

# **BERKHAMSTED TOWN COUNCIL**

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24 September 2013

## **SUMMONS**

Notice is hereby given that there will be a meeting of the **Town Planning Committee** in the Council Chamber, Civic Centre, Berkhamsted, on **Monday 30 September 2013 at 7.30 pm** for the purpose of transacting the business set out in the agenda below and you are hereby summoned to attend.

  
Gary Cox  
Town Clerk

### **MEMBERS:**

Councillors: Dr L Handy - Chair  
Julie Laws - Vice Chair  
A Armytage  
T Ritchie  
G Stevens  
P Warren

### **SUBSTITUTES:**

Councillors: D Bonnett  
D Collins  
R Cowie  
P Matthews

### **EX OFFICIO:**

Councillor IM Reay - Town Mayor

**THE PUBLIC ARE INVITED TO ATTEND ALL MEETINGS OF THE TOWN COUNCIL**

## AGENDA

**TP139 /13 Apologies for Absence**

**TP140 /13 To receive Declarations of Interest regarding items on the agenda**

**TP141 /13 To agree Minutes of the Last Meeting held on 9 September 2013**

**TP142 /13 Chair's Communications**

- i. A copy of a **legal challenge** to the **Core Strategy Adoption – Report Supplement** has been received from Dacorum Borough Council. Papers attached.
- ii. A copy of an email from Dacorum Borough Council giving details of the **Love Herts Campaign**, which is due to take place between the **end of September to the end of October 2013**. Paper attached.

**TP143 /13 To suspend Standing Orders to allow public participation**

To invite public participation on items on the agenda.

**TP144 /13 To consider, for Resolution, forms and drawings for applications relating to the Town of Berkhamsted received from Dacorum Borough Council**

4/01519/13/FHA **AMENDED and/or ADDITIONAL PLANS / INFORMATION – First floor side extension at Homestead, Shootersway. (JA)**

4/01610/13/FHA Single storey side extensions and driveway alterations at Saffron Lawn, Gravel Path. (AP)

4/01626/13/MFA Pitched roof extension and conversion of existing offices to create 10 self-contained flats at 29-33 Lower Kings Road. (JR)

4/01629/13/TCA **FOR INFORMATION ONLY – Works to Deodar Cedar tree at All Saints Church, Shrublands Road. (YE)**

4/01635/13/TPO Work to Japanese Maple tree at 12 Greystoke Close. (LR)

4/01640/13/FHA Two-storey side extension to existing garage and conversion of first floor to granny annexe at New England 9B, Kingsdale Road. (MD)

4/01650/13/FHA Re-paint all windows and front door at 30 Kitsbury Road. (NG)

4/01677/13/FHA Two-storey and first floor rear extensions at 21 Upper Hall Park. (MD)

4/01681/13/FHA Two-storey rear extension and loft conversion at 62 Kitsbury Road. (PD)

4/01692/13/ADV New shop frontage including fascia and projecting sign at 195 High Street. (LR)

- 4/01718/13/LDP    **FOR INFORMATION** – Rear dormer and front velux roof lights at 24 Cobb Road. (LR)
- 4/01734/13/FHA    First floor front extension at 4 Hillside Gardens. (YE)
- 4/01753/13/FHA    Single storey rear extension at 5 Park Street. (IK)

#### **TP145 /13    Planning Appeals**

To note the following planning appeal has been made:

- 4/01571/12/ENA    Construction of two 3-bedroom dwellings with off-road parking  
4/01829/12/FUL    **(AMENDED SCHEME)** – 11 Bank Mill.  
4/01054/13/FUL
- 4/04/01009/13/FUL Construction of two 4-bed detached dwelling at land to rear of 14 and 15 Oakwood.

#### **TP146 /13    Planning Appeal Decisions**

There were no planning appeal decisions.

