

Four Winds –

Copy of correspondence sent to DCC Members post March Committee and
SDC Response

From	To	Dated
Mr M Banister	Chief Executive	5.5.11
Head of Development Services	Mr M Banister and Mr R Banister Cc: DCC	21.4.11
Mr M Banister	DCC Members	18.4.11
Mr M Banister	Deputy Chief Executive and Director of Community and Planning Services Chief Executive Head of Development Services Head of Legal and Democratic Services Cc: DCC	15.4.11
Mr M Banister	Chief Executive Deputy Chief Executive and Director of Community and Planning Services Cc: DCC	13.4.11
Mr M Banister	Head of Development Services Cc: DCC	8.4.11
Head of Service	Mr R Banister	30.3.11
Mr M Banister	Head of Development Services	16.3.11

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

Tel:

Thursday 5th May, 2011

Re: Four Winds, Farley Lane, Westerham.

Dear Mr Hales,

Thank you for your letter dated 28th April, affirming Ms Paterson, and your own full agreement with the contents of Mr Kehoe's letter of the 21st April 2011. This will be important when I address that letters failings and inaccuracies, especially in respect of Members and their liabilities. I further note that you state that Mr Morris and Mr Kehoe have full authority to represent you and Ms Paterson at a meeting with me to discuss the Four Winds situation.

Whilst I can readily appreciate that you would, indeed you must, have confidence in these two gentlemen and their ability to represent you in respect of the planning matters, regardless of my views of the merits, or wisdom of this judgement. I think we are all very well aware that this matter has progressed well beyond the confines of only the planning. The transparent and completely unreasonable procedural failings in this case, their consequential impact on the legality of the procedure, the repeated failure to address these matters despite our clear and repetitive protestations, the implications this has had for the proper and reasonable procedural conduct of due process in respect of our planning and its outcome, demands that this is without doubt the remit of Ms Paterson as the head of dept, and you as Chief Executive of the Council, especially given its potential implications for Members.

As the most senior official, responsible for setting and upholding the ethical standards of the Council and its employees, and application of "best practise" and "good governance procedures" and "due process" within the Council, - all powers and responsibilities delegated to you from Members, - it is inconceivable that you could assign any aspects of this discussion to others. Any attempt to do so would represent a gross dereliction of duty, and disregard for the authority that Members have personally vested in you in the first instance.

For these reasons I repeat that I must insist that you and Ms Paterson both attend the meeting that I have previously requested, and the Council has now acceded to. For these reasons I must decline the prospective dates and meeting that has been proposed with Mr Morris and Mr Kehoe, because for the meeting to be effective it must address issues that they cannot be expected to have, or hold responsibility for.

Indeed as I have previously pointed out, and you must recognise, it would be entirely inappropriate of yourself to propose them as the two sole representatives of the Council at such a meeting given their own clear "conflict of interest" related to their past responsibility for, and failure to address, the inappropriate conduct of the Council, which has to be one of the key issues that needs to be addressed at the meeting.

Whilst I am sure this was an unintentional, and unfortunate, albeit an obvious procedural oversight on your part, you will excuse me for pointing out yet another of this endless

litany of failings by the Council. The necessity of having to do so clearly demonstrates the unprofessional and inadequate conduct of our case from its inception to this point, and the total failure by even you, the Chief Executive, to appreciate and comply with reasonable best practise in respect of the proper procedural conduct of our case by proposing a meeting where the Council is represented by only two people, both of whom have a clear conflict of interest, and are either responsible for, or have condoned many of the matters that are so demonstrably improper and unreasonable in our case.

Clearly for any meeting to have the remotest chance of success, which must be its purpose, not just compliance window dressing, it requires objectivity as a primary criteria. However professional these two gentleman may be, they are nevertheless human, which is not a criticism, but a factual observation, and it is unrealistic on your part to believe that they could or would set aside their historical actions in the search for a resolution, or that it is reasonable to expect me to find such a notion credible or acceptable. Conversely as the Chief Executive one of your primary responsibilities is to hold an all pervading view of the totality of issues, and bring a fresh pair of eyes, and perspectives, and potentially judgements, to just such intractable problems that our audit trail of factual errors, and procedural mistakes represent, that are themselves beyond debate and critically compromise the Councils position. The Council has the unavoidable responsibility in law to engage in a negotiated resolution if at all possible, and only to proceed to enforcement when that fails. As the Chief Executive you are now the only untainted Council Official left to undertake this task, so it is both your responsibility and obligation to do so. -- In conclusion you must understand that Mr Kehoe's letter clings principally to the single key issue of the Inspectors judgement. In a court that particular judgement will never be sustainable due to the evidential and procedural compromises SDC burdened it with from the outset. In reality therefore SDC has no sustainable position at all in respect of the Inspectors judgement, but you will only really understand why that is when you attend the meeting with an "open mind", and having grasped the reality through an understanding of the alternate perspective, you will comprehend why a reasoned resolution is the only pragmatic way forward.

To conclude it is not appropriate, nor I believe reasonable to Members, for you to avoid addressing the issues that have arisen in this case, for which Members will now have to account, (and contrary to Mr Kehoe's letter, Members and you should be in no doubt that they are indeed accountable) without your first making an overt, clear, and reasoned attempt at resolution. Further any failure on your part to act as a "reasonable man" will only serve to enhance my case, and be deleterious to that of Members. I do not believe it is "reasonable" for you to act in such a manner, either towards us, or similarly towards Members. I readily concede that it is for Members, and prospectively others, to be the final judge of your conduct in respect of the liabilities that you, and those you are responsible for (the officials), have prospectively imposed on Members, but I would reasonably surmise there is an expectation that you would at a minimum act, and wish to be seen to act, "reasonably". The choice of course is yours, but everyone is watching to see if your actions are compliant with the words.... (and law).

