Sevenoaks
DISTRICT COUNCIL

Late Observations Sheet

DEVELOPMENT CONTROL COMMITTEE

09 June 2011 at 7.00 pm

Late Observations

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DEVELOPMENT CONTROL COMMITTEE

9 JUNE 2011

LATE OBSERVATION SHEET

Item 5.01 & 5.02 SE/11/00470/FUL & SE.11.99417/FUL Green Coppers, Wildernesse Avenue, Sevenoaks

Update to report for Green Coppers, Wildernesse Avenue, Sevenoaks

Clarification

Permitted Development rights were not removed under planning permission SE/08/00930/FUL (for the replacement dwelling) nor any of the following amendment applications other than those relating to windows in the west elevation.

The site is within a Conservation Area and as such permitted development rights for extensions, outbuildings and other development are more limited than usual.

Given the limited extent and nature of these applications, it is the Officer's view that it would now be unreasonable to impose a restrictive condition relating to permitted development rights upon the whole house where this has not been considered necessary before.

Officer's Recommendation

The Officer's Recommendation remains unchanged.

Item 5.07 SE/10/03522/FUL Chelsham, Church Road, Hartley, Longfield

This item is Withdrawn from the Committee as Officers have been given delegated authority to determine the application.

Item 5.09 SE/11/0075/LBCALT Hodsoll House, High Street Farningham

Proposal:

Amend to refer only to the demolition of existing outbuilding. Remove all reference to the erection of a replacement.

Item 5.10 SE/10/03498/FUL 81 High Street and The Shambles, Sevenoaks

Updates

It is the applicant's intention to remove the majority of equipment that would make up the outdoor seating area from the Shambles at the end of each day. The only equipment

proposed to be left in the Shambles would be the umbrellas and planters. The umbrellas and planters would not be fixed to the ground but both umbrellas would be weighed down by concrete slabs and, at the very least, the weight of the soil in the planters would provide stability for them. Since they would not be fixed to the ground it would therefore be possible to move the umbrellas and planters if necessary.

I have further reviewed condition 5 and in light of the above points I consider it appropriate to amend condition 5 of the recommendation to refer to any additional equipment and paraphernalia associated with the operation of the outside cafe area. A revised condition is included below.

The applicant has confirmed that they have permission from the Town Council to use the two existing planters in The Shambles to create the outer edge of the seating area, if necessary.

The lights and heaters fixed to the umbrellas would be powered by electricity supplied externally within The Shambles.

In addition, the applicant has specified that they intend to put out 22 tables and 88 chairs within the proposed seating area.

No comments from the West Kent Public Rights of Way Officer have been received.

Officer's response

Subject to the inclusion of the condition below on any approval of planning permission this information does not affect the officer's view and so the recommendation for approval as in the main papers still stands:

5. The tables, chairs and any associated equipment or paraphernalia associated with the operation of the outside cafe area shall be removed from the Shambles at the close of business each day.
Reason: To ensure that the development preserves the character and appearance of the area as supported by policies EN1 and EN23 of the Sevenoaks District Local Plan.

Item 5.11 SE/11/00102/FUL Land adj to 1 & 2 Shacklands Cottages, Shacklands Road, Shoreham

Further comments

Environmental Health have advised that have no objection to the proposal.

The Environment Agency have advised the following:-

We have no objection subject to the applicant ensuring that the continued use of a private sewage treatment system does not cause contamination of groundwater.

This is achieved by ensuring that the soakaway system does not allow effluent to discharge directly into groundwater (unlikely if the soakaway system is built using a typical drainage field arrangement). The plant must continue to be maintained in accordance with the manufacturer's instructions to function efficiently going forward.

Recommendation

The Officer recommendation to approve remains unchanged, an informative note is suggested to the bottom of the decision which shall read:-

Please be advised that the soakaway system does not allow effluent to discharge directly into the groundwater. The plant must continue to be maintained in accordance with the manufacturer's instructions to function efficiently going forward.

Item No. 5.12 SE/11/00765/FUL - 66 London Road, Sevenoaks

Update to report:

Clarification

Recommended condition (2) relates to the submission of a scheme for mechanical ventilation of the proposed kitchen area of the A3 unit.

This condition will ensure that an adequate system is installed and maintained to control the discharge of odour and grease from the kitchen extract. The condition allows the exact details of such a system to be agreed at a later date (with the advice of the Environmental Health Officer). Noise data is also required to ensure that the unit does not cause unnecessary disturbance.

The condition was previously considered necessary in giving permission for SE/05/01147/FUL.

The condition ensures that the development does not result in harm to any surrounding residents (such as those on London Road) in terms of smells or noise.

Officer's Recommendation

The Officer's Recommendation remains unchanged.

Item 5.13 SE/11/01024/FUL Proposed Telecom Mast North of Junction with London Road, Shurlock Avenue, Swanley

The application is now Withdrawn.

Item 5.14 SE/11/01076/FUL. Land south of service station, London Road, Swanley

The following comments have been received from KCC Highways;

No objection: The equipment will be subject to separate consent of the highway authority and detailed siting must be in accordance with that consent. Informative INHI05 will be appropriate.

The proposed informative states the following, and has been added to the permission; It appears that the proposal involves works that affect the highway and / or its verge. Before commencing such works, you must obtain the separate consent of the Highway Authority. Please contact Kent Highway Services, Network Operations on 01474 544068.

The following two representations have also been received from neighbours, which raise the following concerns;

The close proximity of the proposal to the houses
That Conifer Way is very child orientated
Health issues generated by phone masts
Health and safety issues of having a phone mast sited in a petrol station
That Swanley has numerous mobile phone mast already
That the mobile phone signals in Swanley are strong enough already and another mast is therefore not needed.
The proposed mast would not be in keeping with the area.
The local houses will be devalued.
The control box will be a distraction for drivers
That Swanley has been chosen as the areas of Bexley and Sidcup have more planning problems.

A petition with approximately 66 signatures objecting to the mast has also been submitted.

Officer's response

The siting and appearance of the mast have been adequately discussed in the officer's report, as has any potential health issues. In addition the agent has submitted information detailing why the mast is needed in this area, and it is part of a wider scheme to improve the 3G service. This has also been commented on in the officer's report.