**TP147/13****Planning Decisions**

- 4/00251/13/FHA Loft conversion with rear dormer, rear extension and replacement of rear steps and balustrade with balcony at 52 Charles Street.  
**Granted / No objection** subject to the views of the Conservation Officer
- 4/00295/13/FHA Sun room, replacement windows/doors and new rooflights to outbuilding, replacement boundary fence and gate. New chimney to house at 18 Cross Oak Road.  
**Granted / No objection**
- 4/00850/13/FUL Detached dwelling at land adjacent Holly House, Doctors Commons Road.  
**Withdrawn / Object**
- 4/01130/13/FHA Extension, front porch and rear garden room at 1 Shrublands Road.  
**Granted / No objection** subject to the views of the Conservation Officer
- 4/01256/13/FUL Repaving, replacement outdoor seating and new bollards at land to front of former Berkhamsted Delivery Office, 300 High Street.  
**Granted / No objection**
- 4/01281/13/FUL Change of use to car valet business with internal alterations at 13A High Street.  
**Refused / Noted**
- 4/01311/13/FUL Change of use from agricultural to mixed use (Agricultural, Forestry and Equine) at land at (adjacent Haresfoot Farm), Haresfoot Park, Chehsam Road.  
**Refused / Object**
- 4/01341/13/TPO Works to Maple, Sycamore, Holly and Oak trees at 10 Gaveston Drive.  
**Granted / No objection** subject to the views of the Trees & Woodlands Officer
- 4/01342/13/LBC Move internal wall to extend bathroom, refit bathroom, install central heating and re-wire at 12 Castle Street.  
**Granted / No objection** subject to the views of the Conservation Officer
- 4/01344/13/LDP Single storey rear extension at 20 South Park Gardens.  
**Certificate of lawful use or development / Noted**
- 4/01354/13/FHA Extension, replacement porch, garage with dormer windows and internal alterations at 55 Gossoms End.  
**Granted / No objection**

- 4/01358/13/FHA Remodelling of front porch and part demolition of rear garage and replacement with a two-storey rear extension at 80 Kings Road.  
**Granted / No objection**
- 4/01364/13/FHA Extension incorporating a loft room at 8 Hall Park Gate.  
**Granted / No objection**
- 4/01373/13/FHA Extensions at 14 Tortoiseshell Way.  
**Granted / No objection** subject to the provision of adequate off-road parking
- 4/01375/13/TPO Works to trees at 2 Hillmead.  
**Granted / No objection** subject to the views of the Trees & Woodlands Officer
- 4/01382/13/TPO Works to tree at 4 Gresham Court.  
**Granted / No objection** subject to the views of the Trees & Woodlands Officer
- 4/01388/13/FHA Demolition of garage and construction of new two-storey side extension with rear bay window at ground floor at Mortimer House, Graemesdyke Road.  
**Granted / No objection**
- 4/01392/13/FUL Change of use from residential care home with ancillary living accommodation (C2) to use as a single dwelling house (C3) at 13 Shrublands Road.  
**Granted / No objection** to change of use to return to a single dwelling in the Conservation Area
- 4/01395/13/FHA Extensions at 7 Shrublands Avenue.  
**Refused / No objection** subject to the views of the Conservation Officer
- 4/01405/13/FHA Extension, front porch, alterations to fenestration, replace timber cladding with tile and new driveway/crossover at 7 Oakwood.  
**Granted / No objection**
- 4/01407/13/FHA Extensions, rear velux windows and alterations to fenestration and doors at 255 High Street.  
**Granted / No objection** subject to the views of the Conservation Officer