Yours sincerely,

Mark Banister.

CC:
Members of the DCC.
Ms Paterson
Mr Kehoe
Mr Morris
Cllr Bracken

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



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

Tel No: 01732 227196
Ask for: Mr Jim Kehoe
Email: jim.kehoe@sevenoaks.gov.uk
My Ref: 3124/796D/JK/RM/NC/tj
Your Ref:
Date: 21st April 2011.

Email:

Dear Mr Banister,

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

Thank you for your letters of 8th, 13th, 15th and 18th April 2011.

I assume that it is common ground that the basement double garage, retaining structure and 2.5 metre boundary wall as built require planning permission and that the planning permission has not been granted.

In your letter you ask:-

'Would you kindly explain your actions please, especially in relation to the failure to present ALL the information to Members, and how this represents a fair and honest procedure that is compatible with best practice, good governance, and due process.'

When considering the adequacy of the information presented to the 10th March 2011 Development Control Committee meeting, it is reasonable to see this as a step that follows on from the earlier stages of the planning history of the site and in particular the stages set out below.

- The Council's refusal of Planning Permission dated 18th September 2009, (reference SE/09/00672);
- Following the refusal of planning permission on 18th September 2009, (reference SE/09/00672), the dismissal of an appeal to the Planning Inspectorate, in a decision dated 16th March 2010.

The last formal planning decision on the development before the March 2011 Committee meeting was the March 2010 Appeal decision. The remedy available to appellants who wish to have an appeal decision quashed is a right to challenge to the High Court, which is described by the Planning Inspectorate as 'the only method by which the decision can be reconsidered.' However, this right has not been exercised and the March 2010 Appeal dismissal decision stands.

Chief Executive: Robin Dales
Community & Planning Services, P.O. Box 183, Argyle Road, Sevenoaks, Kent TN13 1GN
e-mail: community&planning.services@sevenoaks.gov.uk www.sevenoaks.gov.uk
Telephone: 01732 227000 Fax: 01732 451332 DX 30006 Sevenoaks
Switchboard Times: Monday - Thursday 8.45 a.m. - 5.00 p.m. Friday 8.45 a.m. - 4.45 p.m.



The Inspector appointed by the Secretary of State did consider the arguments advanced in favour of retaining and completing the garage/storeroom.

'I thus come to the conclusion that the arguments advanced in favour of retaining and completing the garage/storeroom in the manner proposed do not amount to the very special circumstances necessary to outweigh the general presumption against inappropriate development in the Green Belt. Nor do they warrant a decision other than in accordance with SE Plan policy C3 and Local Plan policies H13, EN6 and EN1. Nor do they justify the visual harm to the character and appearance of the area, the damage to the natural landscape qualities of the AONB, and the harm to the purposes and visual amenities of the Green Belt that I have identified.' (Paragraph 24 of March 2010 Appeal decision).

Before doing so, the Inspector clearly took into account the absence of unanimity between the structural engineers.

'There can be no question that the works carried out have involved the Applicant in substantial unexpected cost, (albeit, like the excavation cost, much of this would have had to have been faced in any event if the originally proposed garage had been permitted). The cost of now removing or altering the works would also represent a considerable financial burden. However, both in effect are the costs of short-term expenditure, and fall to be weighed against the financially impossible to quantify, but far more enduring, harm to interests of acknowledged national importance. In weighing the balance between the two, it would be wrong, in my view, to permit the retention of permanent development solely on the basis that the solidity of its construction did not justify the cost of removing it. I do not suggest that others would purposively risk a similar level of expenditure, but such an approach might well encourage wider disregard of the consequences of progressing alterations to permitted schemes without prior planning clearance. In this particular case, given the Council's flexible stance towards works that are entirely subterranean, and in the absence of unanimity between the structural engineers on either side, I am also not convinced that altering the development in ways that might sufficiently ameliorate its harm in policy and visual impact terms would be excessively costly, even if in doing so the basement became no longer suited to use as a garage/storeroom.' (Paragraph 23 of March 2010 Appeal decision).

This Appeal decision was included in the March 2011 Committee papers for all to see in full. The Committee's attention was specifically drawn to the issue of the emergency excavation by the inclusion of Paragraph 21 of the Inspector's report in the section 'Considerations' (Paragraph 19) of the March 2011 Committee report.

These above decisions are the main parts of the planning history of the site that are relevant to the decision about the expediency of enforcement. The associated information submitted by all parties is publicly available. To the extent that any new material has been submitted to the Council in correspondence after the Appeal decision, this has not quashed that decision. The Case Officer had seen your correspondence to the Council, and the Local Government Ombudsman with their response, to inform as appropriate the report to Members.