The KCC Highways officer's comments, mentioned above, show that there are no objections and if it is felt that any part of the equipment would be a distraction for drivers than this will be dealt with as part of the application to Kent Highways.

Property value cannot be taken into account as a material consideration when determining a planning application. The comments with regard to the planning at Bexley and Sidcup is also not a material consideration.

With reference to the colour of the mast the agent has submitted additional information which states that it will be green in keeping with the additional street furniture.

The recommendation has remained unchanged.

Item 6.01 301/05/085 Four Winds, Farley Common, Westerham

Amendment

Head of Development Control Appraisal:

The reference in the first sentence of paragraph 16 to the brick wall along the "western" boundary should be amended to read "eastern" boundary.

Further Correspondence

Further correspondence has been received from Mr R Banister and Mr M Banister since the matter was previously presented to Committee on 10th March. This reiterates previous concerns and highlights perceived process failures by the Council in dealing with this matter. This letter together with the response from the Council is attached for Members information as Appendices 1 and 2.

Further correspondence dated/received on 9th June 2011 from Mr Banister is also appended. These comprise 2 letters dated 9 June 2011, the first is Appendix 3, the second is Appendix 4.

These do not alter the officer recommendation.

Appendix 1
Supplementary Information

Deputy Chief Executive and
Director of Community and Planning Services:
Kristen Paterson

Sevenoaks
DISTRICT COUNCIL

Mr M Banister and Mr R Banister
Farley Edge
Farley Lane
Westerham
Kent
TN16 1UB

Tel No: 01732 227268
Ask for: Kristen Paterson
Email: kristen.paterson@sevenoaks.gov.uk
My Ref: 3200/796D/JK/tj
Your Ref:
Date: 7th June 2011

By Email: richardb@baniftec.com and suzyp@webspeed.net

Dear Mr Banister,

Re: Four Winds, Farley Lane, Westerham, Kent, TN16 1HB

Thank you for your message of 30th May 2011, enclosing a letter dated 27th May 2011. This was received on 31st May and I respond on Mr Hales' behalf.

In general, many of the points you raise in your letter of 27th May 2011 are similar to those raised in your four letters in April, to which the Council's letter of 21st April 2011 by Mr Kehoe responds. For convenience, I attach a copy of that letter and for clarity we do not wish to alter that response or that of 5th May 2011 in the light of your later correspondence.

In reply to your request about 'process failure', there are good reasons for the Council to consider the expediency of issuing an Enforcement Notice in response to development at Four Winds.

Development has been carried out without the necessary planning permission on land that sits in the Green Belt and an Area of Outstanding Natural Beauty. The development at issue mainly comprised the basement garage, retaining walls and access ramp and a brick boundary wall about 2.5 metres high.

There is planning permission of February 2008 for a house, (SE/07/03532), but not for a garage as this was specifically removed from that proposal, at the Council's request, before permission was granted.

Development nevertheless took place in 2008, including the basement garage/store and 2.5m boundary wall. After the Council identified a breach of planning control, an application was submitted in March 2009 and refused in September 2009.

The floorspace size of the garage/store structure is clearly substantial relative to the floor area of the house, (house floorspace about 350 m2, footprint 180m2, basement garage/store floorspace about 150 m2, footprint 150m2).

You took the decision to appeal which was considered by the independent Planning Inspector who dismissed the appeal in March 2010. No legal challenge was made by you to that decision.

Whilst initially contemplating a more onerous requirement, the Council is now considering a significantly less onerous enforcement action, that would allow the main structure of the basement garage/store to remain (out of use) and up to 2 metres of the boundary wall as well, albeit with restoration of ground levels at the garage access ramps.

You referred the matter to the Local Government Ombudsman, resulting in a conclusion that it is outside the Ombudsman's jurisdiction. This is of course the organisation that follows up complaints made against the Council.

The criticisms you make of the Council's stance on engineering, including the role played by its advisors, were either matters for the Planning Inspector to take into account in his decisions, or were matters for you to raise by way of a legal challenge to that appeal decision. The appeal decision has not been quashed and should carry significant weight in assessing the expediency of enforcement action. It is now over 12 months since the result of that appeal and a decision on the expediency of enforcement action should now be made.

The above points demonstrate that the principal steps in the due process have been followed.

Nevertheless turning to points (1) to (4) of your letter of 27th May 2011, as you requested:

(1) There is no planning permission for the basement garage/store. You refer in Note (1) to the role of the Council's Building Control staff, a matter considered by the Planning Inspector who stated:

> *"4. The Appellant says that the Council's Building Inspector has been kept informed throughout and has visited the site on a regular basis, although works have apparently progressed under the Building Notice procedure so no structural calculations or similar details have been produced. Whatever the case may be in that respect the Council's Planning Officer did not see the works until August 2008 and it was not until 2nd September 2008 that a letter was sent to the Appellant advising of an apparent breach of planning control and requesting the application now subject of this appeal. At that time, the dwelling has been constructed to first floor level, the roof not being erected until October 2008."*

As you will be aware, the Building Control staff do not consider the Planning merits of a proposal and separate applications must be made.

You refer to several legal cases in your Note 1. These focus on the issue of negligence and the duty of care owed by one person or body to another. However, for local authority planning functions, the function is exercised in the public interest rather than for the benefit of the individual. Where an individual suffers as a result of a local authority

decision on a planning application, he has no course of action for damages. The remedy is by way of the appeal to the Secretary of State and if appropriate to seek a judicial review of the Secretary of State's decision.

(2) After the credentials of the first engineer were questioned by you and prior to the Planning Appeal, the Council did refer the case to a second engineer who supported the findings of the first one.

(3) Same response as for (2) above

(4) I note that you refer to the second engineer as a qualified Structural Engineer, but go on to question his contribution to the Appeal Hearing. These were matters for the Appeal Hearing itself, if there were such concerns they should have been raised at the Hearing so that the Inspector could take them into account, or by way of a legal challenge after the Hearing.

As to your assertions of Bad Faith, I do not agree with your analysis, for all of the reasons set out above in this letter relating to the proper Planning process which we have followed.

In explaining the difference between the Local Planning Authority's viewpoint on this matter and your own, I would like to add some further explanation.