**CABINET**

**PART I**

**17 SEPTEMBER 2013**

**AGENDA ITEM 13**

**DACORUM LOCAL PLANNING FRAMEWORK: ADOPTION OF CORE STRATEGY**

**Notice of Possible Legal Challenge under Section 113 of the Planning Act 2004**

1. The possibility of challenge is identified in Section 8 of the Cabinet Report.
2. A letter was received on 13 September from Paul Winter, Solicitor, acting for Grand Union Investments Limited (GUI) (see Appendix). Having sought Queen Counsel's opinion, Paul Winter asserts that the Core Strategy is flawed and unsound, and requests the Council to refuse to adopt. He states that he has advised his clients (GUI) that they should issue proceedings to challenge the Core Strategy (if it is adopted).
3. The grounds of challenge are explained in the attached letter. In essence they are that:
  - The Council has not followed the policies of the National Planning Policy Framework (NPPF) in relation to housing requirements (i.e. meeting full objectively assessed need and providing sufficient sites to do this) and Green Belt release (i.e. promoting sustainable growth and providing safeguarded land beyond the plan period); taken with the need to plan for a 15 year plan period, these are serious defects.
  - The Inspector has similarly failed. Furthermore, he has not sufficiently addressed the legal requirements relating to soundness or other shortcomings raised during the examination.
  - Partial review of an unsound plan cannot make it sound. The Council cannot therefore rationally adopt the Core Strategy.
  - Strategic Environmental Assessment did not consider the reasonable alternative of meeting full objectively assessed [housing] needs.
4. The Council took advice from Queen's Counsel (Simon Bird QC) in respect of similar points raised earlier in the year. This was reported to Cabinet on 26 April 2013. Key points to highlight from Counsel's opinion are as follows:
  - It is important *to have regard to* the policies of the NPPF as a whole.
  - The Inspector must balance all relevant factors – for example, the lack of an up-to-date policy framework (if the Core Strategy is not adopted), the extent of the land supply and the extent of a perceived shortfall: plan making is not all about housing delivery.
  - Whether it is appropriate to allow a later review to occur is a matter of planning judgement.
  - It is wrong to characterise partial review of the Core Strategy as effectively allowing an unsound plan to be adopted. The Inspector's conclusions that weaknesses in the plan, which could not be tolerated for the full plan period, can be remedied as part of an appropriate strategy for an early partial review is a lawful approach to meeting objectively assessed need in full.
  - Whether it is appropriate to allow a later review and revision of Green Belt boundaries to occur is a matter of judgement.

5. With regard to point 4 in the pre-action letter, the Council's sustainability consultant (C4S) assessed the option of 538 dwellings pa at Pre-Submission stage within the Sustainability Report. This is the level of full objectively assessed needs which is taken from paragraph 24 of the Inspector's Report. 13,450 is a Government (DCLG) projection.

#### Conclusion

6. Rob Jameson (external Solicitor) who advised the Council throughout the Core Strategy process has been consulted on the pre-action letter received and is satisfied that the points raised in the letter have been previously considered and modifications made to the Core Strategy to address the concerns. Counsel, Simon Bird QC, has also considered the letter and is satisfied that his previous opinion addresses the key issues which have been summarised above.

Accordingly, officers are satisfied that:

- a) The approach of a partial review rectifying weaknesses in the core strategy is a reasonable and balanced approach.
  - b) The Inspector's Report and conclusions are reasoned and reach an appropriate balance on planning grounds.
7. There is nothing unlawful in the Inspector's approach and his approach is not contrary to current guidance, statute or case law.
  8. Therefore, whilst the risk of challenge must clearly be noted and it will ultimately be for the Courts to decide the lawfulness of the Council's approach if it is challenged, no change to the recommendation is suggested and the recommendation to Council to adopt the Core Strategy stands.

## Appendix: Letter from Paul Winter (text)

Paul Winter & Co

Solicitor

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EC4V 6AL

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[paulwinter@paulwinterandco.com](mailto:paulwinter@paulwinterandco.com)

Daniel Zammit  
The Chief Executive  
Dacorum Borough Council  
Civic Centre  
Marlowes  
Hemel Hempstead  
HP1 1HH

BY EMAIL AND BY POST

13 September 2013

Dear Sir

### **Dacorum Core Strategy Development Plan Document – informal notice of intention to make a claim**

This letter is being sent to you on the basis of advice received from Christopher Katkowski QC (with which I fully concur) that the proposed adoption of the Dacorum Core Strategy DPD will be unlawful and that there are strong grounds for judicial challenge under section 113 of the Planning and Compulsory Purchase Act 2004.