The terms of the proposed Enforcement Notice in respect of the garage/storeroom as authorised at the Development Control Committee on the 10th March 2011 read:-

'Resolved: That Officers be authorised to serve an Enforcement Notice, subject to the Head of Legal and Democratic Services agreeing the wording of the terms of the Notice, requiring the:

- (a) Demolition and removal of boundary wall along eastern boundary of the site between Four Winds and Farleyside.
- (b) Back filling of the garage with inert material and permanent closure of any internal access and permanent cessation of uses within the garage.
- (c) Breaking up and removal of the retaining walls adjacent to the access ramp to the garage and;
 - (i) The restoration of the original ground levels to the front north-eastern corner of the site, or;
 - (ii) The restoration of the original ground levels incorporating the approved parking layout under ref: SE/07/03532/FUL & SE/08/01003/DETAIL, or;
 - (iii) The Implementation of an alternative scheme of restoring this part of the site to include a car parking layout (i.e. not at the original ground level), details of which shall first have been submitted to, and approved in writing by, the District Planning Authority. Such details to include cross sections (both north-south and east-west) to show the original and proposed levels.

For the following reasons:

- (1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The developments comprising the retention of a 2.5m high wall and basement garage with access ramps, add to the built form on the land to a degree that is harmful to the character and appearance of the area. This conflicts with PPG2 (Green Belts) and policy H13 of the Sevenoaks District Local Plan.
- (2) The land lies within an Area of Outstanding Natural Beauty. The developments comprising the boundary wall and basement garage with access ramps, detract from the character and appearance of that area. This conflicts with policy EN6 of the Sevenoaks District Local Plan.

Compliance period: Six months'

The significance of this is it leaves the main body of the garage/storeroom intact. It would leave the garage roof in place.

In short the approach to enforcement by the Council allows the retention of the 'concrete box', (the term used by M.F. Pont and Associates in their Survey and Structural Report for Mr R Banister), (2009), but limits its use.

Before making a decision, the Committee was provided with copies of the material you submitted for their attention under the Late Observations procedure. A Building Control Officer was present to assist the Committee.

The Council's process is consistent with PPG 18. The General Approach to Enforcement, Paragraph 5 of that document is of particular relevance. In considering enforcement action the decisive issue is whether the breach of planning control unacceptably affects public amenity or the use of land meriting protection in the public interest. The Inspector concludes that there was nothing presented to him to justify the visual harm to the character and appearance of the area, the damage to the natural landscape qualities of the AoNB, and the harm to the purposes and visual amenities of the Green Belt.

In conclusion on this point, the Committee Agenda drew the main issues to the Members' attention that are relevant to the decision on whether to authorise the service of an Enforcement Notice, which is principally the result of the refusal of Planning Permission and its dismissal at Appeal in March 2010. This is not a failure to provide information.

A second highlighted point from your letter reads:-

'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 us since inception would suffice in the context', and following from that an underlined section states 'Members must be completely clear of the following. They personally have an ABSOLUTE responsibility in law to assure themselves that they have had, and considered ALL the information relating to the decision before them, and where necessary they have a discreet responsibility to positively ascertain that they have been presented with all the facts and information, and thereby satisfied the actions of a "reasonable man" in law.'

It is a matter for the judgement for Councillors at the Committee as to the extent they consider, and the weight they give, to information received by the Council. The Council's application files are open for public inspection and many parts are available on the internet.

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.

In response to your letter of the 15th April 2011, there is a process for you to contest an Enforcement Notice if it is issued by the Council. This is the right of appeal to the independent Planning Inspectorate against the issuing of that Notice.

Receipt of your response dated 12th April 2011, to the 'Notice as to interests in land' is acknowledged along with its accompanying letter dated 13th April 2011.

There is one further issue. We have in any event decided to refer this case back to the Council's Development Control Committee as we have identified an issue in relation to the unlawful boundary wall, which means that Permitted Development Rights exist to erect a wall up to a height of 2 metres, albeit that the current height is around 2.5 metres. As this is not stated in the March 2011 report, we will prepare a further report for the Committee to enable consideration of the precise requirement of the notice regarding the wall, and on the material planning considerations arising. I expect the Committee date will be in early June 2011. I do not envisage the issuing of an Enforcement Notice in the meantime.

In response to your request for a meeting, Richard Morris and I are available to meet you on Thursday 5th May 2011, 1.30 – 2.30pm or Friday 6th May 2011, 1.30 – 2.30pm, at the Council Offices.

We acknowledge receipt of a copy of your letter to Ms Andrew of the Sevenoaks Chronicle of the 15th April 2011.

As your incoming correspondence has been copied to the Development Control Committee, this reply is also being copied to those Councillors.

Yours sincerely,



Jim Kehoe
Head of Development Services

Cc: DCC Members
Robin Hales
Kristen Paterson
Christine Nuttall
Richard Morris

Tina Jordan

From: Richard Banister
Sent: 18 April 2011 11:38
To: Cllr Arnold; Cllr Bosley; Cllr Brookbank; Cllr Broomby; Cllr Cooke; Cllr Davison, R; Cllr Dawson; Cllr Gaywood; Cllr Gilbert; Cllr Grint; Cllr Maskell; Cllr McGarvey; Cllr Morris; Cllr Parkin; Cllr Piper; Cllr Ryan; Cllr Scholey; Cllr Underwood; Cllr Walshe
Cc: Kristen Paterson; Robin Hales; Jim Kehoe; Christine Nuttall; Cllr Bracken
Subject: TJ PRINTED FW: Four Winds - Westerham, Kent.

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: Ltr - Ms Kristen Paterson - 15 April 2011.pdf



Ltr - Ms Kristen Paterson - 15...