Under Planning Policy Guidance 2 "Green Belts" there is a general presumption against inappropriate development (such as the garage/store) in the Green Belt. Such development should not be approved except in very special circumstances. It goes on to state:

> *"3.4 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."*

Whilst your case for very special circumstances reflects emergency engineering works, the large size of the garage/store relative to that of the main house does weigh against this in the planning judgement, be that a judgement by the Local Planning Authority or the Planning Inspectorate.

As to the role of Councillors, I simply wish to reiterate the comments in our letter of 21st April 2011:

> *"There is no requirement in law for Members to sign any sort of declaration as you have suggested. Furthermore, a Councillor does not take decisions as a private individual but as a Councillor on behalf of the Council. Local Authorities as corporate bodies, are separate and distinct from the persons who comprise an authority for the time being. This means that individual*

Councillors do not incur personal liability for the consequences of any decisions that they make when acting in good faith."

Furthermore, where the Officers do identify a valid matter for consideration, as in the case of the 2.5 metre high wall, we do seek to inform Councillors of remaining issues as is set out in the report to go to the 9th June 2011 Committee meeting. You will recall that our letter of 21st April 2011 referred to an early June Committee meeting.

Finally, there is a process for you to contest an Enforcement Notice if it is issued by the Council. That is a further option of appeal to the independent Planning Inspectorate against the issuing of such a notice.

Yours sincerely,

Kristen Paterson
Deputy Chief Executive &
Director of Community and Planning

Enc: 21/04/2011 letter

cc Robin Hales
Kristen Paterson
Christine Nuttall
Jim Kehoe
Cllr Bracken
DCC Members

Farley Edge,
Farley lane,
Westerham,
Kent. TN16 1UB.

Tel: 01959 562 117

Friday 27th May, 2011

Dear Mr Hales, (Ms Paterson, Mr Kehoe, Mr Morris, and Mrs Nuttall).

Thank you for your letter dated 11th May sent on your behalf by Ms Paterson in reply to my letter dated the 5th of May 2011. In my letter I gave numerous clear reasons why you are the appropriate person to lead the meeting that the Council has acceded to.

In respect of the above I also note your unequivocal statement of response written on your behalf by Ms Paterson..... "I disagree that there has been a failure in the process."

I offer you four clear illustrations of process failure and acts of "Bad Faith" by SDC

1. SDC is now proposing enforcement action on matters that SDC Officials have previously approved, and given their clear permission and assurance to proceed with. (See note 1).

2. The Engineering opinion that SDC utilised in its original dismissal of our planning application was incorrect as to fact, and given by someone who was NOT a Structural Engineer, even though he was presented by SDC as holding these qualifications, but was in reality **un-qualified** as a Structural Engineer and is not a member of any of the regulatory institutions. (See note 2). Even if you set aside the "proclaimed" Engineers lack of qualifications, once the Engineers failings of fact had been high lighted by us to SDC, as they were prior to the original planning decision, it was negligent of SDC not to pursue determination of the true engineering facts to permit an honest judgement compliant with "Good Faith" requirements to be made in light of the pivotal nature of the engineering and site issues to the application. The ground issues informed the necessity of the engineered structure we built, and was the core point of the planning application itself, and the reason the application was being made. **SDC had no right, or ability, in judgement to arbitrarily and capriciously determine it was right, and we were wrong. - And certainly not relying on the advice of an un-qualified engineer Structural Engineer.** Instead the Officers never sought to resolve the disputed facts, or inform the Councillors of them, nor did they demand an explanation, or supporting evidence and references from the un-qualified SDC "proclaimed" Structural Engineer to corroborate and sustain his incorrect "opinions". Instead, quite improperly Officers used and presented incorrect information to Members, who then applied it in judgement and decision. A clear act of Bad Faith and process failure by both Officers and Members.

3. These same incorrect and unsubstantiated engineering opinions, and misrepresentations in respect of the qualifications of SDC "proclaimed" Structural Engineer, were then presented AGAIN in written submissions to the Appeal Inspector in a further clear case of Fraudulent Misrepresentation under the Misrepresentation Act 1967. A clear act of "Bad Faith" and process failure by Officers. (See note 2)

4. Whilst SDC was represented by a new and this time qualified Structural Engineer at the Appeal, this Engineer acknowledged that he had been appointed only 24 hours before, knew nothing of the specific case details, and had never been to site. Despite this he confidently validated the original un-qualified Structural Engineers incorrect engineering opinions without verification or proof. -- Furthermore he then offered alternative engineering

solutions to the Appeal Inspector with no professional justifications; alternatives he was in no position to suggest having no facts or knowledge to base them on, and any competent professional would know were inadmissible and should never have been presented. Mistakenly the Inspector then took these into account, utilised, and relied on these speculative alternatives in his judgement. This obviously unprofessional action by SDC's Engineer contravened the rules related to his Engineering Institutes' codes of professional conduct and ethics, and also the required professional standards of conduct in respect of the provision of expert witness testimony. Similarly the SDC Engineer broke the PINS code (Procedural Guidance 01/2009, paragraph 1.13.2) for the provision of Expert Witness testimony that became law in January 2009. (See note 3). These demonstrable failings were quite obviously extremely prejudicial to the Appeal outcome as they were central to the judgement, and as such represent another clear act of "Bad Faith" and process failure by SDC and its consultants for whom SDC is responsible.

In light of these four clear failures of process, and demonstrable acts of "Bad Faith," can you please explain, in terms, how you believe your statement, "I disagree that there has been a failure in the process" in your letter of the 11th May 2011 is true and justified.

