

[REDACTED]

From: [REDACTED]
Sent: 07 February 2019 23:59
To: Charlotte White
Cc: Planning Registration Team, council, [REDACTED]
Subject: Application Ref. 18/02302/BC4M - Objections [REDACTED]
Attachments: [REDACTED]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Green Category

Dear Ms White,

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

I would be grateful if you would kindly confirm receipt

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 07 February 2019 23:53
To: Charlotte White
Cc: council, Planning Registration Team [REDACTED]
Subject: Application Ref 18/02302/BC4M [REDACTED]
Attachments: [REDACTED]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Green Category

For the Attention of Ms Charlotte White, Case Officer

Re Application Ref 18/02302/BC4M Proposed Leisure Development at Seaway Car Park [REDACTED]
[REDACTED]

Dear Ms White,

Please find attached our objections to the proposed leisure development at Seaway Car Park, made on behalf [REDACTED]
[REDACTED]

We would be happy to discuss this at your convenience.

I would be grateful if you would kindly confirm receipt of this email

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 08 March 2019 08:14
To: Planning Registration Team
Subject: FW: Application Ref 18/02302/BC4M - Objections [REDACTED]

Categories: Green Category

Please enter as a representation

Thanks
[REDACTED]

From: [REDACTED]
Sent: 07 March 2019 15:43
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Application Ref 18/02302/BC4M - Objections [REDACTED]

Dear [REDACTED]

Please let me know when you have decided what to do with this application. In our strong view that this application should be considered invalid (the applicant can resubmit the application once the surveys have been prepared and mitigation proposed, of course). Any other approach is highly questionable and quite possibly renders any future decision of the Council challengeable, particularly noting the Council's financial interest in the application.

Indeed, I draw your attention to the following extract from the Planning Practice Guidance, which is clear that additional information should not be provided where it affects the validity of the application. Protected species surveys and mitigation are part of the Local Validation List, and identified by the applicant as necessary. They are always material to the application, as the LPA has a responsibility with respect to protected species and development (in accordance with case law).

"Changes after validation of an application

Can additional information be requested by the local planning authority after an application has been validated?

Information can be requested after the application has been validated, although normal time periods for determining the application continue to apply unless a longer period is agreed in writing between the applicant and local planning authority to extend the determination period.

Any request for further information under section 62(3) of the Town and Country Planning Act 1990 must meet the tests in section 62(4A) and must not affect the validity of an application, where it has been validated and registered.

Paragraph 060 Reference ID: 14-060-20140306

Revision date: 06/03/2014"

You will be aware the Applicant has had many years to prepare the planning application (for example, they rely on public consultation events undertaken in 2015 to discharge that responsibility) and thus they have had plenty of time to undertake the appropriate surveys during the relevant survey period in advance of making an application.

(for example in May 2018) They have not done so, and I am not aware of any reason why an exceptional circumstance in this case should be granted I do not believe any exists and so the Council should not be deviating from standard practice, as we set out in our letters of objection

We look forward to hearing from you about the validity of the application

Kind regards,

[Redacted signature]

From [Redacted]
Sent: 06 March 2019 17:25
To [Redacted]
Subject: RE: Application Ref 18/02302/BC4M - Objections [Redacted]

[Redacted]
Dear [Redacted]

I refer to your email below

I confirm that your comments will be taken into account in terms of the Council assessing and progressing the application

Regards,

[Redacted signature]

Creating a Better Southend

[Redacted signature]

Department for Place | Southend-on-Sea Borough Council | Civic Centre, Victoria Avenue, Southend, SS2 6ER



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.

From the 1st March 2018 Southend-on-Sea Council will be using a revised local list of planning validation requirements. A copy of the revised list can be accessed at https://www.southend.gov.uk/downloads/download/258/revision_of_the_local_validation_list. Please ensure that you use the revised local list when submitting applications on or after the 1st March 2018. From the 1st March 2018 submitted applications which do not contain the documents identified on the revised list will not be registered as complete. This will delay the assessment and determination of the proposal.

Southend Council is a CIL charging authority. Further details including the CIL Charging Schedule can be found at www.southend.gov.uk/cil

From: [REDACTED]
Sent: 28 February 2019 10:56
To: [REDACTED]
Cc: [REDACTED]
Subject: Application Ref 18/02302/BC4M - Objections [REDACTED]
Importance: High

Dear [REDACTED]

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 16th 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 willingly 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 own 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 7th December 2018 and only validated on 15th 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 be 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 clearly 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 Regulations 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,



[Redacted]

From [Redacted]
Sent: 07 February 2019 23:58
To: [Redacted]
Cc: [Redacted]

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

Dear [Redacted]

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

I would be grateful if you would kindly confirm receipt.

Regards,

[Redacted]

[Redacted]

[Redacted]

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





[REDACTED]

From: [REDACTED]
Sent: 08 November 2019 11:32
To: [REDACTED]
Cc: Planning Registration Team
Subject: FW Ref 18/02302/BCM Seaway Development - Trees and access issue
Attachments: 9809 L 191105 NGNL Seaway Objections_final pdf, JNY9057 Seaway All Key Transport Points pdf

Follow Up Flag: Follow up
Flag Status: Flagged

[REDACTED]

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From: [REDACTED]
Sent: 08 November 2019 10:33
To: [REDACTED]
Cc: [REDACTED]
Planning Registration Team, [REDACTED]
Subject: RE Ref. 18/02302/BCM Seaway Development - Trees and access issue

Dear [REDACTED]

I did not receive confirmation that you have successfully received my previous email, but equally I have not received a bounce back/undelivered receipt that would suggest you did not receive it. I do require confirmation that every email is received because of issues regarding Southend Borough Council's email system which the case officer and others are aware of (and is likely prejudicing the public consultation process).

You will see below our objections regarding the tree issue, and evidence that the proposed access to the Turnstone development can be designed in a way that would avoid removing the trees that are subject to the TPO. I am sure you'll agree with our position once you have reviewed this evidence. I would be happy to discuss the points that we raise with you at your earliest convenience.