Dear Members of the DCC

It has been suggested by a Councillor that the Officers should go straight ahead and issue the Enforcement Notice without further consultation with you, even though it is you, the Members of the DCC, who will be legally responsible for this Enforcement Notice, the Enforcement Hearing that decided it, and ultimately its consequences. As a result of this anomalous suggestion I felt it was important to re-present and remind the Officers of the issues, and the lines of authority, and where the ultimate responsibility rests to make sure that if they did indeed carry out such an action, they issued a justification for this highly improper activity. You will see that I sought advice, and that the advice is relevant to all of us in respect of the law, no matter what your actual view is, of the merits or lack thereof relative to my individual case.

In conclusion I thank you for reading this email and its related attachment, and again I apologise for the necessity of having to burden you with this further material.

Yours sincerely,

Mark Banister.

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

Tel:

Friday 15th April, 2011

Dear Mrs Paterson, (Mr Hales, Mr Kehoe and Mrs Nuttall)

In view of the Questionable Status of the Enforcement process and procedure, and the advice I have received from the policy advice unit of the Department for Communities and Local Government, that indeed a properly conducted Enforcement hearing must include: ALL the information that pertains to the decision before Members in order for it to be compliant with "best practise, good governance procedures, and due process," and it should certainly NOT be based on only limited and selected elements of information that pertain to the case and decision. In view of this advice, if you choose to issue the Enforcement Notice it would be entirely reasonable for me to insist in the circumstances that you include a justification "in terms" in a separate note related to your decision to issue the Enforcement Notice, and how it is compliant with the above observations. If you choose not to include this note, then I must reasonably insist you include a note explaining why you are not explaining your justifications for issuing the Enforcement Notice, similarly expressed "in terms".

In any event it would seem to be especially important given that the aforementioned issues and obvious deficiencies, that only came to light subsequently as a result of Officers written declarations, that Members must have at a minimum, an opportunity to reaffirm their contentment with the decision that they unwittingly made as a direct consequence of Officers failure to present Members with the full information and facts related to the decision previously put before them. However since it is the Members of the DCC who are legally responsible for the decision, and the Enforcement Notice itself, and similarly have ultimate responsibility for the process, procedure, and conduct of the Enforcement hearing that led to the potential for the issuance of the Enforcement Notice, it would seem only right and proper, not to mention legally correct, that only the Members should make the final formal decision to go ahead, and approve the actual issuance of the Enforcement Notice. After all that is the adopted policy procedure the Council utilised in the first place! That said, one would hope Members would only confirm the issuance of an Enforcement hearing after having appraised themselves of ALL the facts in the case, and the related decision before them as is required in law! (Please see my request of Members contained in my letter to Mr Jim Kehoe of the 8th April asking for; ".....a signed document by each Member stating that they had received, read, considered, and understood ALL the information presented by us since inception would suffice in this context."

It would seem that in light of events, and I would hope everyone's belief in the fundamental tenants of democracy and law, that in practise those that bare the responsibility for a decision should also be to the ones that make it! (I.e. the Members of the DCC, not Officers.) Again if Officers decide to set aside this obvious proper requirement, and issue the Enforcement Notice without at a minimum a clear and transparent process of reversion to the Members in light of the issues previously raised in this letter, then again we feel it is entirely reasonable to insist that Officers should give a full justification "in terms" in a separate note related to their decision NOT to revert to Members in respect of the issuance of the Enforcement Notice, and therefore how this action is compliant with the above observations contained in this letter. If Officers do not choose to include this note then we must reasonably insist that you include a note explaining why you are not explaining your justifications for issuing the Enforcement Notice expressed "in terms" without reversion to the members in light of the observations contained in this letter and made above.

In conclusion, I repeat: The ultimate legal responsibility rests with Members, and therefore it is only Members who should determine what happens next. THEIR preparedness and willingness to PERSONALLY ASSUME the full LEGAL RESPONSIBILITY and consequently justify and defend this legally dubious and obviously deficient process, procedure, and conduct of the Enforcement hearing, that then led to the potential for the issuance of an improper and illegal Enforcement Notice, none of which by the advice I have been given by the policy advice unit of the Department for Communities and Local Government is compliant with "best practise, good governance and due process" as it is required to be in law. – **Again this MUST be MEMBERS decision and choice, and at a minimum Members should have the choice and opportunity to correctly comply with the laws requirements.**

Yours sincerely,

Mark Banister.

CC. Members of the DCC.

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

Tel:

Wednesday 13th April, 2011

Dear Ms Kristen Paterson, (Mr Robin Hales, Mr Jim Kehoe)

Thank you for your email reply to my letter sent to Mr Kehoe, yourself, and Mr Robin Hales. I was saddened and disappointed by your reply on a number of levels, and related issues, which I will address in turn, but in no particular order of precedence.

Given the obvious and evermore parlous position that SDC now finds itself in relative to the legality of the conduct of our case, (and I should emphasise that I make this observation from its commencement, not just more recent events) it would be best for SDC to be seen to be actively engaging in the resolution, rather than the inverse: Continued obfuscation, delay, and the repeated cynical manipulation of Members by Officials in respect of full disclosure. Furthermore in light of your deliberate and abject failure to keep Members fully informed on a timely basis of matters that are intrinsic to Members personally, and pertain to their own legal liabilities, and especially when they "could" be held personally accountable, and have individual action taken against them. You and your colleagues should be clear and never forget that you act as Officers as the Members SERVANTS in these matters. Therefore if I ask you to.....