In the absence of an extensive, clear, and credible explanation that addresses all four points in detail, I must demand that both you and Ms Paterson (since she is also Head of the Planning Dept) retract this false statement, and acknowledge the numerous process failings, and acts of "Bad Faith" by SDC in this case. In respect of this "reasonable" demand, both of you should remember that you are in turn under an absolute legal obligation to be "reasonable" at all times in the conduct of your respective Offices and related duties. Both of you, and the Council as an entity, must also act in "Good Faith" at all times, the legal definition of which is to show; "**honesty, fairness, lawfulness of purpose, and the absence of any intent to defraud, act maliciously, or take unfair advantage.**"

Clearly the four illustrations I have put before you are undeniable as to fact, and your disregard of them is not consistent with you as individuals or the Council acting in "Good Faith" as defined, and especially so since these failings have been pointed out on numerous prior occasions to you and other individuals in the Council. Still the Council has proceeded evermore "unreasonably" and "improperly" in respect of its subsequent actions, specifically the pursuit of an illegal and improper Enforcement hearing, and related Enforcement Notice. Therefore you must either validate your statement in detail addressing each point in turn, or accept its falsehood, and withdraw it. Failure to do so will jeopardise the authority of your Office, destroy your own credibility in your respective roles as the two most senior Officials of the Council, and jeopardise your individual positions. The Council cannot be lead by people who are anything less than scrupulously honest, and uphold the highest ethical standards in their own conduct, and the conduct of those they are responsible for in the execution of the Councils activities.

Members are forced to rely on the "professional" guidance and opinions of Officers, as they look to you for advice and stewardship of their affairs. This must be a relationship based on unimpeachable trust and dependability so as to maintain public confidence in Members and the Council. My assertions above are true, and when this is confirmed correct, this must be of grave concern to Members and call into question not only the judgement of senior management, and their suitability, but public confidence as a consequence.

SDC has never responded satisfactorily to our points other than with a heady mix of denial and complacency, presumably in the mistaken belief that they held a fair planning hearing with a decision taken by Members which subsequently received confirmation via an Appeal judgement .... End of story... A completely reasonable process... why are we (SDC) suffering Mr Banister's endless letters of complaint? – The fundamental point is this:
If SDC as an entity and the Officers within it as individuals are prepared to pursue matters as outlined above, telling untruths, misrepresent their qualifications, misrepresent and dissemble matters of fact, omit material issues, prejudice Statutory hearings with material that should never be presented, completely omit the opposing arguments, and then guide and advise Members in judgement using falsehood and omission, while Members then completely failed to revue ALL the information as is required in law.

How can you believe that a template such as this would stand examination by an outside authority? In the light of this it is all the more remarkable that you are able to state, presumably in all seriousness, that you believe there has been no "failure in process." Given this is the process you have pursued and therefore a process you consider "reasonable", I am sure you believe there hasn't been any failure! Its business as usual, SDC style! The point is these illicit activities can't validate a lawful outcome, unlawful begets unlawful.

I am sure my long, detailed, and involved letters are EXTREMELY tedious to all (they certainly are to write), however they are already worth their weight in gold by way of proof and record of our open, transparent, and "reasonable" efforts to achieve a reasoned resolution compared to the Councils obfuscation, denial, failure to engage, and complete "unreasonableness," and this despite Officers and Members legal obligations to act in a professional and "reasonable" manner. Confronted with such a wall of denial and unwillingness to engage with these important points of dispute and principal, how else would you expect me to act (?) given that it is a complete affront to have legitimate and proper issues of fundamental legal concern and importance go unaddressed, and not taken seriously by even you the Chief Executive.

Let me be quite emphatic; I simply cannot understand why when presented with indisputable facts the SDC Officers at all levels effectively ignored them, and in the process exercised a complete lack of judgement in the mistaken belief that they could manipulate their way to a successful resolution. More importantly given Officers own legal responsibilities and obligations to act "reasonably" and in "Good Faith" they have exposed themselves as individuals to the potential of prosecution, everyone from you the Chief Executive downwards. - All of this information, and much more besides, was detailed in my letter of Complaint sent to the key individuals on 13th July 2010 (See note 4). This letter contained numerous other failings of procedure and yet they have never been formally addressed, yet another clear failure of procedure, and act of "Bad Faith!"
Moreover how Officers could fail to clearly inform Members of these core issues, and associated complaints is beyond comprehension given Officers legal obligations and liabilities in respect of the execution of their duties. The presentation by Officers of a detailed, balanced and comprehensive Enforcement report, containing ALL the facts, one would think was an obvious, and "reasonable" **minimum requirement**, especially in view of the legal responsibilities Members' have in respect of ANY decision they make. - Transparently this minimum threshold has never been met as set out in Mr Kehoe's letter of 30th March 2011, which is of course yet another procedural failure and act of "Bad Faith!" More fundamental still, is the related question. How did this improper and illegal activity ever progress to even the point of Enforcement, and who were the participants in all these decisions that led to this point, and on what basis were the progressive procedural steps made given that they were successively built on legally inconceivable, improper, prejudicial, and unsustainable prior stages?

Fundamentally the failure of Officers to inform Members about these matters should be a question of the gravest concern to Members given their clear Personal Liability if they are proven to have acted in "Bad Faith" (which legally is anything less than the transparent application of Good Faith and related principals - see above), **and remember ignorance is no excuse, Members have a clear legal obligation to fully inform themselves of ALL the facts when reaching and making a decision, and a failure to do so, is itself an act of Bad Faith.**

Further how any Member could claim to have reached an informed and compliant decision in a legally sustainable context that failed to question, let alone supported, a single one of the improper activities of Officers as described above, or noted in other correspondence, or even more incredibly then followed Officers related recommendations, is beyond me, and legally suicidal.
Any decision that gave succour to Officers' unlawful activities as outlined above, would be a decision based on a clear act of "Bad Faith" – "An intentional dishonest act by not fulfilling legal obligations, and violating basic standards of honesty"- and knowingly doing so. [A fundamental tenet of which is to inform yourself of ALL the facts when making a decision, which if Members had done, would have meant they knew of the demonstrable acts of "Bad Faith" and procedural failure undertaken by Officers in the name of Members, which would have made it impossible to apply any judgement based on a known injustice, without itself being an act of clear "Bad Faith." – Everyone knows it's impossible to make a legal outcome, out of an illegal process, surely? Or are you really attempting to suggest that you believe unlawful actions of Bad Faith and procedural failing can go

on to create a legal outcome and resolution – No Mr Hales surely not, in which case what the heck do you think you are doing and ratifying?]
Quite obviously, if Members act in "Bad Faith" they are personally liable, and open to prosecution. Indeed just the accusation of such impropriety by Members would quite obviously require an independent investigation by the appropriate authorities, and in all probability Members suspension from the DCC while it was investigated. Clearly if it was then proven, as sadly I must contend the facts indicate it would be, then in all likelihood it would jeopardise Members continued status as Councillors. Regrettably under these circumstances it is hard to imagine how anyone confirmed as having acted in "Bad Faith" could then remain in office given the loss of their reputation and consequently their credibility.