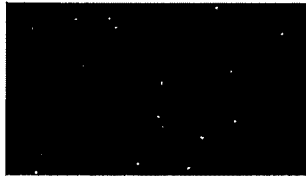
With regards to transport and parking issues, I re-attach our objection letter and also attached the specific transport enclosures, setting out the key notes and concerns regarding why the Turnstone proposals fail to comply with SCAAP Policy DS5 and other adopted policies. Specifically, the Transport Assessment and its Addendum both demonstrate that the development will generate a parking requirement far above that which will be provided on site with

the development, when considering what exists at present on site, and so the proposals must be refused until the level of car parking is provided. Otherwise there will be a severe impact. To re-iterate, our client has always stated that they do not object to the principle of the development so long as sufficient car parking is provided on site that both maintains the existing level of car parking and meets those generated by the proposed development

I would welcome the opportunity to discuss our concerns with you

Please confirm receipt of this email and the previous email.

Kind regards,



From: [Redacted]
Sent: 07 November 2019 06:47
To: [Redacted]



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



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 29th 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.

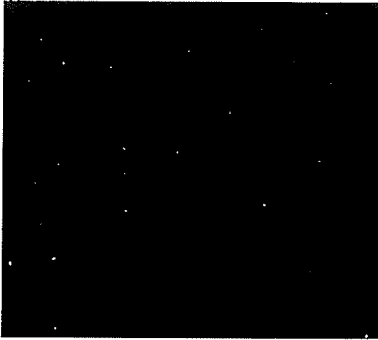
I am also making you aware of this because I am sure you'll agree that there would be a serious public perception and relations issue if the Council goes ahead and authorises the removal of its owned – legally preserved – trees so recently after the Cabinet and the Portfolio Member issued an important 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), Cllr 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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[REDACTED]

From: [REDACTED]
Sent: 08 November 2019 16:27
To: [REDACTED]
Subject: FW: Seaway Car Park - Planning Application (Ref No 18/02302/BC4M) - Noise Objection
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

From: [REDACTED]
Sent: 08 November 2019 16:25
To: [REDACTED]
Subject: Seaway Car Park - Planning Application (Ref No 18/02302/BC4M) - Noise Objection
Importance: High

Dear [REDACTED]

I write to you regarding the above.

You may have already seen our recent objections regarding the above application (as attached), which complement our original objections of 7th February 2019 and other comments since that time. We understand that you have raised significant noise and amenity concerns regarding the proposed Turnstone development at Seaway Car Park, and won concessions regarding the removal of Class A4 drinking establishment from the proposed development, along with early closure of the outdoor seating area (at 11pm). We agree wholly with what you have achieved thus far, in the name of preserving the residential amenity of those living or staying along Herbert Grove (according to various policies, including CS1 2). However, our concerns remain, as outlined under the sub-section 'Noise, Disturbance and Residential Amenity' of the attached. The scheme remains unacceptable.

The key points that we raise can be summarised as follows:

- The restaurants and bars will face directly on Herbert Grove residents. The 11pm closure does not mean that clean up won't take place afterwards outside (dishes clanging, for example).
- As the restaurants close at 12am (midnight), there will be patrons and staff leaving the facility in the very early hours of the following morning. This will still cause a noise nuisance and disturbance to the residents of Herbert Grove well after the 11pm outdoor seating closure, to their detriment.
- In addition, the cinema facility is unlikely to close at 12am (midnight), so there will be more noise nuisance than currently acknowledged by the applicant.
- Whilst taxis will be prohibited from collecting passengers along Herbert Grove, friends and family of patrons and staff will not be prevented from picking up or dropping off passengers along Herbert Grove without a change to Traffic Regulations applicable to the Grove to prevent pick-up/drop-off, which cannot be relied on by the applicant to be delivered with the planning application (as far as I am aware, no Order is proposed to address this). Furthermore, there is a question mark regarding enforcement (unless the applicant pays for 24-hour staff-based enforcement), given the time of night this would occur at. The pick-up and drop-off will likely continue to take place well after the restaurants close (because staff will probably stay some time later to clean up and cash out, etc). Unfortunately, the car park is not conveniently designed for pick-up and drop-

off (and may require payment even for those purposes), and there is no through route on the hotel side of the building towards Lucy Rd. Hence Herbert Grove, with its through access to Marine Parade and destinations beyond, will provide the most convenience pick-up/drop-off location. There will be noise from vehicles, car doors opening and closing, etc I know if I was in Southend and my kids needed picking up, I would see Herbert Grove as being the most logical spot to pick them up after they go to the cinema or restaurants, because I can easily take off thereafter without having to negotiate (and pay) the multi-storey car park or the surface car park on site. The existing double lines on the road wouldn't prevent that scenario from taking place, neither would any non-personnel based enforcement (i.e. only staff on site at all times waving potential stoppers on would prevent this)

- The impact to Herbert Grove, which is not within the identified Town Centre (so the residents should have a reasonably good level of amenity, which they do at present), would be tremendously harmful on a regular basis. Little can be done to mitigate against this
- Whilst there is currently some movement along Chancellors Road pavement (to and from the car park), the proposed development turns the Seaway Car Park site into a destination for visitors from the town centre, who would return to the town centre after visiting the site. This is clearly an increase in the number of movements and resulting noise and disturbance to Chancellors Road residents, late at night in most cases given the nature of the uses at the site
- Indeed, the Transport Assessment indicated there would be somewhere around 490 pedestrians will be leaving the site between 22:00-24:00 on a Friday night, the majority moving towards other car parks, the town centre or the bus station. Whilst the model split has changed with the Addendum (at Davinia Farthing's request), which means more people are assumed to arrive by car, the numbers travelling past Herbert Grove and Chancellors Road still remain significant at late night times (estimated at over 300+ pedestrians leaving the site). This excludes stragglers or in situations where films end later than 12am midnight.
- There is a bus stop along Chancellors Road which will be subjected to more users, also to the detriment of those living there whilst those wait for the bus
- The current issues will now be exacerbated because now there are no A4 drinking establishments (and rightly so), but people attending the restaurants and cinema, etc who want to carry on at nightclubs, etc will travel to the town centre to do so, after 11pm or 12am. But their cars are still parked at the Seaway Car Park, so they'll return in the wee hours of the morning, some of whom may be loud due to drinking effects or being in a group, etc. This doesn't happen to the same extent now, as if you wanted to go to the cinema, you'd park at a different car park closer to the Odeon in the town centre, so all your journeys are focused away from the Seaway Car Park and does not lead you past Chancellors Road
- I would add that the toilet facilities is now moved closer to the town centre side of the site, making it attractive to those who require it after a night out

