Sent: 28 August 2019 15 06

**Subject:** FW. Application Ref. 18/02302/BC4M - EIA Screening Opinion Assessment  
**Importance:** High

Please enter as a neighbour representation

Thanks

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**Sent:** 27 August 2019 15:07

**Subject:** Application Ref: 18/02302/BC4M - EIA Screening Opinion Assessment  
**Importance:** High

Dear

In our original objection letter dated 7<sup>th</sup> February 2019, we promised to write to you regarding Environmental Impact Assessment (EIA) matters. In light of the planning application documentation and recent consultee responses, we have re-assessed the proposed development associated with the above application against the Town And Country Planning (Environmental Impact Assessment) 2017 Regulations, as amended. We are pleased to provide you with our report, which concludes that the Council should revisit its Opinion due to a number of shortcomings with its approach and with the information that it previously relied on to make its determination that the proposed Seaway development was not EIA development. I set out some key points regarding it below

- In relation to landscape/townscape, the information accompanying the Opinion clearly stated that up to substantial effects on local views are possible. These could be considered 'significant' in EIA terms. However, with the application, the assessed effects were lowered, because there was a downgrading of the sensitivity of residential receptors. It is not clear how this downgrading was determined, noting good practice and the author's methodology, but it does raise questions regarding whether the developer has sought to underplay the potential effects without justification. In addition, some of the trees on site are now confirmed to be valuable. We have not seen any drawings which suggest they will be retained with the proposed

development, and their loss with the proposed development has to be considered in the EIA context. This alone warrants a revisit of the Opinion.

More importantly, we are also unclear how the Council was able to assess the 'substantial' effects identified by the developer's own team and conclude these were not significant when no professional landscape/townscape person was in the employ of the Council at that time to take a professional view on the matter. This alone suggests that there have been procedural errors with the Opinion issued by the Council and alone this warrants its revisiting. In this regard, RPS is preparing a LVIA which looks at these issues, and this will be issued shortly, but we also understand that the Council has now employed such professionals (we welcome such a move). You are now in a position to revisit what was reported during the Screening process versus what is being reported at applicant stage, to determine if there has been errors in the developer teams approach.

Separately, we would appreciate if you are able to let us know which firm has been appointed and the lead contact there, noting it is a public contract (please treat this as a FOI request, if necessary).

- In terms of Heritage matters, it is clear that Historic England has indicated there would be effects on heritage assets (including non-designated ones). These may be significant given the concerns raised by Historic England, and warrants a revisit of the information from a EIA context. In this regard, RPS is preparing a Heritage Assessment which in our view, better complies with NPPF Paragraph 189 (the submitted assessment is, in our view, inadequate and does not discharge the requirements of NPPF Paragraph 189). We will be issuing this shortly, and which we'll share this with Historic England and other bodies to ensure others can comment as well. With this information, the Council should revisit whether there would be significant effects on both designated and non-designated heritage assets.
- It is clear from the evidence that there would be significant effects arising from the development with regards to economic matters. We also note that in our comments on the economic assessment submitted with the application (prepared by Aventia Consulting and submitted with our main objection letter dated 7<sup>th</sup> February 2019) that there was a lack of information on some of the other potential effects, so there is certainly a need to revisit this from a EIA perspective once a comprehensive assessment has been carried out.
- In terms of transport effects, the information relied upon at Screening Opinion stage appears to underplay the level of traffic generation (the model split) and the temporary effects on parking has not been addressed. We understand your transport team are in discussions with the applicant regarding the provision of such additional information. The proposed development should be re-screened once appropriate transport information has been provided to ensure there would be no significant effects arising from traffic, parking and transport matters.
- It is also noted that no information was provided which lends to the Council's conclusion that significant operational noise effects are not likely, so it is unclear how this conclusion was reached. Indeed, your Environment health team's comments on the application clearly reflect our view that there is a lack of information to assess effects. This alone warrants a revisit of the Opinion once such information is provided.
- There is also no information regarding cumulative effects.

You will see from the above and attached that there are serious issues regarding the way in which the Opinion was reached, and which a proper assessment may have concluded that the development is EIA development. If the Council relies on the current Opinion as it stands, it is quite possible that any decision is challengeable from an EIA perspective, as we have demonstrated. We therefore urge the Council to revisit the EIA Screening Opinion once the relevant information is available, and halt the processing of the application until such information is available (or ask that the application is withdrawn until such information is available).

We note that once you have revisited the Opinion, if you conclude the development is EIA development, EIA Regulations 11 and 20 set out how you can then consider a validly made application that is subsequently found to be

EIA development We trust that these regulations will be followed as appropriate, and we look forward to participating in the process

We would be more than happy to provide any clarifications with regards to our report and conclusions, should it be necessary. I'll be in touch shortly with the LVIA and Heritage Assessment.

Kind regards,



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Date: 09/10/2019 14:05:09

Subject: FW: Seaway Application Ref: 18/02302/BC4M - Air Quality Memorandum

Attachments:

(1) image001.png(1 B)

Please upload as neighbour representation

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**Sent:** 08 October 2019 22:24

**Subject:** RE: Seaway Application Ref: 18/02302/BC4M - Air Quality Memorandum

**Importance:** High

Dear

Further to my email below, the Heritage Report submitted with the EIA Screening Request for the proposed Turnstone development at Seaway Car Park (Ref: 19/01706/RSE) indicates at Paragraph 1.11 that they have provided a response to RPS's original objections made on 7<sup>th</sup> February 2019 in Appendix 3 (but not our most recent objections submitted on 20<sup>th</sup> September 2019). Appendix 3 is missing from both Heritage Assessments submitted for EIA Screening Opinion request and the one submitted with the planning application. It is clearly impossible to draw any conclusions regarding whether the Applicant has appropriately responded to concerns raised by RPS in February, which has a bearing on whether there are potential significant effects on heritage assets.

In the same way as the missing Appendix G related to the Air Quality Technical Note, we urgently request that you obtain this from the Applicant and publish this as part of both the EIA Screening Request and the planning application online record. The consultation period for both applications must also be extended and should only commence once this document and other missing documents are made available for public comment, given the Applicant's reliance on these for both EIA Screening and planning application purposes.

I will write to you again if there are any other fundamental omissions from the application package.

Kind regards,

09/10/2019

**Subject:** Seaway Application Ref. 18/02302/BC4M - Air Quality Memorandum  
**Importance:** High

Dear

Both the Carter Jonas EIA Screening Opinion Statement (Appendix G) and the Carter Jonas Cover Letter attached to the revised planning application (starting at Page 17) refer to a subsequent 'Air Quality Technical Memorandum' regarding air quality matters, which is an update on the December 2018 report. Appendix G of the Opinion Statement only encloses the December 2018 report, which was published in 'draft' and marked 'confidential' on its front cover. The Memorandum is relied on by the Applicant regarding both matters. As such, we urgently request that you arrange for this to be provided online ASAP, and that the consultation period for both applications is extended by 21 days to ensure all parties are able to make comment on the claimed assertions of the Applicant and their team regarding air quality matters. I note that we have raised concerns on this matter in our previous commentary on EIA matters (see my email to you of 27th August 2019). Any decision before this becomes available is likely to be subject to a challenge.

Thank you for your urgent assistance

Kind regards,

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