I find myself debating whether or not this is the unhappy position that ALL bar one Member of the DCC now find themselves in. - Obviously I will have to make a decision on what I consider the exact position to be, in respect of the observations made above. First however it would seem "reasonable" that I once again reference you to the opening paragraph of this letter, and invite you to make a full retraction of your statement, and the admission of culpability of Officers and the Council's clear failures of process and acts of "Bad Faith" in this case.

This has gone on long enough without clear, extensively detailed, and informative answers from you and SDC, and I insist that you clarify all my points in this and previous correspondence as a matter of urgency, and comply with my letter of the 5th of May, and account for these unreasonable, irresponsible, and legally improper actions by Officers given the unlawful position that you, and your Officers have ALREADY, in all likelihood, placed Members in.

Members have the ultimate legal responsibility, authority, and accountability for the decisions they make, which must consider, and be based on ALL the information. In respect of these important points and understandings I would be interested to learn of the legal advice Members have sought and been given, and their reaction to the position, predicament, and clear culpability that Officers have in all likelihood now placed Members in. I would have thought Members would demand your compliance Mr Hales with my letter of the 5th of May, and similarly respect and support my demands, made in this letter for a full detailed explanation and justification of your statement, or full retraction and a clear admission of process failure, acts of "Bad Faith", and SDC's acceptance of liability.

With all that I have written and presented to you, your letter and stated view "I disagree that there has been a failure in the process." ...and its inherent confirmation that the actions and behaviour of Officers and Members are in effect exemplary is a paradox.

In writing your reply you must consider your legal position and responsibilities (previously set out above) and what an independent authority would make of all of this? At the very least they would want to start by clarifying matters of fact, then in your case they would apply the higher professional threshold of judgement in respect of your actions related to those facts, that of a "knowledgeable and informed reasonable man" – reflecting your position, authority, and responsibilities.

I would ask you to correspond within 7 calendar days as we all need to bring this to a conclusion. Given the gravity of these matters I expect a comprehensive reply from you personally that addresses ALL the points made in this letter that is consistent with the thresholds noted in the paragraph above. Mindful that if your reply is not satisfactory, this is in all likelihood the only alternative left open to me.

Yours sincerely,

Mark Banister.
CC:

Michael Fallon MP

CC: continued....

Members of the DCC.
Ms Paterson
Mr Kehoe
Mr Morris
Mrs Nuttall
Cllr Bracken

Notes of Addendum to Letter.

Note 1.

- The access ramp provides the support to the concrete retaining walls that hold back the soil on either side, which in turn access the drainage system. They were only constructed AFTER approval was sort from the SDC Building Inspector and Greendoor, SDC's agents. I also sought the Building Inspector's assurances that in matters related to safety, and the related foundation, drainage and sump issues, that all formed part of these related works, that Building Control and not the Planners had the final authority. I received this categorical assurance and only then constructed the retaining walls, ramp, and sumps accordingly, with the full assent of Building Control who also approved the actual method and construction in situ as it happened. I also note that a Building Inspector has seven days to send a note of non-compliance in respect of the buildings construction to include adherence of construction form. At no point have we EVER received such a note, further confirming my statement above and the Councils knowledge of and acceptance of same. I reference some legal cases below that will assist you in understanding the Councils position. (All have a baring but particularly those highlighted in blue).
  Donoghue v Stevenson [1932] UKHL 100
  Candler v Crane, Christmas & Co [1951] 2 KB 164
  Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465
  Home Office v Dorset Yacht Co Ltd [1970] UKHL 2
  Smith v Eric S Bush [1990] UKHL 1
  Caparo Industries plc v Dickman [1990] 2 AC 605
  Henderson v Merrett Syndicates Ltd [1995] 2 AC 145
  White v Jones [1995] 2 AC 207
  Ministry of Housing and Local Government v Sharp [1970] 2 QB 223
  Spartan Steel & Alloys Ltd v Martin & Co (Contractors) Ltd [1973] 1 QB 27

Note 2

- Mr Richard Morris of SDC in a letter dated 29th November 2010 acknowledged that Mr Haime **(SDC's first Engineer)** *"... is not currently a member of a Professional organisation,"* and consequently is therefore not current, and has not undertaken any recent and ongoing professional development that would ensure his views were compatible, and compliant with the standards required by any Professional organisation regulated by the Engineering Council. Only then would that qualify him to offer a professional opinion that can legally be relied upon, and is therefore in compliance with the associated PINS code (Procedural Guidance 01/2009, paragraph 1.13.2). The fact that Mr Haime is not in compliance with the overseeing regulatory bodies' requirements for the provision of expert witness opinions, nor the standards required for statutory submissions, voids his opinions and submissions in these forums entirely.
  Further it should be noted that Mr Haime was only once registered with the Engineering Council as a "Building Services Engineer" in 1979, and has never been registered since. – **More Importantly he is NOT registered with any of the three Structural Engineering bodies, nor has he ever been in the past, and the Engineering Council, the regulatory**

body that governs all engineers in the UK, do NOT recognise him as, or ever having been, a Structural Engineer or qualified in anyway to offer related professional Structural Engineering opinions. The written admission alone which Mr Morris has freely acknowledged and conceded is sufficient to void Mr Haime's contribution to both the original planning application, and the subsequent Appeal, and thus render the entire planning decision and process, prejudicial, unsafe, and consequently invalid. – an unequivocal admission of failure and illegality by SDC.