The effect of the proposed development is to basically draw the residents of Herbert Grove and Chancellors Road into the town centre although they are not at present, to the detriment of existing residents

I trust you'll agree with the above and continue to object to the proposed development on noise, disturbance and residential amenity grounds. I note that if the applicant had proposed a different design, which made pick-up on the hotel side of the site more attractive, that would solve part of the issue. The other part, regarding pedestrians, I note there is a policy requirement to offer improved pedestrian links to the town centre (see Policy CS1.2). These have not been offers, but they could have sought to improve the Chancellors Road/Church Road junction to make the southside of Chancellors Road the most attractive route, and deter pedestrian from using the northside of Chancellors Road as their primary route (accessed via an uncontrolled crossing, which has potential safety and noise issues), reducing the impacts on the residents of Chancellors Road. No obvious effort has been made to comply with the policy in this regard. As well, if the Spanish Steps were delivered with the scheme (also according to Policy CS1.2), this would also alter the travel patterns of the site, and direct more pedestrians away from sensitive receptors. Along with many other concerns that we raise in our objections, this points to a scheme that is not acceptable in policy terms and alternatives exist to make the scheme better. I have copied in Abbie Greenwood as the Council's Conservation and Design Officer, with whom you can discuss the merits of a different design.

I have also copied in the local ward members, who will be the recipient of any complaints from the residents because of an ill thought scheme, if it gets approved in its current form. They will then struggle to address the

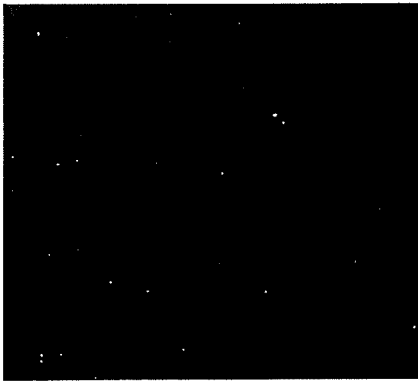
matters because the scheme will have been built, resulting in the Council expending energy and resources to resolve something that the applicant should have dealt with from the outset to gain approval

I also note that the Applicant has acknowledged there would be medium impact on the daylight and sunlight of residents along the southern-half of Herbert Grove. Obviously, if the main building was shorter, and the development had been better spread across the whole of the site, this would eliminate any harm and detriment to the residents of Herbert Grove from this perspective. A revised design would also be more respectful to the existing urban grain and character of the area, the neighbouring historical assets, and most certainly mean that the TPO trees can be preserved on site. So it will address many of the key issues with the development. The concerns clearly point to the fact that the current designs causing more harm than is absolutely necessary, including regarding noise and daylight/sunlight. I trust that you'll maintain an objection on this point given the Applicant already acknowledges the issue.

I am happy to discuss any of the points above or any other matters with you. Please feel free to call [REDACTED]

As there is an email issue at the Council, I would be grateful if you would kindly confirm receipt of this email.

Kind regards,




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Our Ref: ECO00602 Seaway, Southend-On-Sea



Dear Sir/Madam

**OBJECTION TO PLANNING APPLICATION REF: 18/02302/BC4M
'COMPREHENSIVE REDEVELOPMENT OF SITE' LOCATED AT SEAWAY,
SOUTHEND-ON-SEA**

The planning application (18/02302/BC4M) is for the comprehensive redevelopment of the site, including the demolition of three residential buildings and existing toilet block, to be replaced by new buildings for leisure and recreational use, a hotel, car park and access routes

BACKGROUND TO REPORT

The Preliminary Ecological Appraisal (PEA) (Applied Ecology Ltd 2018) characterised the area as predominantly hardstanding with small areas of amenity and semi-improved grassland, introduced shrubs and planted trees. A total of seven buildings of mixed residential and commercial use were included within the PEA and were therefore also subject to a preliminary bat roost assessment.

The PEA concluded that the site would be unlikely to have any direct or indirect adverse impact on the integrity of the designated sites as a result of the proposed construction and operation of the site. In addition, the majority of the habitats present on site were of negligible habitat and biodiversity value and therefore would only represent a minor adverse ecological impact.

The report also concluded that the site was of limited value to protected species with interest restricted to the buildings 1, 3 and 7, which were assessed as being of low potential to roosting bats, and the surrounding scrub and tree habitats which are likely to support low numbers of common and widespread bird species.

The report stated that the following surveys are considered necessary prior to development:

- 'Up to two separate bat activity surveys should be completed of Buildings 1, 3 and 7 within the recognised May – August window to verify bat roosting presence/absence.'

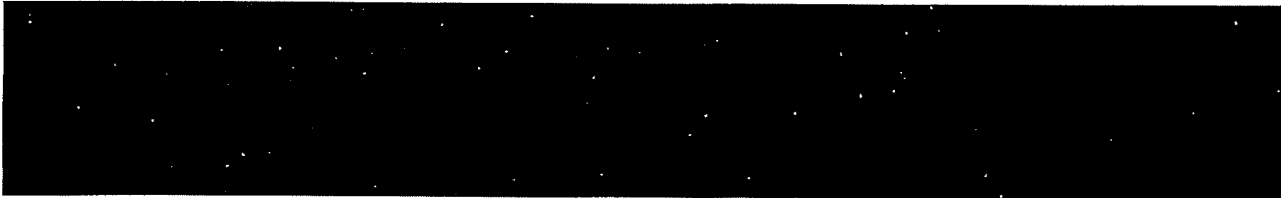

OBJECTION 1


The preliminary bat roost assessment detailed within the report comprised only an external inspection of the structures. Of particular interest, were the features observed on Buildings 1 and 3 which included

- Small gaps at the base of plastic boarding cladding on the eastern aspect, and
- Gaps present under roof tiles.


Following the recommended bat survey guidelines set out in the Bat Conservation Trust 'Good Practice Bat Survey Guidelines, Third Edition' 2016, internal inspections of buildings should be undertaken (where practicable) to compile information on potential and actual bat entry/egress points and any evidence of bats. As stated in the guidelines, it is not always possible to identify evidence of bats on the exterior of a building, and where it is, wet weather can often wash any evidence away.