I have advised my clients, Grand Union Investments Limited (GUI) that if the Council proceeds in accordance with the recommendation set out in the report due to be considered at the Cabinet Meeting on 17<sup>th</sup> September 2013, they should issue proceedings to challenge the lawfulness of the Core Strategy.

Whilst a formal pre-action protocol letter is not required in this case, we have been advised to provide a brief outline of the basis on which my client's claim will be made in order that the Council can have an opportunity to consider these matters carefully before they decide whether or not they should adopt what GUI are advised is a seriously flawed and unsound document, despite the modifications proposed and conclusions contained in the Inspector's report dated 9<sup>th</sup> July 2013.

In brief summary, the grounds of challenge will include the following:

- 1) That the Core Strategy substantially fails to accord with NPPF policies in relation to:



a. identifying the full objectively assessed housing needs of the district (NPPF paragraphs 47 & 159) and requiring LPAs to plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of the NPPF and to allocate sites to promote development and bring forward new sites where necessary ((NPPF paragraph 157);

b. establishing through local plans Green Belt boundaries that will have regard to their intended permanence in the long term and taking account of the need to promote sustainable patterns of development, including identifying safeguarded land where appropriate and ensuring consistency with the Local Plan strategy for meeting identified requirements for sustainable development (NPPF paragraphs 83 - 85);

c. the crucial need for Local Plans to plan positively for the development and infrastructure needed and to be drawn up over an appropriate time scale, preferably a 15-year time horizon – the Core Strategy initially purported to provide for a substantially longer period (and was submitted and assessed on that basis), but the serious defects identified in the statutory examination process have, by virtue of MM28, seriously compromised the ability of the Core Strategy to provide clear and effective guidance due to the need for a “partial review” to remedy these fundamental shortcomings in the submitted Core Strategy which means effectively that the time horizon of the Core Strategy (if adopted) will be approximately 4 years only;

d. the criteria for soundness (paragraph 182) are clear and it is clear that the Core Strategy is unsound by reference to those criteria. Whilst the inspector (Inspector’s report paragraph 28) appears to reduce the importance of the NPPF as “*guidance not statute*” the criteria in paragraph 182 have considerable statutory importance under section 20 of the 2004 Act; it will be contended that the effect of his recommendation in paragraph 79 and the recommendation in the Cabinet report published 10 September 2013 will be unlawful on the basis that they will clearly amount to adoption of an unsound development plan document.

2) Section 19(2) requires the LPA to have regard to these policies and the findings of the inspector (See for example, Inspector’s report paragraphs 11 – 26; 33 – 34 and 78) indicate that the LPA manifestly failed in that statutory duty;

3) Whilst the inspector found (Inspector’s report paragraph 77) that the Core Strategy has met all legal requirements, he does not specifically analyse these requirements or address shortcomings that were raised during the examination process. He also concludes (paragraph 79) that the recommended changes (main modifications) will satisfy the requirements for Section 20(5) of the 2004 Act and meet the criteria for soundness in the NPPF. It will be contended that this conclusion is wrong as a matter of law and that the LPA, properly advised, cannot rationally adopt the plan on that basis and in particular on the basis of the amendment set out in MM28 because that amendment cannot have the effect of converting a fundamentally unsound and non- legally compliant development plan document into a sound one.

4) Furthermore, it will be contended on behalf of GUI that the strategic environmental assessment of the Core Strategy was defective and did not fulfil the requirements of the SEA Directive or the SEA Regulations and that, by virtue of regulation 8 of the SEA regulations, the LPA is not entitled to adopt the plan. Regulation 12(2)(b) of the SEA regulations require the SEA to identify describe and evaluate the likely significant effects on the environment of "*reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme*". The inspector's findings indicate that the alternative of providing for the full housing needs of the district was a reasonable alternative and was arguably the most reasonable alternative in the circumstances of this case. It is plain that the LPA failed to undertake a legally compliant SEA process in relation to this option. This defect is integral to the Core Strategy and is not capable of being remedied by MM28 or the other modifications recommended by the examining inspector.