Note 3

- In the same letter dated 29th November 2010 Mr Morris of SDC affirmed and offered the following confirmation that Mr Hook **(SDC's Second Engineer)** who represented SDC at the Appeal hearing, -- "**supported the views of Mr Haime"**,(SDC First engineer).
(Several of Mr Haime's engineering opinions are indisputably factually incorrect, as highlighted in my letter to Jim Sperryn dated 16th June 2009, and subsequently validated as incorrect by another independent Structural Engineer) –
This represents yet another significantly helpful admission by Mr Richard Morris, as it serves to underline the incompetency of Mr Hook, as he affirmed Mr Haime's errors of fact, and consequential misjudgements. Indeed despite Mr Hook's extensive list of qualifications, he broke his professional body's guidelines in respect of professional testimony in his speculative alternative suggestions and other contributions to the Appeal hearing as set out in my detailed letter of complaint to SDC dated 13 July 2010. When you review this detailed document you will find numerous paragraphs that address these specific failings. Any single aspect of Mr Hook's conduct is sufficient to entirely invalidate his contribution to the Appeal and therefore SDC's case, and the Inspector's judgement since it relied upon Mr Hook's testimony in no small measure as referenced in the Inspector's decision text. Importantly from a legal perspective it only requires us to uphold a single argument of fault, to render that entire hearing and its ruling voided, whereas SDC must successfully defend every single issue in order to sustain the Inspector's ruling. Furthermore due to the entirely prejudicial testimony emanating from Mr Hook, that was clearly improper and illegal, which was not in compliance with the PINS code (Procedural Guidance 01/2009, paragraph 1.13.2). While the Inspector behaved correctly, the technical basis of the decision is unsafe. (Notwithstanding that the Appeal itself was born out of a planning process which as a consequence of Mr Morris's admission and confirmation must now be considered an entirely illegal planning process and decision in the first place). Moreover given that Mr Haime's unqualified and incorrect pivotal contribution falsely denied the true engineering arguments that supported the use of "Very Special Circumstances" which was the only way the planning notice could succeed, SDC clearly and improperly corrupted the planning process.

- Returning to the Appeal, since the Council's written submissions were provided by Mr Haime, and the oral testimony was supplied by Mr Hook, and both were riddled with errors, falsehoods, and improper conduct, it makes all of SDC's engineering submissions inadmissible, illegal and consequently extremely prejudicial to the Appeal judgement and outcome.
- SDC had no fundamental right to impose or even promote one solution versus any other. (It can legally only respond to concepts, never promote alternates, otherwise it would be guilty of pre-determination of Members' decisions). It is exclusively up to our professionals to propose solutions in light of their knowledge and assessment of the site specific facts, unless SDC is or was prepared to assume the future legal liability of that alternate resolution, (which of course they legally can't do anyway, in addition to the reason already cited, not to mention the fact that the promoter had no site specific knowledge upon which to base his speculative alternate solutions!). Therefore SDC's promotion of any alternate solutions was highly improper and prejudicial to the judgement the Inspector reached. Further the Inspector's adoption of this notion of alternates in his written judgement and opinion was similarly wrong. Which accordingly denies the principal plank on which the Inspectors written judgement was based - that he was not convinced there were not alternative resolutions. In short SDC cannot promote alternative resolutions, because it's

not legally allowed to, notwithstanding its inability to support them technically, or legally as previously described.

- The above point also serves to underline how responsible SDC was for misleading the Inspector in judgement. The Inspector could only base his judgement on the information and evidence that was presented before him. He had no reasonable way of knowing that alternates should never have been admissible by SDC in the first place, and that much of this technical evidence should never have been introduced because it was both improper, prejudicial, or simply wrong as to fact, and in respect of Mr Haime's written contributions presented by an unqualified engineer who was not a Structural Engineer as presented. Secondarily much of it was technically faulty anyway, because the alternate means of resolution that SDC specifically mentioned were not technically robust, and would not have been put by a competent Expert witness who met the required legal guidelines for expert testimony anyway. - In short the entire episode was a travesty of justice on all levels and a failure by SDC again to be reasonable and exercise its responsibilities in accordance with the law and proper procedure, let alone fulfilling its duty of care towards us.
- As a direct consequence of SDC's activities the Inspector felt able to write the judgement he did, which only serves to confirm SDC's malpractice and their engineering experts' failure to act objectively and independently, as is required in the code of conduct for expert witnesses at Appeal hearings. (Previously cited). Demonstrably SDC failed to act in Good Faith.

Note 4.

Letter of Complaint was sent on the 13 July 2010 to Jim Sperryn and has formed part of the Four Winds file ever since. It was also forwarded by Cllr Bracken to Ms Kristen Paterson (deputy Chief Executive and Director of Community and Planning). I received a reply from Cllr Bracken confirming that she had not only forwarded the Letter of Complaint, but had followed that up with a telephone call and discussed it with Ms Paterson. Ms Paterson promised to investigate the matter fully in preparation for Cllr Bracken's scheduled portfolio meeting at the end of the month (July) so that they could discuss the Four Winds situation in greater detail after Ms Paterson had consulted with Officers in respect of the detail. That discussion was subsequently held between Cllr Bracken and Ms Paterson.
Bottom line: The Council's Deputy Chief Executive and Director of Community and Planning, the Council's most senior planning executive has known about all these matters of complaint in detail from July 2010, and has therefore been complicit in, and an active participant in the improper and unlawful actions that have taken place subsequently, and the intentional failure to fully inform and disclose ALL of these matters and procedural failings to Members.

Farley Edge,
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Tel: 01959 562 117

Thursday 9th June, 2011

Late Observation NOTES in respect of Four Winds, Farley Lane, Westerham.
Agenda item. 6.01 - Reference: 310/05/085

Dear Members of the DCC,

I apologise for the lateness of this submission, however I only received a letter of detailed reply from the Director of Planning yesterday.

Paragraph 23 of the agenda item the officer suggests that I have not taken up the opportunity to discuss the terms of the Enforcement Notice "specifically".
As the recipients of my numerous letters, you will know I have asked for discussions at the highest level on several occasions, but they have been denied to me. With no disrespect to the one officer offered, there are far-reaching implications related to the ethics and legality of this situation which justify my requests.

I welcome the opportunity to discuss the situation and resolve the disputed matters openly in light of ALL the true facts, but this demands that the Council must make a full, frank, and open disclosure in respect of ALL the facts in this case, including recognition of its own procedural failings and acts of bad faith, and cease this endless, futile, and protracted denial of reality. I set out just one example below where there is scope for agreement, but to date my open, detailed, and repeated correspondence has proved patently ineffective. Perhaps Members can achieve that which I have not, the disclosure of the entire truth from Officers as set out above.

