

## RE: Food hub

**From:** "Phil Courtier" <phil.courtier@broadland.gov.uk>  
**To:** "'Peter Milliken'" <chair@eastonparishcouncil.co.uk>  
**Cc:** "Cllr Shaun Vincent" <Cllr.Shaun.Vincent@Broadland.gov.uk>, "Matthew Rooke" <matthew.rooke@broadland.gov.uk>, "Helen Cowles" <helen.cowles@Broadland.gov.uk>, "Helen Mellors" <Helen.Mellors@broadland.gov.uk>  
**Date:** Jul 27, 2018 1:41:37 PM

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Peter

I'm afraid that I am now away for the next two weeks and I haven't had an opportunity to respond to the points raised below. Having reviewed the questions and points you have raised I can't see anything that requires an urgent answer, but if you disagree can I ask you to let Helen Mellors know and she will endeavour to respond to the relevant point in my absence.

Many thanks

Phil

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**From:** Peter Milliken [mailto:chair@eastonparishcouncil.co.uk]

**Sent:** 24 July 2018 14:26

**To:** Phil Courtier

**Cc:** Cllr Shaun Vincent; Matthew Rooke; Helen Cowles; Helen Mellors

**Subject:** Re: Food hub

Phil,

Apologies for the delay in getting back to you, the joys of having an MS relapse, I have responded in blue to your comments.

Regards

Peter

**Sent:** Friday, June 15, 2018 at 4:18 PM  
**From:** "Phil Courtier" <phil.courtier@broadland.gov.uk>  
**To:** "'Peter Milliken'" <milliken@gmx.com>  
**Cc:** "Cllr Shaun Vincent" <Cllr.Shaun.Vincent@Broadland.gov.uk>, "Matthew Rooke" <matthew.rooke@broadland.gov.uk>, "Helen Cowles" <helen.cowles@Broadland.gov.uk>, "Helen Mellors" <Helen.Mellors@broadland.gov.uk>, "Stephen Scowen" <stephen.scowen@broadland.gov.uk>  
**Subject:** Food hub

Peter

Please find responses to the points raised in your attachment entitled 'Questions and requests', sent to Cllr Vincent on 13th June 2018. For the avoidance of doubt I have cut and pasted your text and provided a response in red:

Can LDO conditions be legally imposed on a different District Council area of responsibility? **Yes** What evidence can you provide to support this answer

Can you please advise the measures that have now been adopted at BDC following the discovery of the flawed decision making process that was made in the way in which this application has been handled up until you have taken over this matter so that it cannot happen again? **No decision has been made, and the application you refer to has been withdrawn. Therefore I cannot accept that there has been a 'flawed decision making process' on the grounds that there hasn't been a decision. The fact that the application has been withdrawn has addressed any inadequacies. I don't envisage this series of events occurring again.** The term envisage can lead to the possibility would it not be more prudent to have formal process in place?

Please provide the TOPOGRAPHICAL SURVEY carried out by TOWER SURVEYS as depicted on their drawings R-N4185 201 TO 205 together with any other documents held to date in relation to planning application 20180471 this should include any document that relates to drainage and flooding along Church Lane. **The survey documents were not submitted to Broadland DC.** Was this document requested by BDC officers at the outset of the application?

Please provide detailed descriptors of these trigger points and what work on Church Lane will be required before each point is reached by way of employee numbers, area coverage and commercial vehicle movements. **These details are required as part of condition 2.20 of the LDO. As the current application has been withdrawn I am unable to provide the details you request.** Revised drawings have now been included with the original LDO application and an application for partial discharge has been made. How can this be done without the detailed descriptors of the trigger points being agreed? (It would seem the tail is wagging the dog.)