Following an internal inspection of the buildings 1 and 3, a more accurate assessment of the buildings' potential as a bat roost could be made, followed by requirements of further survey work and potential mitigation.



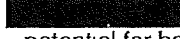


Furthermore, it should also be noted that where a comprehensive assessment of the buildings' interior is not possible, the BCT guidelines (2016) recommend that emergence/re-entry (presence/absence) surveys are undertaken. Currently, the PEA states that up to two 'bat activity surveys' are required in the appropriate season however it does not specify whether these comprise emergence/re-entry surveys or whether it is indeed referring to bat activity or transect surveys, which are not considered appropriate for the size and type of development proposed.

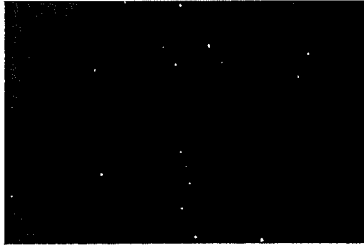
 objects to the proposals as insufficient survey work has been undertaken to assess the potential for bat roosts to be present within the buildings due to be affected.

OBJECTION 2

A factory building which falls within the site boundary of the project was not included in the PEA and has now been demolished. There is no reference to building or any indication if it was inspected or surveyed for the presence of a bat roost.

 objects to the proposals as insufficient survey work has been undertaken to assess the potential for bat roosts to be present within the building already demolished.

Yours sincerely,



[REDACTED]

From: [REDACTED]
Sent: 09 October 2019 09:46
To: Charlotte White
Cc: [REDACTED]
Subject: [REDACTED]
Attachments: [REDACTED]

Importance: High

Dear Charlotte,

Thank you for updating the application websites with this document and providing it to us. We will obviously need time to consider its findings in order to provide meaningful comment. So I assume that you are agreeing to delay the processing of any Screening Opinion and Planning Application until consultees have had adequate time to comment.

Do you know why the Air Quality Assessment itself is still referred to as 'draft' and 'confidential'? Will a final version be issued?

Do you know if your Environmental Health Team had a copy of this Memorandum?

[REDACTED]

From: Charlotte White [REDACTED]
Sent: 09 October 2019 09:36
[REDACTED]
Subject: FW: Seaway Application Ref: 18/02302/BC4M - Air Quality Memorandum

CAUTION: This email originated from outside [REDACTED]

Dear [REDACTED]

I refer to your email below. I can confirm that the air quality technical memorandum is available on public access for both applications. For ease, I have also attached a copy for your information.

Regards,
Charlotte


Charlotte White – Development Control Team Leader | Planning and Building Control Group

[REDACTED]

[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.

[REDACTED]



Sent: 08 October 2019 15:56

To: Charlotte White



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

Importance: High

Dear Charlotte,

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,



[REDACTED]

From: [REDACTED]
Sent: 06 November 2019 00:00
To: Charlotte White
Cc: [REDACTED]
Subject: [REDACTED]
Attachments: [REDACTED]

Dear Charlotte,

Please find attached our objections to the above scheme.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: 11 October 2019 23:59
To: Charlotte White [REDACTED]

[REDACTED]

Dear Charlotte,

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,

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 11 October 2019 21:26
To: Charlotte White [REDACTED]

[REDACTED]

Importance: High

Dear Charlotte,

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 [REDACTED] as they may have the power to extend consultation periods to avoid prejudicing the public process.

Kind regards,

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent:

06 November 2019 00:08

To:

Charlotte White

Cc:

Subject: [REDACTED]

Attachments:

[REDACTED]
Objection Letter Enclosures.pdf

Dear Charlotte,

Further to the email below, I have been advised that the PDF as attached appears to have been corrupted. As such, I attach a revised version with the letter and enclosures separately attached. I would be grateful if you would kindly confirm that you have received this PDF in good working order.

Regardless, you will see from our letter and enclosures that the proposed development is non-compliant with many policies of the development plan and there are little material considerations that would outweigh such conflicts, noting alternative designs exist which would reduce the conflicts and achieve a much better development.

I will write to you again shortly regarding the 'missing emails' issue.

I would be happy to discuss the contents of the letter and enclosures at your convenience.

Kind regards,

[REDACTED]

From [REDACTED]

Sent: 06 November 2019 00:00

To: Charlotte White [REDACTED]

[REDACTED]

Dear Charlotte,

Please find attached our objections to the above scheme.

Kind regards,

[REDACTED]

[REDACTED]
Sent: 11 October 2019 23:59

To: Charlotte White [REDACTED]
[REDACTED]

Dear Charlotte,

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,
[REDACTED]

From [REDACTED]

Sent: 11 October 2019 21:26

To: Charlotte White [REDACTED]
[REDACTED]

Importance: High

Dear Charlotte,

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

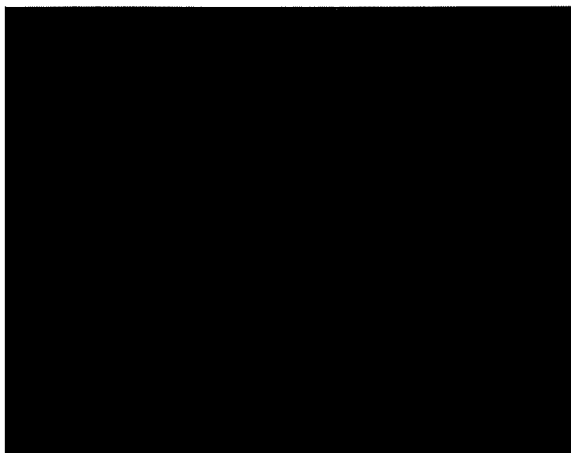
[REDACTED]

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 [REDACTED] as they may have the power to extend consultation periods to avoid prejudicing the public process.

Kind regards,



[REDACTED]

From: [REDACTED]
Sent: 08 November 2019 10:55
To: Charlotte White
Cc: [REDACTED]

Subject: [REDACTED]
Attachments: [REDACTED]

Part 3 of 3.

You should have the full outline LVIA and Heritage Statement as previously submitted. These should be read with our other comments, including the Heritage and LVIA notes submitted in response to both the EIA Screening and planning application, and our objections to the scheme.

Please confirm receipt.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: 08 November 2019 10:54
To: 'Charlotte White' [REDACTED]

[REDACTED]

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

Part 2

[REDACTED]

From: [REDACTED]
Sent: 08 November 2019 10:53
To: 'Charlotte White' [REDACTED]

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

Charlotte,

Please find attached Part 1 of the LVIA that was submitted on 20th September 2019.

