

08/01/2016 10.41

Dear Mr. Tulloch

We refer to your Delegated Report on the above planning application in response to which we submitted representations on behalf of our client Builder Depot Ltd. on 29 October 2015.

James Earl, chair of Fortune Green & West Hampstead Neighbourhood Forum, has now kindly copied us your response dated 7 January 2016, as attached, to his email of 14 December 2015, in which he pointed out the erroneous omission from your report of any reference to the policies in the Fortune Green and West Hampstead Neighbourhood Plan.

You suggest “the Neighbourhood Plan was considered when assessing the application”. However we fear the evidence suggests the contrary. Whereas we stated at para. 5.1

“In assessing the proposal the relevant development plan policies requiring to be satisfied are those in.....the Fortune Green and West Hampstead Neighbourhood Plan (“NP) 2015”,

your report cites the West Hampstead Place Plan 2012 instead.

That is expressly described at para. 6.4 of the Neighbourhood Plan as a “report” and “not a formal planning document”, and therefore contains no adopted development plan policies which could possibly have been considered when assessing this application. The “Relevant policies” section of your report thus fails to refer to any Neighbourhood Plan policies such as NP 9 “Pavements and Pedestrians” specifically invoked at para.6 of our representations.

We suggest these anomalies are not merely issues of “transparency” but are contrary to sec.38(6) of the Planning and Compensation Act 2004 in terms of which “the determination must be made in accordance with the (development) plan unless material considerations indicate otherwise.” No such considerations exist in this instance.

The validity of the Delegated Decision is imperilled further in that your Summary of our client company’s consultation response states the very opposite of what was contained in it and could not therefore have been properly considered. You claim we suggested “ *Conditions should be considered to mitigate*” the impacts on residential amenity, whereas we demonstrated at paras. 8.2 and 8.3 that in this instance any imposition of conditions would be unenforceable and therefore contrary to both NPPF para. 206 and the Planning Practice Guidance relating thereto.

We await hearing from you as to what action your Council proposes to take in these matters, since merely “amending”, after the event, a report which forms the very basis of a Council decision is clearly inadmissible.

Since these are issues of a serious nature we must ask that they be drawn to the attention of your Members' Panel meeting this coming Monday 11th January 2016. We are accordingly copying this email as a matter of urgency to your Council's Planning Principal Administration Officer to reach your Council before noon today.

Regards

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