"...arrange immediate distribution of this letter to all the Members of the DCC." – that's what you do. You do NOT have any right to make judgments on either my behalf, or more importantly Members behalf, as to whether or not you wish to engage in this action. You have to do it as part of your responsibilities, and most especially so when it represents a matter related to full disclosure of a serious formal allegation made against YOUR department, YOUR staff, and YOU personally. Further before you suggest that this matter was indeed in hand, (the distribution of my letter to Members) and especially so as I now raise it (!), permit me to familiarise you with the meaning of the word "immediate" that my sentence quite deliberately contained..... "without a lapse of time; without delay; instantly...." The word "immediate" does not quite obviously stretch to a four day delay!

So permit me to ask a rhetorical question...and supply you with the answer. -- Given that you are the second most senior Official in the Council, why do you think I made this request of you and the Head of Planning and the Chief Executive Officer....

- Was it related to chance?
- Laziness on my part?
- An inability to find out the names and email addresses of the Members of the DCC, all so helpfully published on the SDC website?

Or was it because I wanted to afford you the opportunity of highlighting the ongoing and cynical manipulation by ALL the most Senior Council Officials related to this matter, and lets be clear; that's You, Mr Hales, and Mr Kehoe. You were the addressees of my email and letter, which means you must all have agreed on who would undertake the follow on action, what your reply would include, and the related actions you agreed to take. Similarly you must have agreed what you would NOT include in your reply, (like the reasonable request for a timely meeting) or in this specific case, the deliberate inaction in respect of notifying Members. --- It is precisely all these little deeds that give the tell tale signals as to the depth of the malaise that lies at the centre of your method of execution of the SDC planning system, and the

defective core values set by the most Senior Officials in respect of this important responsibility. It highlights your complete disdain for proper execution of "best practise", and "good governance", and "due process". -- And all this at your own hands in such a simple and clear illustration related to the most basic of requests, to distribute a letter. Those that sit in judgement in due course will find issues like this most revealing and insightful. After all if you can't get the little things right, like forwarding an email to all Members of the DCC that highlights your own failings, what hope of your competency related to more complex ethical matters and judgements, like those that have gone before in our case. -- I can only thank you and your senior colleagues for illustrating the scale of the problem so effectively to Members and others.

In due course the reviewers who will sit in judgement of Members, their actions, and consequently you and your colleagues actions, will also be extremely interested to know your explanation for this and other actions. --- If you are now feeling manipulated, reflect on the fact that you had an equal opportunity to do "right" in the first instance, but it was an act of deliberate choice by you, presumably self serving, but certainly at the observable expense of others (Members), that meant you didn't. The manipulation was all your own, and that of your colleagues who participated in this deliberate course of action, and purposeful decision to fail to inform Members -- "immediately".

This then brings me to the matter in hand. Please find attached a copy of our schedule of declaration as to the beneficial interests in Land whose time limit you did not see fit to extend, we consider quite unreasonably so. Indeed now you have this information you could just go ahead and issue the Enforcement Notice if you decided to.

After all one has to cynically ask oneself the question whether your lack of willingness to notify Members of my letter "immediately" could in anyway be related to your being able to issue the Enforcement Notice "immediately" once you had this information. Then if subsequently questioned by any Member all you would have to do is issue a sycophantic note of belated regret. Thankfully because it is my intention to copy the entire membership of the DCC to this letter we need no longer have this concern, because the light of openness is illuminating any potential dark corners where further sharp practise may still be lurking!

I should conclude by making it transparently clear that in sending this information (the signed copy is in the post) we do not consider it a legal confirmation that you can use in terms in anyway, merely a demonstration of our good faith. We do not acknowledge the legality of your Enforcement Notice hearing procedure or its contents, nor any Enforcement Notice that you might try to issue as a consequence of it. Further we are adamant that it is illegal and improper due to gross procedural and contextual misconduct, and related failings that are fundamental to law, and the failure of the imposition of best practise, good governance and due process. All of which should, and must apply, as we have stated with great clarity in prior communications, and to which all citizens have an absolute right. Indeed such are our entirely "reasonable concerns" as expressed in law, that your procedure and conduct of the hearing will need to be validated via a full Judicial Review for it to be deemed lawful. It is your responsibility to prove its merit via independent review as outlined, not ours to disprove, beyond the initial allegation of transparent misconduct, contextual, and procedural failure.

We have therefore included our reply as a gesture of good faith with the aforementioned caveat, in the hope that by our example, you will at some point reciprocate, and act in good faith, not with standing your obligations under the duty of care to do so.

Given the above it is with more interest and amazement that I note you have engaged Ms Christine Nuttall; Head of Legal and Democratic Services to assist Mr Kehoe in addressing the points I raised in my letter. Given that she too must have read my letter in order to carry out this related task, it does not exactly inspire one with confidence that she failed to correctly advise you, and your colleagues, about the meaning of the word "immediate" in the VERY last sentence highlighted and differentiated in blue text so that it would not be missed..... Clearly Ms Nuttall got off to a flying start, but crashed whilst still within the confines of your office!

So whilst I earnestly look forward to Mr Kehoe's explanation of his actions, ably assisted by Ms Nuttall's veil of legal credibility, they will have jointly pulled off the planning and legal equivalent of turning water into wine, which will doubtless accord them great fame, and much deserved notoriety in planning and legal circles.....If they can achieve this trick of alchemy then I will be the first to congratulate them, and tout their success, but doubly so if they don't pull it off... They should be warned however, many have tried, and all have failed. I am therefore minded to observe that the best answers, are often the shortest answers..... "Sorry, we got it wrong." Or as one famous legal mind observed,... "You can't out run your liabilities, but you can surely make them a lot bigger trying to! – therefore the old saying...."The first cut is always the cheapest." – and that's really good legal advice, with which I assume Ms Nuttall is familiar, and will hopefully see the sense of recommending in this particular case. After all the last time I checked the Law required the whole truth and nothing but the truth (and related facts), not just the conveniently selected and edited highlights.....!