Please confirm receipt of all documents once received.

Kind regards,

[REDACTED]
From [REDACTED]
Sent: 08 November 2019 09:31

To: Charlotte White [REDACTED]
[REDACTED]

Importance: High

Dear Charlotte,

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 received 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 [REDACTED] 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 20th 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 [REDACTED] investigate whether the practice of withholding public comments and statutory consultee comments from the application website, as well as undertaking meeting 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.

[REDACTED]

Turning to the EIA Screening Opinion you have made, it appears you have made this decision whilst overlooking our duly made representations made on 20th September, and which we referred to in both the body of the email and within our EIA Review document sent to you on 11th October 2019 @ 09:58 (see Paragraph 2.7), and also referred to in my email sent on 12th 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,



From: Charlotte White [redacted]
Sent: 05 November 2019 16:15
To: [redacted]
Subject: RE: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections

CAUTION: This email originated from outside of [redacted]

Dear [redacted]



I refer to your email below. Unfortunately I did not receive either of your emails dated 11th October 2019 or 20th 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,
Charlotte

Charlotte White – Development Control Team Leader | Planning and Building Control Group



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



From: [REDACTED]
Sent: 05 November 2019 14:35
To: Charlotte White
Cc: [REDACTED]
Subject: RE: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections

Charlotte,

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

[REDACTED]

From: [REDACTED]
Sent: 11 October 2019 19:27
To: Charlotte White <CharlotteWhite@southend.gov.uk>
Cc: [REDACTED]
Subject: FW: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections
Importance: High

Dear Charlotte,

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 [REDACTED], any Transport/Highways Officers [REDACTED], any Environmental Health officer, or any other third party acting on the Council's behalf [REDACTED] 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,

[REDACTED]

From: [REDACTED]
Sent: 20 September 2019 15:47
To: Charlotte White [REDACTED]
Subject: Seaway Application Ref: 18/02302/BC4M - Landscaping & Heritage Objections
Importance: High

[REDACTED]

Dear Charlotte,

Further to my email below, I am pleased to send the attached Outline Landscape and Visual Impact Assessment 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:

[REDACTED]

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 [REDACTED] 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. Cliftown 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, [REDACTED] 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 [REDACTED] 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 [REDACTED], any Transport/Highways Officers (including [REDACTED], any Environmental Health officer, or any other third party acting on the Council's behalf [REDACTED] Town Legal (the latter of which we understand from recent FOI responses is acting for the Council but their bills may [REDACTED] 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,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 27 August 2019 15:07
To: Charlotte White [REDACTED]

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

Dear Charlotte,

In our original objection letter dated 7th 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.
- [REDACTED]

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 [REDACTED] 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 [REDACTED] 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 7th 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.

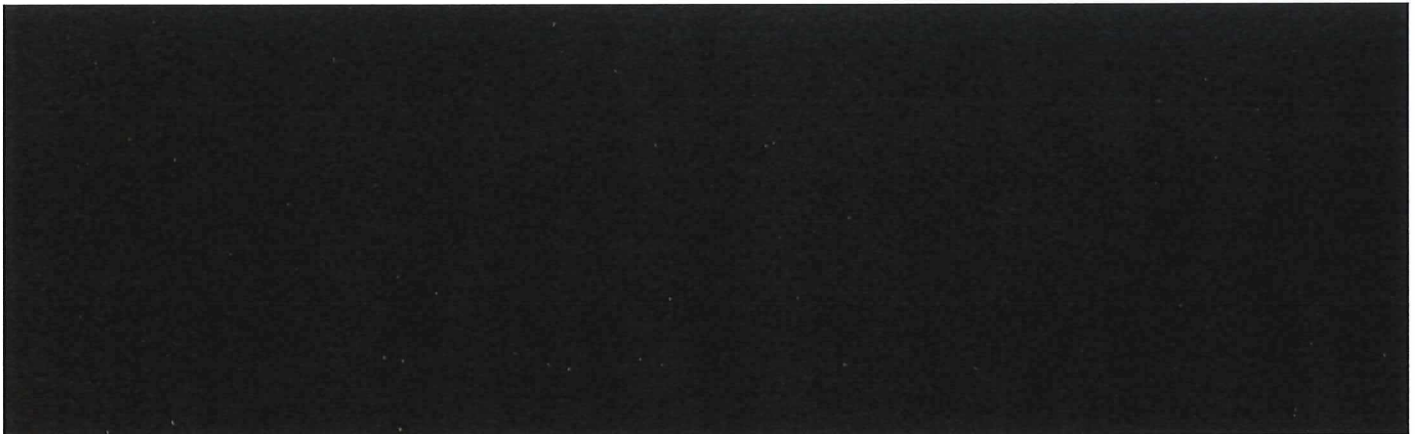
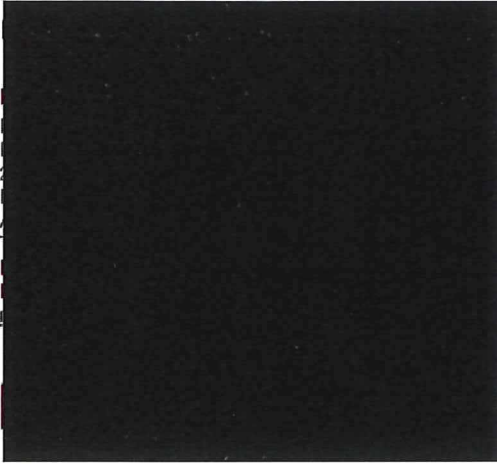
You will see from the above and attached that there are serious issues regarding the way in which the Opinion was reached, and which a proper assessment may have concluded that the development is EIA development. If the Council relies on the current Opinion as it stands, it is quite possible that any 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.

[REDACTED]

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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Consider the environment. Please don't print this e-mail unless you really need to.

This e-mail message and any attached file is the property of the sender and is sent in confidence to the addressee only.



[REDACTED]

From: [REDACTED]

Sent: 24 November 2019 08:00

To: Charlotte White

Cc: [REDACTED]

Subject: [REDACTED]

Attachments: [REDACTED]

[REDACTED]

Dear Charlotte,

I write to regarding the ecology matter (further to my email below and our representations of 7th November 2019).