The removal of the retaining walls adjacent to the access ramp will have an adverse effect on the remainder of the structure (the ground and hydrological difficulties being now well accepted by the Inspector and Council) to the point that the removal of them would present an unacceptable level of risk of destabilisation to the approved built form. (for precisely the same Engineering reasons that the Inspector understood and prescribed the retention of the Garage structure). This much and the engineering justification of the existing construction are now accepted matters of fact. The Council's second Engineer, in the space of the 24 hours available to him, did not visit the site, and did not formulate his own independent opinion, but merely endorsed the previous opinion of the first engineer who wasn't a qualified structural engineer, and whose facts the Council now acknowledges as wrong. Neither Engineer offered any technical evidence to challenge our position, and the second Engineer offered no supporting evidence whatsoever to sustain the viability of the various alternative solutions he proposed, alternate solutions that should never have been uttered, much less put before the Inspector, were highly prejudicial, and quite improperly contaminated and corrupted the Inspectors findings. (There is no implied criticism of the Inspector for he was unknowingly, yet actively and improperly misled by the SDC Engineer). As just one example, based on the assumption that the second Engineer

did in fact look at the drawings of the structure lodged with the Council. The second Engineer blindly reconfirmed the incorrect findings of the first Engineer, and falsely warranted them to the Inspector. Namely that the garage foundation slab was separate from that of the house, a fact that the Council now accepts is incorrect, because it is observably, in physical reality, one single structure. The Appeal Inspector did not ask for verification of any of the Council's Engineering assertions even though we suggested he might, whereas our Engineer presented the engineering solution that he had confirmed was in full compliance with his professional standards, as set out in the definitive published literature, applying the "best practise solution", and which he was prepared to stand by, mindful of his responsibility to his insurers.

The engineering issue is the primary pivotal factor as it relates to the application of "Very Special Circumstances" from which all other matters, including those of the Green Belt, flow. Members must be in possession of ALL the true facts, and similarly demand a full explanation of all the issues that I have raised with Officers, but for which Officers have yet to offer a full and convincing account, or explanation of their conduct in respect of this case. Only when these facts are openly and fully disclosed to Members and ourselves, as they should have been from the outset, can the full implications of the obviously apparent abuse be considered. Only then will Members be in possession of ALL the facts and able to consider this case and related Enforcement Notice on its merits, as they are legally, and morally bound to do.

Clearly any precipitate action or decision by Members at this stage would be a clear and demonstrable act of "Bad Faith" given the outstanding issues related to this matter, and their lack of clarity. Clearly everyone of us, you, me, Members have a liability in respect of acts of "Bad Faith," in addition to which Members need to ensure they are compliant with the "Wednesbury Principle" ---"A local Authority (and Members of it) must not take into account matters that it should not take into account, and must not neglect matters it (or Members) should take into account." – In respect of this, Members also have a clear obligation to consider ALL the information before reaching a decision.

Q.E.D. until ALL the information and circumstances is available to Members no legally compliant decision can be made.

On the proposed terms (C) of the enforcement notice as written cannot be carried out in respect of the assured long-term stability of the house, and is thus unenforceable.

Yours sincerely,

Mark Banister.

CC
Robin Hales
Ms Paterson
Mr Kehoe
Mr Morris
Mrs Nuttall
Cllr Bracken
Cllr Maskell

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Thursday 9th June, 2011

Dear Mr Hales, (Ms Paterson, Mr Kehoe, Mr Morris, and Mrs Nuttall).

Thank you for your letter dated the 7th of June written on your behalf by Ms Paterson.

The fact that your letter and my consequent response to it does not give Members sufficient time to give either letter proper and balanced consideration ahead of tonight's meeting is further justification for asking for the withdrawal of the Four Winds item from this evenings agenda, or failing that, a robust Officers' recommendation to defer this matter until we have had the meeting that I have previously requested.

Clearly I recognise, as will all the other recipients, that your letter is written in support and defence of your legal position, in a vain and mistaken attempt to protect the Council from the inevitable liabilities that you and Officers have needlessly accumulated and burdened rate payers with, as a direct consequence of the way you and your Officials have chosen to conduct this matter.

It is therefore disappointing, though perhaps inevitable, given the difficulty of your position, that you should seek to deny the obvious failures of process, and acts of Bad Faith. You must similarly realise that no one has any real belief in the viability of your position as presented, and especially so as you have demonstrably failed to address my individual four points in depth and detail, which you undoubtedly would, if the facts permitted you to do so.

In respect of point 1.
Quoting the Inspector tells us nothing new. Nor does it address the point that the Council knew that I was making full well. It was simply an attempt to confuse those that don't understand the significance of the legal cases quoted. Similarly as you will most definitely know, the legal cases I quoted to you have no bearing on the planning issues, this was never my point. What they do demonstrate is the clear legal and consequential financial liability that the Council has by dint of the assurances given by the Building Inspector that "IF" any of the affected works have to be remediated as a consequence of the planning outcome, i.e. the passing of an Enforcement Notice, SDC will have a clear financial liability to the cost of the original construction, and then the cost of the remediation into compliance with the final planning outcome. The reality therefore is that the Sevenoaks Rate payers are in all probability going to foot the bill, if a resolution to our dispute is not found, which I, and I am equally sure they, find perverse in the extreme. I should also note that all the cases I listed are all extremely well known, and are either Court of Appeal or House of Lords cases. Your failed attempt at dismissing this has convinced no one. Palpably Local Authorities, and all other Public bodies, are just as exposed as everyone else, and as you know

full well, the liability does not itself have anything to do with the planning process, it arises as a consequence of the assurances I was given.

In respect of point 2.
If you did indeed, as you now suggest, refer the case to a second Engineer who supported the findings of the first, then you should have disclosed this fact to us prior to the Appeal which you did not. In any event I, and I am sure everyone else is extremely grateful for your further and repeated confirmation that the second Engineer proved as incompetent as the first Engineer. Given that you reaffirm the second Engineer supported and confirmed the first Engineers opinions of Engineering findings that are provably wrong as matters of fact. Once again your total failure to address my point in detail only serves to validate my original contentions, the assertions of bad faith, and procedural failing. -- Thank you.