Finally I am minded to observe that my letter of the 8th of April made a number of clear requests, some of which I have already addressed in this letter, but for clarity's sake I will recap so that I can expect a further "immediate" response addressing all these points that remain outstanding; Item 1 is to be addressed by Mr Jim Kehoe; 4 is mute; 5 I am now addressing for you as a consequence of your failure to do so;

1. Would you kindly explain your actions please, especially in relation to the failure to present ALL the information to Members, represents a fair and honest procedure that is compatible with best practice, good governance, and due process.
2. 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 us since inception would suffice in this context.
- 3 I expect your early reply agreeing to this meeting. That the meeting will be held at a mutually convenient time by Friday 15 April at the latest,
- 4 your acknowledged agreement to suspend the Statutory notice period related to Mrs N Church's (sorry - Mrs N Clinch (sp)) letter until after the meeting.
- 5 Finally I would ask you to arrange immediate distribution of this letter to all the Members of the DCC

This leaves matters 2 & 3 outstanding.

I would have expected that at a minimum you would have facilitated item 3 it is such an obviously "reasonable" thing to do, so if at first you don't succeed in the immortal words... try, try again. I have to believe that SDC might at least wish to appear to be reasonable?

As regards item 2, I accept that this is an issue for Members but your failure to actively make them aware of it is itself an act of gross misconduct by any third parties judgement, and hardly assists Members to carry something out that they are not aware of It will be interesting to see how Members view your conduct especially now they and their proper conduct will itself be the subject of review at some future point.

Once again I look forward to your early reply.

Yours sincerely,

Mark Banister.

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

Tel:

Friday 8th April, 2011

Dear Mr Kehoe,

Thank you for your letter dated 30th March 2011, received in reply to my letter of the 16th March 2011. (For your ease and speed of reference I attach copies of both letters to this email).

When you re-read my letter of the 16th referred to above, you will note that it asked two clear questions of you;

- 1). "... could you please confirm that you are entirely satisfied that Members had all the pertinent information put before them to enable them to reach a "reasoned" decision..... I will need to see a detailed list of that pertinent information..."
- 2). "I will need to see a detailed list of that pertinent information, **and clear and transparent evidence of its** (all the information) **consideration** (by Members)."

I concluded my letter of the 16th of March saying.... "You will of course appreciate the significance." --- This discreet comment remains true today, perhaps more so in light of your illuminating response dated the 30th of March.

I note your absolute and clear confirmation of the list of material that you deemed prudent and exhaustive to present to Members, selected from the far more extensive information that was available to you, which you positively decided NOT to present to Members, and yet your similarly unequivocal observation that... "as such Members had the necessary information to arrive at a well informed decision." -- that by inference you considered a fit, fair, and proper process, despite your carefully selecting and actively limiting the provision of information available to Members to base their judgement and decision on. Would you kindly explain your actions please, especially in relation to the failure to present ALL the information to Members, and how this represents a fair and honest procedure that is compatible with best practice, good governance, and due process.

It is extremely kind of you to confirm your, the Council Officials, as opposed to the Council Members, position in respect of this important point. -- Clearly Members can only know what you the Officials elect to tell them. Further since Members not only rely on you for the full disclosure of information, but also on you and your Officials for advice in respect of the law and legislation, and its correct interpretation, the Members are ENTIRELY dependent on you for all information inputs in respect of the judgements they "can" make relative to a decision, and are therefore totally compromised if you choose to operate a policy of only limited disclosure of information, and bias to a single perspective when explaining the significance of a disputed fact, or offering a legal and legislative interpretation of that fact. Of course a "reasonable man" as expressed in law, would recognise this clear "conflict of interest", and would not hesitate to rule himself, and all other similarly compromised participants out of the proceedings, and import an independent third party to resolve these issues, and facilitate the open, full disclosure of ALL the information to Members. Similarly only an independent third party could have offered Members unbiased autonomous advice and interpretation in respect of explaining the significance of a disputed fact, or offering legal and legislative interpretation.

Regrettably of course we know you failed to take these obvious and entirely necessary actions, and thereby bring the required rigour and independence to the execution of these devolved Statutory Powers, utilising best practise and good governance procedures that are quiet obviously and properly a necessary requirement for Members to fulfil their legal responsibilities and duties, related to making a fit, proper, and thus legal decision.

I have no doubt that a Judicial Review would take an extremely dismissive view of this highly improper, and the entirely unsatisfactory approach to the conduct of these proceedings in respect of what are, after all, Statutory Powers. I believe the reviewers would hold to this view most especially when there is over two years of disputed correspondence between these same Council Officials and myself, which means in any proper procedural context, it would be inconceivable that these Officials could play any role, much less lead, or conduct the entire process. It is therefore inconceivable that the process that led to this decision could stand from a procedural perspective, as it clearly brings the exercise of the law into disrepute, reflecting as it does an actual process more akin to a Kangaroo Court, rather than the proper formal exercise of Statutory Powers devolved to a District Council. This being the case, the decision would quite obviously fall too, with all the reputational loss this would result in, not to mention the cost of financial compensation. The more mystifying element of this sad tale is that you, and all the most senior Council Officials actively ignored all the warnings and entreaties, both formal and informal, that were made to you in advance. Innocence and ignorance was clearly not part of the decision to proceed, rather hubris and arrogance, which is the more reprehensible given that this endeavour is supported by precious public funds that are being needlessly wasted by you and your colleagues actions, and self evident poor judgement.