First, I do not apologise for the length of the email. I want to be clear to you: this email will be forwarded to [REDACTED]

[REDACTED] All parties can then see the evidence, and draw their own conclusion regarding what SBC DCC should be doing on 27th November 2019 when it considers the application. Indeed, I have done this because we want transparency in decision making: the reason to refuse permission regarding protected species is fully justified and any other decision will raise questions regarding the Council's abilities to discharge its statutory responsibilities on this matter. The details in this email are also designed to dispel at the outset any myths that might be perpetuated by the applicant's lobby team after my email is circulated. I have sent the email as a blind copy to external parties so their data can be protected if the email is published, but the circulation is listed above, so you can contact these partners directly and verify what I state is correct.

You have clearly set out in Development Control Committee's (DCC) Committee Report Paragraph 6.224 that clarification was obtained from the applicant regarding the ecologist surveys, and which you appear to accept at face value. Unfortunately, this appears to be a fatal mistake on the Council's part as the evidence supplied by the Applicant in October 2019 is contrary to guidance and remains unjustified. To the point, the Council should not have relied on the applicant's evidence before it drew the conclusion that Building 7 is of negligible bat roost potential. This is because the downgrade is not justified (indeed, there is no evidence submitted by the applicant which would warrant the change), and in fact the applicant's conclusions are incorrect given the building's features etc, as I'll set out below. Ultimately, the implications are that as no bat emergence surveys are forthcoming before the DCC meeting this Wednesday, so you must therefore change your recommendation to one of **refusal on a lack of information on the impact of the development on protected species (there are other issues which warrant refusal, but that is not relevant to this email but could form further justified reasons)**. I provide all the evidence of the reason for this below, so you (and DCC) will be fully confident that such a refusal will be upheld by an Inspector with any Planning Appeal.

[REDACTED]

There is no doubt that DCC must refuse the application on the lack of bat emergence surveys alone. For example, the Government's Protected Species Checklist (as attached) is clear that without the emergence surveys, the decision falls under Category F: *"Inadequate survey. Request this is done properly as in question 3 or refuse application."* It is supported by the Government's Planning Practice Guidance (PPG), which states: *"You can refuse planning permission, or ask for a survey to be redone..."* (PPG Chapter: 'Protected Species: How to Review Planning Applications – As a Planning Authority use Natural England's standing advice to review planning applications that might affect protected species'). It goes on to state: *"Use Natural England's guidance (known as 'standing advice') to help you decide whether to reject or approve an application if a protected species could be affected. You need to take standing advice into account when making your planning decision."* Under the checklist for 'Making a Decision' within the same PPG section, it is clear that the proposal fails all criteria (no additional surveys carried out, no confidence a licence can be granted, no mitigation or compensation plans put forward, etc). You can be wholly confident that the scheme's refusal is justified by the PPG and other guidance, and will be upheld by a Planning Inspector at Appeal (who will take their responsibilities towards protected species very seriously given EU and UK law on the matter). Indeed, without changing the current recommendation, the report could be conceived as being misleading noting the evidence that we have already submitted, and additional information that we submit to you with this email. So the conclusion that can be drawn is that DCC would be falsely informed when making their decision if our information below is not supplied to them. There could be substantial negative consequences arising.

We can draw this conclusion because [REDACTED] own ecologist, who holds Natural England Levels 3 and 4 bat licences, has conducted an independent survey of the building (see attached report). You will see that that the report clearly concludes that the building should be subject to further emergence surveys because it remains classified as a building which hosts 'low' potential for a bat roost (and the evidence to support that conclusion is supplied). You will see by their report that they state on Page 3: ***"There was potential for bats to roost within the roof void and/or behind the wooden fascia of Building 7, and the building was considered to have low roost potential. Demolition of this buildings is planned as part of the proposed development and therefore further surveys on this building are required in advance of planning."***

Furthermore, there are other reasons as to why you should withdraw Paragraph 6.224 of your report and alter your recommendation to one of **refusal**, which can be summarised as follows:

- The PEA November 2018 incorporated survey results from a high bat licenced ecologist. It clearly drew the conclusion that the building's bat roost potential was 'low' and further emergence surveys would be required before any planning permission could be granted.
- The PEA October 2019 includes references to a May 2019 building survey, but which contains no documentary evidence that justifies that a downgraded potential exists, in direct conflict with Bat Conservation Trust (BCT) guidance (details below).
- Building 7's features that the applicant's team identified that exist and warrant further investigation have not changed.
- The absence of external evidence is not sufficient justification to warrant the downgrading of the potential, according to the BCT guidance.
- No internal survey of the building has been recorded. As the building has been abandoned, there can be no certainty that bats are not roosting within the building.
- Sufficient connectivity exists between the building and wider foraging routes for common bat species, noting the presence of vegetation in the rear gardens of Hartington Road that links the northern and southern parts of the site and wider foraging areas.
- It is not possible to conclude that there is no bat activity on another part of the site from the data collected during the May 2019 surveys, as the ecologists were located in immediate proximity to Buildings 1 and 3, and at some distance from Building 7. Bats will be using the extremities of the site due to the unattractive surface level car park in the middle, as acknowledged by the Applicant's team, and no evidence is supplied that would demonstrate the ecologists were surveying the eastern side of the site at the relevant times. In any event, the May 2019 survey results demonstrates that **bats are present** in the vicinity (I come to this again below with a PPG reference on how to deal with this).
- So, to draw that conclusion that bats are not active on the whole of the site, formal bat activity surveys of the entire site would be required and forms the outcomes of multiple surveys between April/May and September/October. No evidence of such surveys has been presented, and we suspect that these have not been carried out.



- In any event, you already have the evidence that two ecologists (from the same firm) who have formed differing opinions regarding the potential surveys that should be prepared, with the more qualified person stating that the building hosts 'low' potential and further surveys are required. You therefore must err on the side of caution and require such surveys before any application is determined, according to the PPG.
- In fact, with [REDACTED]'s report, you now have confirmation the two more qualified ecologists who have visited the building have confirmed in their view the building's potential is 'low' and which bat emergence surveys are required before the Council can conclude that there is no likelihood of impact on protected species by the proposed development, in accordance with the NPPG and Circular 05/2006. This cannot be ignored or brushed aside.