Can you also confirm if it is BDC legal position that an LDO can stipulate conditions outside of its red line. **Yes. There is no legal obligation to restrict to limit conditions to matters which lie within the red line.** What evidence can you provide to support this answer

Can you confirm if any formal discussions had taken place with Historic England in relation to this application and the potential adverse impact it may have on the Grade 1 Listed Church of St Peter. **No, there have been no formal discussions with Historic England in relation to the recently withdrawn application.** Was this a mistake by an officer not to inform them or was it a deliberate decision? which seems to be implied by Mr Kirbys comments on the events that took place in which he suggested a light touch approach was taken,

Can you please comment on the follow statement "A Section 106 planning obligation cannot be required under an LDO as the LDO constitutes the grant of planning permission" source Great Yarmouth and Lowestoft Enterprise Zone General Information Guide March 2012 p5 s6.1. The current LDO has a s106 routing agreement as a condition this seems to be at odds with the above statement. Who is correct and if it is not BDC what other mistakes have been made in the preparation of this Local Development Order. **I am satisfied that the use of a s.106 agreement was fully acceptable. I have not investigated the Gt Yarmouth case and so I am unable to comment further.** Given that this is BDC's first LDO, would it not be advisable to seek advice on this matter, what evidence do you have to support your conclusion which would be contrary to the experience of the planning and legal team who created the Great Yarmouth and Lowestoft Enterprise Zone General Information Guide March 2012 p5 s6.1

Can you please advise why no public comments have been uploaded to your planning portal? **If you are referring to the representations received regarding app. ref. 20180471 then I can confirm that Broadland DC doesn't put third party representations on the website.** Accepted

EDP article of yesterday (Link) in which Mr Ian Alston stated "As a condition of the LDO we have had to pay for a legally-binding routing agreement, which states that once the improvements are in place we will cease using Church Lane for access to the FEP." If this is true can you advise were I can find the evidence to support this statement, but like wise should this statement be untrue, can you confirm that BDC will be looking to set the record straight with the public. **Please see section 9 of the s.106 agreement. I am satisfied that Mr Alston's comments are consistent with this section of the agreement.** I refer to my previous but one question if your conclusion is incorrect this statement is not valid. It should also be noted that the waters are very muddy who the developer is see my comments on letter 23 July 2018 re Discharge of conditions application 20181177.

Mr Ian Alston's statement as not being factually correct as he has given no such undertaking to stop using Church Lane once the A47 direct link has been established. **Noted, but as Church Lane will become the sub-optimal route (once the new access has been implemented) to the site I am satisfied that the vast majority of vehicles (notably HGVs) will use the new access direct from the A47.** Just to say noted does not give any confidence to the residents of Easton. What will BDC do to enforce this? What is BDC doing to set the record straight?

Was it legal to impose a s106 as part of a condition within the LDO. If it is not deemed a legal right to impose such a condition. How is Broadland District Council going to rectify this position. **The s.106 was not imposed as part of a condition. It's a free standing document which supports the LDO but is separate from it, para. 1.18 of the LDO refers to an accompanying planning obligation which is the s.106 which has been referred to.** An obligation is a legal bond (*vinculum iuris*) by which one or more parties (obligants) are bound to act or refrain from acting. An obligation thus imposes on the *obligor* a duty to perform, and simultaneously creates a corresponding right to demand performance by the *obligee* to whom performance is to be tendered. Obligations may be *civil*, which are enforceable by action in a court of law, or *natural*, which imply moral duties but are unenforceable unless the obligor consents. The term condition is a term of a contract which is of such vital importance that it goes to the root of the transaction; essentially it is a major term of the contract. Breach of a condition gives rise to the **claimant's** right to terminate the contract (treat the contract as discharged) and claim damages for any loss. Apologies for what seems a legal lesson on the meaning of terminology. Given the statement in the Great Yarmouth and Lowestoft Enterprise Zone General Information Guide March 2012 p5 s6.1 you state para. 1.18 of the LDO refers to an accompanying planning obligation which is the s.106 as such again the question needs answered which council interpretation of law is correct.

Please provide a full list of all documents and correspondence that was removed from the file together with the full legal reasoning why these documents were removed in full from the file. **The list has already**

been provided and the reasons were included in Matthew Rooke's email dated 23 May 2018. On a DPA view point what independent evidence exists to support this?

Please advise who reviewed the material that was removed and provide the legal policy process that is undertaken at Broadland District Council in relation to the removal of documents from files before the public may see them. **The planning officer removed the documents. I'm unclear what 'legal policy process' you are seeking.** Has the officer who removed the documents been specially trained as a DPO, if not what was the legal basis at the time to withhold the documents in full? Did the office seek formal advice from the DPO before removing them.