Further you all had every opportunity to either enter into negotiations, which you are required to do in law, only pursuing formal Enforcement Action when these negotiations had been comprehensively exhausted. -- The clear and ongoing correspondence will show that you failed to engage properly in this process, much less complete this course of action by a total failure to be "reasonable," as is once again required in law. Alternatively, all be it prematurely, you should have pursued a proper formal process in compliance with "best practise" and "good governance" as I outline above. Instead you did neither, but rather elected to waste public money, and bring the Members and Council into disrepute, by actively pursuing a completely compromised and improper process which I have already described.

The Second half of my question asked in my letter of the 16th March, and I note your letter singularly failed to address in any manner, ... "**clear and transparent evidence of its (all the information) consideration (by Members).**"

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 us 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, and therefore my demand would be considered entirely reasonable, and the minimum standard that should pertain to the actions of a Councillor fulfilling his or her legal responsibilities in respect of the actions of "a reasonable person" in law, necessary to consider the imposition of Statutory Powers in relation to the issuance of an Enforcement Notice. Similarly the failure by any Councillor to sign such a reasonable affirmation would be a clear indication of their failure to carry out their duties, since again the law requires and finds appropriate the positive affirmation of, and assurance that, the appropriate and required standards of due process have been met and fulfilled.

Indeed given that all Members of the DCC who were in attendance on March 10th at the DCC meeting voted in support of the motion (save Kevin Maskell who was the sole vote against the motion). All these Members have become individually and collectively legally responsible for the decision to issue a Statutory Legal document "The Enforcement Notice."

It is important that Members realise the weight of their responsibility, and thus assure themselves for their own safety's sake, that they have indeed acted as "a reasonable man" as the law requires. This caution is because they are about to assign their individual names to this action, and become legally responsible for it once this document is officially issued, which fortunately for them, is not yet the case. I am offering all these members this last chance at self examination, and to make a full and clear compliance assessment / statement that they have indeed made their decision, as they are required to do in law, in respect of ALL the information that I have placed before the Council, not just that information which you the Council Officials have deemed prudent to place before them. I should state very clearly that we are firmly of the opinion that if Members have indeed given due consideration to just some of the points discussed in ALL the extensive material that we have presented in this case, it would NOT have been correct, or possible, for Members to have even considered this motion, much less to have passed it. The

prior procedural failings in respect of the original seemingly unqualified Engineer, and consequently the original planning decision, the misdirection of the Inspector at Appeal, and a host of other material issues, the Councils failure to comply with the rules pertaining to expert witness testimony, and much more besides, would alone have ensured any decision by Members in respect of Enforcement Notice was inconceivable and completely premature.

Again whilst you may, or may not have made all the information available to Members (**though by your own admission and disclosure you clearly didn't**), or as importantly, may, or may not have drawn Members attention to key issues, or highlighted or failed to highlight their significance to Members, Members must be completely clear of the following. They personally have an ABSOLUTE responsibility in law to assure themselves that they have had, and considered, ALL the information relating to the decision before them, and where necessary they have a discreet responsibility to positively ascertain that they have been presented with all the facts and information, and thereby satisfied the actions of a "reasonable man" in law. Similarly you, the Officials, are Members responsibility, you work for them, it is Members responsibility to correctly instruct you, and to see that you meet their legal requirements and needs in full. – **Ignorance, or a failure to find out the full facts is subsequently NO DEFENCE for Members, it is their clear and absolute responsibility to inform themselves of ALL information.** –

I am sure that Members will be more than puzzled as to why I am so concerned for their liabilities, in reality I am not, but it is simply a case of mutual beneficial interest. They will be best served if they heed my warnings, and similarly if they do, I and the Council will benefit because reasoned resolution will result, rather than unreasonable, unlawful actions that will have to be fought at considerable expense to everyone, and this unfortunate situation will take still longer in resolution. This very honest point made, the Members should also be aware that it is also beholden to me to demonstrate that in respect of the considerable compensation claim that this entirely unnecessary affair will now unavoidably result in, I will be able to demonstrate that I have been open, transparent, and "reasonable" at every point. Further I will be able to show that I have done everything within my power to point out the issues, act reasonably, and thus minimise the extent of compensation particularly by actively seeking a negotiated settlement of the dispute, rather than a more protracted legal process as the Council seemingly prefers, as judged by its unreasonable actions in pursuit of an Enforcement Notice.

In pointing out the positives I should also be equally clear about the negatives for Members. If Members decide to continue to blindly follow Officers advice, then they need to consider two important things very carefully, and keep them in mind.