In respect of Point 3
You offer absolutely no explanation this time other than to quote point 2. So again this effectively affirms my argument and allegation. – Thank you.

In respect of Point 4
Once again you have not answered the detail point. Instead you attempt to distract other readers by asking questions of your own, again this ploy fools no one.

In respect of your questions however I will furnish you with a clear, open, and transparent response unlike yourself, and I trust that others will note the difference in approach.
We did politely and respectfully make our anxieties known to the Inspector, but unlike SDC we did not feel able to abuse the process, and therefore correctly and properly restricted and limited our comments, not wishing to unreasonably interfere with the Inspectors conduct of due process. -- Similarly you should know that Inspectors have no means of testing evidence that is placed before them, there is an expectation that professional expert witnesses will only give evidence in compliance with the various relevant codes of conduct and demands of the law. Sadly this was not the case on this occasion.
As regards the second part of your question, it took me a long time to understand the significance of what had happened, unlike you I am not a professional in this area, it is I hope both my first and last experience of it. Further it was only a long time later that we came to discover that the first engineer was not qualified, and therefore the clear and provable implications this had for the second Engineer given that he had blanket adopted the opinions of the first engineer, without ever independently confirming them. This was well after the time limit had expired for taking action in respect of the matter you question. **Of course by way of conclusion I also note that this was as a direct consequence of SDC failure to be open, transparent and honest, which is itself a clear act of Bad Faith and procedural failing. This of course highlights the final issue of greatest concern, relative to your NEW disclosure in point 2. If you called in a second engineer BEFORE the planning application was determined as you now state, to validate the opinions of the first engineer, then you obviously felt you had reasons to doubt the probity of the first engineers findings, in which case it was highly improper and dishonest not to disclose your known failings of the first engineer to us. In any event I look forward to the disclosure of the written statement of validation being disclosed. As this validation took place when it did, how is it that the Engineer representing the Council at the Appeal did so with just 24 hours notice? And why were the original first Engineers findings ever submitted to the Inspector at the Appeal and similarly the confirmation of the second**

engineer. All of this represents an inexcusable admission of BAD FAITH and active deceit, and constitutes an unholy mess.

In respect of your further points quoting chunks of the planning regulations (PPG2). Once again this tells us nothing new....all of us know this. Similarly the size of the garage is directly related to the scale of the problem we had to address, and therefore bares no relevant relationship to that of the house. It was certainly no bigger or smaller than the Engineer determined that it must be to solve the problem, it was the problem that dictated the size, nothing else, and a point the Inspector in his conclusion effectively acceded to in his finding that the structure should be retained.

I note a couple of other more minor points in your letter. The fact that *"...it is now over 12 months since the result of that appeal, and a decision on the expediency of enforcement action should now be made."* – I agree entirely and perhaps you might start by offering an explanation for the six month period of delay when absolutely nothing was done, and from which I and Councillor Bracken had to wake the Council from its torpor? – Itself a clear act of procedural failure.

Before I address the final point, there is one other more general point that needs to be explored. Your letter seeks to suggest that the Council is adopting a less onerous requirement than that originally considered, one that would allow the retention of the structure (out of use) and the Boundary wall up to 2m in height. – In respect of the Wall I am glad that you are effectively re-acknowledging what Mr Morris affirmed at my meeting with him in August 2010 which was later denied as a mistake and aberration. As regards the retention of the garage structure it was the Inspector who in his ruling effectively mandated its retention.
In respect of this the Inspector also noted that what we did was in response to a genuine emergency, and that he was similarly convinced that we never set out to build a garage in a deliberate attempt to flout the planning laws. The fact that the structure must be retained as the Inspector mandates, makes it seem overly harsh and perverse, to then deny something that lends itself to constructive use. Further given the necessity of its retention, denying its use would be a shameful waste as its actual use would result in no, or very little discernable harm to the greenbelt as was noted in the original SDC planning report to Members at the Planning application stage. The harm was described as being in "principal", and to the extent it is "real", it was described as "limited." – The reality is that Members are being asked to consider this enforcement Notice on a point of "principal" not its merits. Since the principal sets no precedent, this is clearly an entirely unique situation and circumstance, it can be considered on its merits. In light of all of this I continue to contend it would be perverse in the extreme to enforce against this application, and in the process land Rate Payers with a monumental bill.

Finally in respect of your comment about Members liability and your desire to reiterate your comments of your letter of the 21st of April and specifically ..... *"There is no requirement in law for Members to sign any sort of declaration as you have suggested."* – I would respectfully tell you that words mean what they say, not what you think they say... and in respect of this point... what I wrote was: *"As a consequence of this failure I would consider a signed document by each Member stating that they had received, read, considered, and understood ALL the information presented by <u>us</u> since inception would suffice in this context. -- In making this request I am mindful that the law and legislation requires just this commitment from Members"* – At no point does this say that Members have to sign a declaration in law... it asks them to "consider"... in effect I was politely trying to remind Members

that to adequately safeguard themselves, they need to have considered and read ALL the information.

More interestingly however is that your quote concludes *"……This means that individual Councillors do not incur personal liability for the consequences of any decisions they make when acting in good faith."* And that's the very point….. your own chosen quote affirms my point…. Councillor don't attract any liability when acting in "GOOD FAITH" but just like everyone else, and themselves in a private capacity, they DO attract liability if it can be show that they actively acted in Bad Faith, which is anything less than the tangible application of Good Faith principals **--"honesty, fairness, lawfulness of purpose, and the absence of any intent to defraud, act maliciously, or take unfair advantage."** Furthermore when acting as Councillors they also need to be compliant with two further things…(1) that they apply the "Wednesbury principal" –-"A local Authority (and Members of it) must not take into account matters that it should not take into account, and must not neglect matters it (Members) should take into account." – In respect of this principal, (2) Members also have a clear obligation to consider ALL the information before reaching a decision.

Given the facts in this case as detailed in this, and previous correspondence, I fail to comprehend how any Member acting lawfully as required, and pursuing the actions of a "reasonable man" could make a decision compliant with "good faith."

Yours sincerely,

Mark Banister.

CC
Michael Fallon MP
Members of the DCC.
Ms Paterson
Mr Kehoe
Mr Morris
Mrs Nuttall
Cllr Bracken