In the light of the above, we strongly urge the Council to refuse to adopt the Core

Strategy. Yours faithfully,

*Paul Winter*

**Paul Winter**

c.c. James Doe  
Richard Blackburn Laura  
Wood Richard Blackburn

**Ann McHugh**

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**From:** Susan Lea  
**Sent:** 19 September 2013 12:42  
**To:** Ann McHugh  
**Subject:** Love Herts Campaign

Hi Ann,

Following on from our telephone conversation today here is the detailed information about "Love Herts" campaign.

I was approached by Annie Hawkins, County Tourism Manager at Herts Local Enterprise Partnership, Annie would like Dacorum to get involved in the up and coming event. The event is due to take place at the end of September through to the end of October.

The event is called "follow the flag" and we have been asked to "hide" golden love Herts flags across the borough. We would very much like Berkhamsted to take part. I will be willing to hide a number of flags in Berkhamsted and Enjoy Herts will be using social media to give out clues to the members of public to where they will find the flags.

Each of the flags will have a message on the back explaining how the finder can be included in the free draw to win a series of Hertfordshire themed prizes. The flags will be numbered which will enable Annie and her team to track how many are left.

The hiding of the flags – as previously mentioned I am willing to go to the shops and businesses and ask for them to hide the flags, we will be looking at hiding between 5 – 10 in Berkhamsted. I will also be responsible for recording where the flags are hidden.

In the absent of the Town Clerk I was wondering if you would be kind enough to forward this email on to someone at the Town Council. It would be great to have the support of the Town Council.

Taking part in this event will be a great opportunity for us to raise the profile of Dacorum, and to encourage footfall in our towns.

I look forward to hearing from you.

Kind regards  
Sue

Ms Sue Lea  
Tourism and Marketing Officer  
Strategic Planning and Regeneration  
Dacorum Borough Council

Tel: 01442 228719  
Web: [www.dacorumlooknofurther.co.uk](http://www.dacorumlooknofurther.co.uk)



TP 145/13

Date: 11/09/13  
Appeal Refs: APP/A1910/C/12/2181255  
APP/A1910/A/12/2188979/NWF  
APP/A1910/A/13/2203847  
Our Ref: 4/01571/12/ENA  
4/01829/12/FUL  
4/01054/13/FUL  
Contact: Andrew Parrish  
Andrew.parrish@dacorum.gov.uk  
Direct line: (01442) 228334

BERKHAMSTED  
TOWN COUNCIL  
16 SEP 2013  
REFERENCE.....



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Berkhamsted Town Council  
The Civic Centre  
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HP4 3HB

Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEALS BY: MR COWMAN & MR MCLAUGHLIN**  
**LOCATION: 11 BANK MILL, BERKHAMSTED, HP4 2ER**  
**DEVELOPMENT: CONSTRUCTION OF TWO 3-BEDROOM DWELLINGS WITH**  
**OFF ROAD PARKING (AMENDED SCHEME)**

I refer to correspondence of today and 12 September 2012 and 23<sup>rd</sup> January 2013 in connection with the above appeals and write to inform you that the Planning Inspectorate has changed the appeal procedure to all three appeals to a hearing. The hearing will provisionally take place on Tuesday 25<sup>th</sup> February 2014 in the Bulbourne Room at Dacorum Borough Council, Civic Centre, Hemel Hempstead, HP1 1HH. Consider that this is the date unless advised otherwise.

Please note any observations that you may have sent to us at the application and appeal stages have been sent to the Inspectorate and the appellant.

Other than in relation to the latest appeal (see concurrent letter dated 11/09/13), there is no further opportunity to comment on the appeals.