What steps were taken to ensure that they had full legal justification in removing a complete document. **See above. see above response.**

Where is the check in / out sheet attached for the file nor did it have an index of the documents that should be on file. **There was no check in/out sheet but the Council's Deputy Data Protection Officer has confirmed that this does not constitute a breach of the data protection act.** Having sought advice from the ICO and on their request, I have formally referred this matter to the ICO for investigation and clarification

you have already stated one of your officers misinterpreted the original legal advice, what else is Broadland District trying to hide by not disclosing the full advice. **I have not made such a statement and nor is Broadland DC trying to hide anything** I have not said it was you it was Mr Rooke.

please advise if permission was requested and if so was it granted to remove the hedgerow on Church Lane were the proposed planning permission for the entrance to the LDO site under planning application 20180471. **This matter has now been considered by the tree/landscape officers at both Broadland and South Norfolk Councils and both have confirmed that there has been no breach of the Hedgerow Regulations. Therefore no further action can be taken regarding this issue.** accepted

Please advise under what rule you used to exempt the briefing note at the time it was removed? **The officer's briefing note to Cllr Proctor in advance of the Cabinet meeting on 18 July 2017 was removed because it was an internal note and not in the public domain. However, I'm happy to review this matter.** Please review this decision

public comment made during a public consultation, are not exempt from public scrutiny because they have identifying details on them as such should not have been removed from the file, some very limited redaction may be permitted. Please provide the detailed legal basis for this decision to withhold these documents in full. **The consultation is automatically removed after a set period of time. However, the portal has now been re-opened for you to view. Please see: <http://broadland-consult.limehouse.co.uk/portal/>** Thank you at SNDC who are more open and transparent do not seek to hide this information after only a short period of time, I accept that this was done due to the poor culture of openness and transparency that was in place at BDC at the time. It is hoped as the working relationship between SNDC and BDC develops the good practices of both councils rub off on each other.

please provide the supporting officially adopted protocol or details from your Data Protection Officer taken at that time to withhold these documents. **Officers rely upon the general principles set out in the Freedom of Information and Environmental Information Regulations in making decisions regarding what to withhold.** A legal process must be undertaken on each occasion data/ information is withheld from public scrutiny providing a right of appeal to any decision that has been made. A formal methodology should be in place to safeguard the rights of public scrutiny.

In relation to the Hedge row, you state the works have planning permission I would like to point you to LDO s1.8 and it could be argued on your part that planning permission is already granted however this is subject to conditions within the LDO. Condition 2.20 requires a scheme of works to be submitted and agreed in writing with LPA and the Highways Authority. It is my understanding that this has not as yet been granted. The removal of the hedge without this approval

is in breach of condition 2.20 and 2.28 of the LDO this removal of hedge row can be tantamount to the start of development without permission. What enforcement action will be taken against the land owner for such a breach of the conditions as laid out in the LDO. **The removal of the hedge is not 'development'**. If I am not mistaken your legal advice states that the entrance is classed as development and the removal of the hedge was in connection with the entrance that would then indicate that was development. The alternative is at that point the hedge that was removed was outside the red line of the LDO and then it's not development. Which is it?

Please clarify what you mean by "in due course" **Can you please clarify this point?** The term was used by Mr Rooke to answer me to when he would deal with a matter as he was very busy on another matter which led to the last question on your list. This term is open to much interpretation, I was seeking clarification on his meaning.

please confirm that a Cease and Desist Order has been issued to the land owner until such time as all the matters that have been raised have been fully clarified, legally tested, and shown to be lawfully implementing the Local Development Order **Such action is not required or justified at present** noted

Would you also confirm that sufficient staff time and resources will be given to making sure the Local Development Order is correctly implemented and monitored in the future **Yes, there are sufficient resources** Then why did an offer state he was too busy deal with other matter this indicates he is not allocated enough time to properly deal with urgent matter that arise.

As you are aware, if you remain unhappy with the Council's actions, you have the right to complain to the Local Government Ombudsman. The Ombudsman is an individual who is independent of the Council and who investigates complaints against Local Authorities. Further information can be found at: <http://www.lgo.org.uk>.

Regards

Phil

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