This matter is never going to go away, and at some point in the near future absolutely everyone's participation, and actions are going to be examined and scrutinised in considerable detail in a formal setting. The truth seekers will be very interested in respect of what people knew and when, and how they are able to justify their conduct and related decisions and actions. Obviously if my contentions are proved correct then it will have career implications for Council Officials. Similarly if it is found in a formal setting that this Enforcement action should never have been placed before Members, and that clearly if Members had themselves undertaken a proper and compliant discovery process in respect of ALL the information, as they are legally bound to have done, and it is then discovered that had they done so, it would have been impossible for Members to have considered the motion, much less passed it, as they already have. It would then be clear that Members did not fulfil their duties properly, nor conducted their office and responsibilities with due circumspection, as determined by the actions that they have ALREADY taken. In short Members could no longer remain Members of the DCC for entirely obvious reasons, and more than likely would have to resign as Councillors and especially given the financial liabilities that they would have quite unreasonably exposed the Council to, relative to my numerous previous clear warnings. – Again given my prior protestations there can be no claim to ignorance by way of mitigation by either Officials or Members. – Furthermore, given that the proper conduct of due process is a legitimate public concern, and interest, it would be entirely appropriate for me to put all of these matters in the public domain. Then voters can make an entirely informed decision about the competency of their elected Members and their control, or lack thereof, of the paid Officials that work for them, and their collective and reckless disregard for the pursuit of proper procedures, and the consequential mis expenditure of public funds, and the accumulation of totally unnecessary large financial liabilities.

I suggest an immediate period of reflection and self examination by the Council Officers and Members is now called for prior to the proposed Enforcement Notice being issued. Given that I am under a statutory time limit to make certain disclosures to the Council reference the letter I received from Mrs N Church on the 22nd March 2011 which by my calculation demands a reply no later than Tuesday 12th of April. I would therefore ask you to either suspend this time limit temporarily, or make a formal extension to it for a short period.

The Council, both Members, and Officials can no longer afford to deny the reality of this situation. Your actions have denied me due consideration and the application of a proper process that I have an absolute right to, and one would reasonably expect from a Council with such a reputed commitment to standards of excellence. The reality is a process designed to deny the individual a fair hearing based on ALL the facts, and this in the context of the imposition and use of Statutory Powers.

It is simply impossible for you to remain in denial, and given very fortunately for you the status of the Enforcement Notice is not yet resolved.... I cannot see any "reasonable" alternative to the earliest meeting where BOTH sides can put all their cards face up on the table, and at a minimum explore a resolution given the legal responsibilities you have to do this.

Given the gravity of this case, and whilst I appreciate all officers of the Council are busy, I consider the following people are essential participants to this meeting.

Robin Hales - The Chief Executive Officer
Kristen Paterson - The Deputy Chief Executive Officer and Director of Community and Planning Services.
Mr Kehoe - Head of Development Services.

I expect your early reply agreeing to this meeting. That the meeting will be held at a mutually convenient time by Friday 15 April at the latest, and your acknowledged agreement to suspend the Statutory notice period related to Mrs N Church's letter (details previously stated above) until after the meeting. **I look forward to your reply and agreement to these matters and the proposed next step within 24 hours.**

Finally I would ask you to arrange immediate distribution of this letter to all the Members of the DCC.

Yours sincerely,

Mark Banister.

CC Cllr Kevin Maskell
Cllr Elaine Bracken

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



Mr R Banister

Tel No: 01732 227196
Ask for: Jim Kehoe
Email: jim.kehoe@sevenoaks.gov.uk
My Ref: 3088/796C/JK/RM/tj
Your Ref:
Date: 30th March 2011

By Email:

Dear Mr Banister,

Re: Four Winds, Farley Lane, Westerham, Kent

Thank you for your email of 16th March 2011, regarding the decision of the Planning Committee in respect of the above property.

The information available to Members for their consideration of Enforcement Action included the following:

- The opportunity to attend a Site Inspection
- The Report to the Development Control Committee.
- Details of the planning history of the site.
- The decision of the Planning Inspector in consideration of the Appeal to retain the development as built.
- The Late Papers circulated at the meeting.
- The Officer Presentation and their Questioning.
- The view of the Local Member who addressed the Committee.

As such Members had the necessary information to arrive at a well informed decision.

I hope this helps to clarify matters.

Yours sincerely,

pp

Jim Kehoe
Head of Development Services

Chief Executive: Robin Hales
Community & Planning Services, P.O. Box 183, Argyle Road, Sevenoaks, Kent TN13 1GN
e-mail: community&planning.services@sevenoaks.gov.uk www.sevenoaks.gov.uk
Telephone: 01732 227000 Fax: 01732 451332 DX 30006 Sevenoaks
Switchboard Times: Monday - Thursday 8.45 a.m. - 5.00 p.m. Friday 8.45 a.m. - 4.45 p.m.



Richard Banister

From: Richard Banister
Sent: 16 March 2011 12:44
To: 'jim.kehoe@sevenoaks.gov.uk'
Cc: 'jim.sperryn@sevenoaks.gov.uk'
Subject: Four Winds, Farley Lane, Westerham.
Importance: High

Reference : Four Winds, Farley lane, Westerham.

Dear Mr Kehoe

As unsatisfactory as I found Thursday evenings decision to be, I am aware that you have yet to formally issue the Enforcement Notice. Before you do issue the Enforcement Notice on Four Winds could you please confirm that you are entirely satisfied that Members had all the pertinent information put before them to enable them to reach a "reasoned" decision, and thereby correctly discharge their legal duties in respect of the Statutory Powers pertaining to the issuance of Enforcement Notices.

You will understand that in order for you to answer this question correctly, I will need to see a detailed list of that pertinent information, and clear and transparent evidence of its consideration. You will of course appreciate the significance.

Yours sincerely,

Mark Banister.