



Subject: RE: H09-0276-19 Fen Road Holbeach

This message originated from outside your organization

Hi Polly,

Thanks for letting us know, we do not agree with this stance but accept the High Court ruling.

Kind Regards

Barrie



Subject: H09-0276-19 Fen Road Holbeach

Dear Barrie

Erection of 83 dwellings with associated garaging, roads and sewers

I refer to your application of 13-03-19 and the viability case subsequently submitted on your behalf.

I am writing to draw your attention to the latest judgment relating to site viability issued by the High Court in R (on the application of Holborn Studios Limited) v LB of Hackney and GHJ (Eagle Wharf Road) Limited [2020] EWHC 1509 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1509.html>. It confirms that the release of information as part of planning decision making, including potentially confidential viability information, is to be considered a requirement unless there are 'exceptional circumstances'. It is also a reminder of the legal requirements around committee papers and background documents also being available to the committee and members of the public.

The judge reached that view after considering the wording of the revised NPPF and PPG on Viability, concluding among other things that "in accordance with the [NPPF] viability assessments (where they are justified) should reflect the approach set out in PPG, and be made publicly available".

"The inputs and findings of a viability assessment should be set out 'in a way that aids clear interpretation and interrogation by decision-makers' and be made publicly available save in exceptional circumstances," the judge said. "As the PPG makes clear, the preparation of a viability assessment 'is not usually specific to that developer and thereby need not contain commercially sensitive data'. Even if some elements of the assessment are commercially sensitive, as the PPG points out, they can be aggregated in a published viability assessment so as to avoid disclosure of sensitive material."

Therefore, unless there are exceptional circumstances, the viability assessment should be made publicly available.

I am therefore advising you that in line with this judgement the Council shall be making the viability case you have submitted available for public viewing on the Council's website. If you wish to provide a revised viability assessment that avoids disclosure of sensitive material only, please can I have this in the next 7 days by midday on Monday 6 July 2020 and copy in Ricard Fidler, in case I am not available. If I do not receive a revised statement then your submissions will be published in the format already received.

Yours sincerely

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