Without such bat emergence surveys, the only conclusion you can draw is that the application should be **REFUSED** according to relevant guidance, which the applicant's team appears to be asking you to deviate from without providing any good reason to do so.

I set this out in more detail, for your benefit. Following our objections in October 2019, the Council had received a revised PEA from the applicant's team, and published this on the application website on 23rd October 2019. It is referred to as the PEAOct19. This contains a number of changes, primarily focused around 'Building 7', a former toilet block building located in the south-eastern corner of the site, and to which our comments below primarily related. These can be summarised as follows:

- Added reference to a new surveyor [REDACTED], a Natural England Level 1 bat worker) in Para 2.6, who has supposed carried out a further survey of the toilet block on 29th May (no evidence or details of the survey are supplied within the report).
- A new paragraph was inserted for the description for Building 7 and its potential on Page 11, which indicates that upon the further May visit, the toilet block is no longer considered to host 'low' potential for a bat roost. Hence no surveys were required in May.

[REDACTED] holds strong reservations as to why this information was not provided at the outset with the July revision of the PEA following the May 2019 surveys carried out by the applicant's team (referred to as PEAJul19), on which our objections below have been submitted. The evidence would have clearly been available in July when the applicant prepared an update to the PEA, and indeed, the Figure was altered at that time, but without any accompanying text within the report to explain why it had changed. It appears to be a substantial omission. More to the point [REDACTED] also notes that there is no evidence (e.g. survey notes or photographs) attached to the PEAOct19 that complements the primary changes to it. We come to this again below, but it does raise questions on why the Case Officer can be confident that what is reported is accurate and justified.

Before discussing the reasons that justify our position, I take the opportunity to set out the relevant guidance, as you may not be familiar with it. The Bat Conservation Trust's 'Bat Surveys for Professional Ecologists Good Practice Guidelines (3rd Edition)' (referred to as the 'BCT Guidance') is most pertinent (I note that the applicant's team has sponsored the document, so you would expect them to adhere to it). The key paragraph is Paragraph 5.2.9, which states:

"Where the possibility that bats are present cannot be eliminated or evidence of bats is found during a preliminary roost assessment, then further surveys (such as winter hibernation (Section 5.3), presence/absence (Section 7.1) and/or roost characterisation (Section 7.2) surveys) are likely to be necessary of the impacts on the roosting habitat (or the bats using it) are predicted. The ecologist should consider the further surveys needed (if any), their logistics (resources, emergence survey locations, timings), and any potential health and safety hazards reported.

"If the structure has been classified as having low suitability for bats (see Table 4.1), and ecologist should make a professional judgement on how to proceed based on all of the evidence available.

"if sufficient areas (including voids cracks and crevices) of a structure have been inspected and no evidence found (and is unlikely to have been removed by weather or cleaning or be hidden) then further surveys may not be appropriate. Information (photographs and detailed descriptions) should be presented in the survey report to justify this conclusion and the likelihood of bats being present at other times of the year estimated. If there is a reasonable likelihood that bat roosts could be present, and particularly if there are

areas that are inaccessible for survey, then further surveys may be needed and these should be proportionate to the circumstances (see Section 2.2.5).

"If not suitable habitat for bats is found, then further surveys are not necessary. In this scenario, it is necessary to document how this decision has been reached; photographs and details descriptions should be made available as evidence of a robust survey and assessment."

Our main concern is that the PEA Oct 19 alterations that indicate that Building 7 has 'negligible' potential for a roost is **NOT** supported by any documentary evidence within the report and which would normally be required with such a conclusion. The approach that has been adopted by the applicant's team is without doubt contrary to the BCT Guidance regarding such a situation, as referred to above. This is especially pertinent when the original surveying ecologist is a Natural England Level 2 licenced bat worker (i.e. has more experience) and is licenced to use endoscopes as part of the preliminary roost survey, whilst the May 2019 survey was carried out by members who does not hold such advanced licences. It is also pertinent that the building's relevant features have not been changed in any of the three versions of the PEA that would suggest a downgrade to the potential is warranted, and there is no evidence that the building was internally inspected to confirm the absence of bats, noting the building is abandoned so without regular disturbance, it could become an attractive place for bats to roost. Indeed, as you'll see from our report, there are certainly reasons as to why the building was initially identified as hosting 'low' potential for a bat roost.

Some other points of relevance:

- There is a claim that the building is isolated with hardstanding located between it and any suitable bat foraging habitat. This clearly ignores the presence of suitable trees and other vegetation located at the rear of the properties that face onto Hartington Road, and which provides a reasonable link to wider foraging routes including northward along Queensway to the railway line, or along the Seaway Car Park trees to the church yard, where bats were recorded as foraging during the May 2019 site visit. The bats could have easily travelled along the rear of the gardens of Hartington Road and along the line of trees that face the Queensway and Chancellors Road to get to the church yard, and would explain why they were recorded to have arrived at the church yard sometime after sunset (as we set out in our objection below).
- A lack of bat activity has been cited. It is unclear how the ecologists could have concluded this, as during the May visit, they were located adjacent to Buildings 1 and 3, so at some distance from Building 7, and with their devices facing the two buildings that they were surveying. It is likely that with vehicle movements and other noises may have intervened, and so there can be no conclusive evidence that bats are not active in the vicinity of Building 7 during the May 2019. Indeed, the evidence of the ecologists clearly demonstrates bats were active in the vicinity, so the opposite is true from the evidence provided to you by the applicant. Furthermore, no bat activity surveys of the whole of the site have been carried out.
- Also cited is the fact that no external evidence was found on the building. We are surprised that they are relying on this position because the BCT Guidance is clear on this point in Paragraph 5.2.4.1 (External Surveys), where it emphasises the point that: ***"Sometimes bats leave no visible sign of their presence on the outside of a building (and even when they do, wet weather can wash evidence away)."*** Indeed, the same guidance is repeated with the equally high emphasis in Paragraph 5.2.4.2 (Internal Surveys). No justification has been provided that would enable the ecologist to rely on this against BCT Guidance.
- [REDACTED] notes there is no evidence that the applicant's team has undertaken an internal survey of the building. BCT Guidance in Paragraph 5.2.1 states: ***"A Preliminary Roost Assessment is a detailed inspection of the exterior and interior of a structure to look for features that bats could use for entry/exit and roosting and to search for signs of bats. The aim of this survey is to determine the actual or potential presence of bats and the need for further survey and/or mitigation. In many situations it is not possible to inspect all locations where bats may be present and therefore an absence of bat evidence does not equate to evidence of bat absence."*** It is clear from the BCT Guidance that if no internal inspections have been carried out, a precautionary approach is necessary and emergence surveys must be carried out. As noted above, bats are present in the area. It would be incorrect to conclude there are no bats at the building simply because no external evidence was found.

