

Letter from Stuart Brooks to WODC Chief Executive dated 8 July 2016

Mr D Neudegg
West Oxfordshire District Council
Wood Green
Witney
OX28 1NB

8 July 2016

Dear David,

Planning Inquiry Observations

On 4th July the Planning Inspectorate determined a planning appeal concerning the development of up to 169 houses and the construction of a new doctor's surgery on land south of the Witney Road, Long Hanborough. There was an associated application to build a new school playing field which was also approved as part of the same decision.

There was significant concern within the village about this proposed development and two Schedule 6 parties came forward from the village to participate in the five day inquiry, the Parish Council (HPC) and the Hanborough Action Group (HAG). I represented HAG at the inquiry.

Unfortunately the Inspector allowed the appeal and we will have to live with this decision in the years ahead.

This letter is not one complaining about the decision but one where I would like to make some general observations based upon my experience.

WODC and the appellants were the primary parties and much rested on the case advanced by WODC.

Five days before the inquiry began, WODC and the appellant signed a Statement of Common Ground. That statement contained two significant items, the first being WODC's agreement that it no longer could demonstrate a five year housing land supply with all the implications that entails, the second that "Long Hanborough is a suitable location to accommodate significant residential growth."

The first point has been known for some time but the Schedule 6 parties were totally unaware that the second point had been conceded until 5 days before the inquiry began. Indeed HPC had informed the case officer of the inadvisability of agreeing the latter point.

This concession put the schedule 6 parties at a considerable disadvantage and it remains unclear as to who authorised this position.

WODC's defence centred on two points, the landscape and visual impact of the development and the appellant's financial viability evidence justifying a reduction in the proportion of affordable housing from 50% to 35%.

The appellant produced expert witnesses for each of these points while WODC relied on the case officer. He was subjected to severe pressure under cross examination on the landscape and visual impact of the development. The main thrust of the cross examination was not on his subjective opinion of this issue but on his competence, having had no formal training or qualification in this field and not adhering to the industry standard assessment procedure.

Reading the Inspector's report it is obvious that this criticism resonated with the Inspector and he therefore agreed with all the points made by the appellant's expert witness, especially regarding urbanisation, coalescence and the potential for further development.

Regarding affordable housing, in paragraphs 56 and 61 of the Inspector's report he states that the council did not carry out or commission its own viability assessment or critique and that as the appellant's valuation was the only one full independent valuation produced he preferred it to WODC's broad criticisms.

You will probably know that I have considerable experience in this area. WODC had made some important points. HAG also raised other concerns but as a Schedule 6 party HAG's views were regarded with some scepticism.

Once again, the expert witness' views prevailed.

Should further confirmation of the above points be needed I enclose an extract from the appellant's closing submission.

I believe that the above experience is in no way unique and lead to the general point that if WODC is serious about fighting an inquiry it has to consider commissioning expert independent reports and using expert witnesses.

Like any other council in this time of austerity, WODC has budgetary constraints unlike developers who will invest significant sums with the potential for high returns. This is the reality but unless WODC reconsiders its position then officer time will be wasted fighting unequal battles with the additional prospect of appellants seeking to recover their costs.

Finally, the springing of unwelcome surprises on parties seeking to support WODC in a planning inquiry is very bad practice and something I will be wary of should I ever become involved in another inquiry.

Yours sincerely

Stuart Brooks

Written in a private capacity but with the support of the members of the HAG Committee

WODC Reply to Stuart Brooks – Dated 5 August 2016

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Our Ref: CG/MS

5 August 2016

Dear Mr Brooks

PLANNING INQUIRY OBSERVATIONS

I am writing in response to your letter of 8 July addressed to David Neudegg, and must apologise for the delay in doing so.

I am grateful for your reflections and observations which I have discussed with relevant colleagues, and would make the following comments:

As local planning authority, members and officers always reflect upon the detail of appeal decisions, particularly those cases where the appeal is upheld. In terms of how we handle individual appeals, we make judgements in every case as to whether to engage external consultants; Chris Wood, who is our Senior Planner (Appeals), has a very good track record and so we are able to utilise our resources carefully and to best effect by only going outside the Council for expert advice when we believe it is essential to do so.

You will appreciate, however, that every Inspector is different in how they judge the evidence presented to them and in this case the balance of that judgement went against the Council. We recognise, on that basis, that we may need to consider placing more reliance on external witnesses in the future.

Finally, with reference to the late publication of the Statement of Common Ground, it is an unfortunate fact that these are rarely produced more than a few days prior to the commencement of an Inquiry. Whilst I understand your concerns about 'the springing of unwelcome surprises', this is dictated to a large extent by the nature of the Inquiry process and the expectations of individual Inspectors. Nevertheless, I have discussed the timing of the publication of these statements with relevant officers and asked them to consider what can be done to avoid such circumstances arising in the future.

I hope that the above will provide you with some reassurance.

Yours sincerely

CHRISTINE GORE
Strategic Director

Email from Stuart Brooks of HAG to Christine Gore of WODC – Dated 7 August 2016

Dear Ms Gore,

Thank you for your reply dated 5 August to my letter to David Neudegg dated 8 July.

I take note of the points you have made but would like your comments on the second point I made in relation to the agreed statement of common ground. This point was in relation to the agreed position that “Long Hanborough is a suitable location to accommodate significant residential growth,” in particular who authorised this statement and on what basis.

I have attached a copy of my letter to David Neudegg with the relevant section highlighted.