The Council is effectively being asked to deviate from standard guidance regarding bat emergence surveys by the Applicant's team without the latter supplying the Council with any evidence to do so. We are completely unclear why you would take their information has face value given the substantial omissions, unless you are looking at the [REDACTED]

commercial realities of a lease arrangement which falls outside of planning matters. The PPG section on Protected Species states: *"Use Natural England's guidance (known as 'standing advice') to help you decide whether to reject or approve an application if a protected species could be affected. You need to take standing advice into account when making your planning decision.*

Use an expert, such as your local authority ecologist, to help you apply the standing advice to planning decisions if you're not a wildlife specialist. Unless you are qualified expert, the PPG is clear that you will need to rely on one to determine whether the PEA submitted by the Applicant is valid and justified. I am not aware that SBC has obtained evidence from an independent qualified ecologist to verify the applicant's PEA, even though [REDACTED] has raised substantial concerns regarding the evidence presented through the application process (perhaps you could have asked Essex County Council's team, who are copied into this email, or Natural England for more advice). This puts DCC's decision at risk if it is anything but **REFUSAL**.

Regardless, the BCT Guidance is equally clear on this point at Paragraph 4.3.8, which states: ***"Where further surveys and mitigation are required, the preliminary ecological appraisal report in isolation will not be adequate for submission to the LPA in support of a planning application. The report will only be adequate for this purpose if there is need for further surveys and mitigation."*** It is clear that a further Phase 2 bat survey report is necessary before the Council can consider sufficient evidence has been supplied to enable the Council to deviate from BCT Guidance. This is repeated in the PPG, which states: *"You only need to ask an applicant to carry out a survey if it's likely that protected species are:*

- *present on or near the proposed site, such as protected bats at a proposed barn conversion*
- *affected by the development, such as the effect of a wind turbine proposal on protected birds"*

We already know that bats were found in the churchyard within the vicinity of the site, as I mentioned above. They are near to the site, and therefore the Council's position to not request additional surveys would be clearly against such guidance and which justification must then be supplied. Without such evidence, the Council must follow the PPG and BCT Guidance as otherwise it could render any decision invalid because DCC would not have considered all material considerations appropriately. This is particularly true when the Council employs no ecologists inhouse to carry out an independent verification of the evidence, and which the reliability of the applicant's evidence has been heavily questioned by others.

The Council cannot impose a Condition to require the provision of Surveys after permission is granted.

You may be tempted to suggest to DCC that a condition could address the matters. I want to make it clear that this would be against guidance. I also want to ensure the applicant's lobby team does not mis-represent the correct approach.

Our ecologist's letter is clear that it states that further surveys would be required as they would inform mitigation measures necessary. The Council cannot impose a condition to any permission that requires the submission of the surveys and the eventual submission of mitigation (which could require planning permission to implement), because 'exceptional circumstances' according to Circular 05/2006 Paragraph 99 do not exist (the applicant's team has not presented any evidence of such circumstances, and missing a survey season is not an 'exceptional circumstance'). Any condition imposed would fail the tests of the NPPF, as it would not be 'precise'. The Council also has a requirement that they be fully confident that Natural England would issue a licence in the future of a bat roost is found, noting any licence must comply with the 3 legal tests set out in the PPG. You have made no assessment of the 3 legal tests in your report, so DCC would be blindly making the decision without reference to the correct approach. In fact, the PPG clearly states: *"You'll need to agree any mitigation or compensatory measures as part of the proposal. To make sure that mitigation measures are effective when granting planning permission you may have to consider"* imposing a planning condition or planning obligation. However, you cannot ensure any mitigation could be effective if you are not able to ascertain whether bats are in fact on site or not, hence it would be inappropriate to secure such surveys by way of condition.

It states under 'Making a Decision' that you can grant planning permission if:

- an appropriate survey was carried out by a qualified ecologist at the time of year specified in the standing advice – **Further survey not completed.**



- a wildlife licence is likely to be granted by Natural England – **unknown, as an assessment against the 3 legal tests cannot be carried out without further surveys.**
- Mitigation plans are acceptable – **none submitted as species surveys not carried out across whole of site.**
- Compensation plans are acceptable when mitigation isn't possible – **same, no mitigation plans presented because species surveys were not carried out.**
- review and monitoring plans are in place, where appropriate – **no plans to review.**
- all wider planning considerations are met – **approach completely contrary to PPG and BCT Guidance and the recommendations that further survey of the building is necessary according to the applicant's original submission and [redacted] recent report.**

We look forward to receiving confirmation that you have submitted a change to the recommendation in the report and you now recommend that the application is **REFUSED**.

I would be grateful if you would kindly confirm receipt of this email, noting the 'missing emails' point. Of course, I would be happy to discuss with you the evidence presented in the above email on in the attached as required.

Kind regards,

[redacted]

From: [redacted]
Sent: 10 October 2019 00:33
To: Charlotte White [redacted]

[redacted]

[redacted]

Dear Charlotte,

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 [redacted]. 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 7th

[redacted]

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.

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

- Paragraph 2.12 confirms that a bat roost emergence survey was carried out on the evening of 29th 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 potentially 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 19th October 2018 survey and the 29th 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.**
- [REDACTED] 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 [redacted]'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 [redacted] who I am sure would agree with [redacted] 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,

[redacted]

[redacted]

[REDACTED]

Sent: 28 February 2019 10:56

[REDACTED]

Importance: High

Dear Ms White,

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 16th 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

[REDACTED]

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 willingly 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 own 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 7th December 2018 and only validated on 15th 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,



[Redacted]

From: [Redacted]
Sent: 07 February 2019 23:58

[Redacted]

Dear Ms White,

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

I would be grateful if you would kindly confirm receipt.

Regards,

[Redacted]

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[Redacted]

[Redacted]