A prompt response would be appreciated as I am considering addressing the next meeting of full council on the substance of my letter and your response as both raise matters of a general nature of which all councillors should be made fully aware.

Yours sincerely

Stuart Brooks

Email from Christine Gore of WODC to Stuart Brooks of HAG – dated 11 August 2016

Dear Mr Brooks,

I apologise for omitting to deal with this specific point in my previous response.

In terms of who 'authorised' the statement, there is no formal mechanism for authorising any appeal documentation. As I previously indicated, Mr Wood, our Senior Planner (Appeals) is very experienced in preparing for and appearing on behalf of the Council at appeal hearings and Inquiries, and his work is not 'signed off' as such by any more senior officer. I should say, however, that proofs of evidence, Statements of Common Ground etc ARE checked by our legal advisors, whether internal or external, and they pay particularly close attention to the wording used in such documents.

In relation to this specific statement, it is based on the view that as a medium sized village defined as a rural service centre in the submission draft of the emerging Local Plan, it would be difficult to argue that Long Hanborough is NOT suitable for 'significant' additional housing – 'significant' is not the same as, nor does it imply, 'substantial', but could refer to a relatively small number of dwellings. We would certainly expect a settlement the size of Long Hanborough to accept more than 'small scale' development, subject to other matters such as the ability of local infrastructure to absorb such development – and this of course was a matter that was well aired at the recent Inquiry.

I trust that this is of some assistance.

Yours sincerely,

Christine Gore

Strategic Director

West Oxfordshire District Council

Stuart Brooks Address to WODC Full Council Meeting on 7 September 2016

Note: This address was based on the above correspondence and informed all district councillors of HAG concerns with regard to WODC's input to planning inquiries. The talk was limited to 5 minutes.

In the last year, of five planning inquiries into housing schemes for over 50 homes, this council lost four.

My address is based upon correspondence I have had with your Chief Executive and the Strategic Director responsible for planning following a recent inquiry into a 129 home development in Long Hanborough.

WODC's responsibility was to defend the decision of the Uplands Planning Committee with the Parish Council and the Hanborough Action Group participating as schedule 6 parties. I represented the Action Group which has widespread support in the village.

It is not my intention to comment on the outcome of the inquiry but would like to make some observations about WODC's input, which your Strategic Director concedes could have been better. I hope that sharing our experience may be of some use to you.

Prior to an inquiry, the appellant and local authority have to agree a Statement of Common Ground. This document was signed and distributed to third parties less than five calendar days before the inquiry began, well beyond the prescribed deadline.

Your Strategic Director contends this is normal practice but does not seem to appreciate that this gave the Parish Council and our group little time to react to its content.

It contained two very important points agreed by the council and appellants.

The first was no surprise in that WODC admitted it could not demonstrate a five housing land supply. The inspector therefore concluded that policies in the 2011 plan were out of date and any contained in your draft policy carried very little weight. Thus to argue for refusal on the basis of any of your policies was futile.

The second point was a declaration that Long Hanborough was suitable for significant housing development. This is a policy statement that has wide ranging implications for the village, both for this inquiry and others that are in the pipeline. It seems that WODC's appeals officer had full delegated authority to make this concession and did not need the approval of a more senior officer. Your Strategic Director then sought to qualify this position by saying that legal advisors had checked over the document and that anyway, "significant" was not the same as "substantial." Many lawyers have made very good livings on the basis of such wordplay.

Should the future of a community be decided by a nuance and such a policy concession by an officer when full council has yet to debate a revised planning policy? Strategically, was it an unnecessary concession that would undermine the case?

Regarding the role of legal advisors, it is never their job to comment on commercial terms, simply incorporate them into a legal contract.

Even small developments of ten or twenty houses are multi million pound projects. In our situation the appellant spared no expense, engaging an eminent Q.C, supported by five expert witnesses whereas WODC simply relied on the appeals officer and counsel.

WODC's case was based on the impact of the development on the local landscape while also questioning the amount of affordable housing to be built.

Hanborough Action Group recorded the proceedings. If members listened to that recording they would hear a brutal cross examination of your appeals officer, questioning his credibility and competence, in particular his lack of formal training in the process of assessing Landscape and Visual Impact and his failure to adhere to industry standard assessment procedures.

This criticism resonated with the Inspector and time and again in his report, he accepted the argument advanced by the appellant's Q.C. that the views of their expert witnesses should prevail over those expressed by the appeals officer. Indeed there is implicit criticism of WODC at one point when the inspector writes "the council has not carried out or commissioned its own viability report or critique of that prepared by the appellant....{as} the appellant's valuation is the only one full independent valuation to have been produced I consider it to be preferred to the broad criticisms of the council." (paras 56 and 61)

A success rate of one in five shows that our experience cannot be attributed to a single inspector and do not be complacent that when a new policy is in place the problem will be solved. There are always those who will eloquently argue a case and by the time you have a new policy all may be lost.

In summary I would ask you to consider:

- Is it right that the council agrees concessions so late in the process and should those concessions be subject to a more rigorous authorisation process?
- Is it right for the council to place itself at a disadvantage by relying on officers alone to defend appeals for large projects or does it need to commission its own expert witnesses in every case?

I appreciate that WODC has budgetary constraints unlike developers who will invest significant sums with the potential for high returns. This is the reality but unless WODC reconsiders its position then officer time will be wasted fighting unequal battles with the additional prospect of appellants being awarded costs.