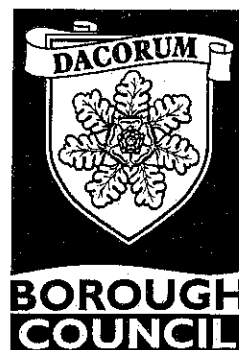
Yours faithfully

**Planning and Regeneration**

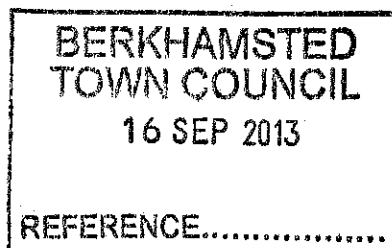


INVESTOR IN PEOPLE

Date: 11/09/13  
Appeal Ref: APP/A1910/A/13/2203847  
Our Ref: 4/01829/12/FUL  
Contact: Andrew Parrish  
Andrew.parrish@dacorum.gov.uk  
Direct line: (01442) 228334



Berkhamsted Town Council  
The Civic Centre  
161-163 High Street  
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Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEAL BY: MR P COWMAN**  
**LOCATION: 11 BANK MILL, BERKHAMSTED, HP4 2ER**  
**DEVELOPMENT: CONSTRUCTION OF TWO 3-BEDROOM DWELLINGS WITH OFF ROAD PARKING (AMENDED SCHEME)**

I write to inform you that an appeal has been lodged with the Secretary of State for Communities and Local Government in respect of the above site following the refusal of planning permission by this Council.

The appeal is to be decided on the basis of a hearing and a site visit by an Inspector. Any observations that you may have sent to us at the application stage will be sent to the Secretary of State and the appellant.

If you have any additional comments, please send 3 copies to **The Planning Inspectorate, 3/23 Wing, Temple Quay House, 2 The Square, Bristol, BS1 6PN**, quoting the above appeal reference number by **15<sup>th</sup> October 2013**. Representations received after this date will be returned. Letters will not be acknowledged.

The Council's reasons for refusal and the appellant's grounds of appeal can be inspected on the Dacorum Borough Council website. <http://www.dacorum.gov.uk/default.aspx?page=5998>

If you require a copy of the Planning Inspectorate's booklet 'Guide to taking part in planning appeals' then this can be obtained free of charge from Dacorum Borough Council or at [www.planningportal.gov.uk](http://www.planningportal.gov.uk).

Please note that the appeal decision will be published on the Planning Portal.

Yours faithfully

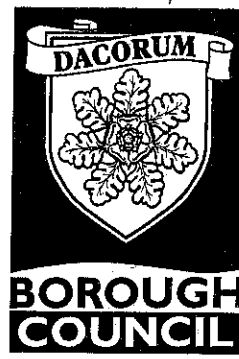
**Planning and Regeneration**



INVESTOR IN PEOPLE

Date: 12/09/13  
Appeal Ref: APP/A1910/A/13/2203683  
Our Ref: 4/01009/13/FUL  
Contact: Andrew Parrish  
Andrew.parrish@dacorum.gov.uk  
Directline: (01442) 228334

TP 145/13



Berkhamsted Town Council  
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Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEAL BY: Mr & Mrs M Fifield & R & Mrs R Hall**  
**LOCATION: LAND TO REAR OF 14 AND 15, OAKWOOD, BERKHAMSTED, HP4 3NQ**  
**DEVELOPMENT: CONSTRUCTION OF TWO 4-BED DETACHED DWELLING AND ACCESS**

I write to inform you that an appeal has been lodged with the Secretary of State for Communities and Local Government in respect of the above site following the refusal of planning permission by this Council.

The appeal is to be decided on the basis of an exchange of written statements and a site visit by an Inspector. Any observations that you may have sent to us at the application stage will be sent to the Secretary of State and the appellant.

If you have any additional comments, please send 3 copies to **The Planning Inspectorate, Room: 3/06, Temple Quay House, 2 The Square, Bristol, BS1 6PN**, quoting the above appeal reference number by **14<sup>th</sup> October 2013**. Representations received after this date will be dismissed. Letters will not be acknowledged.

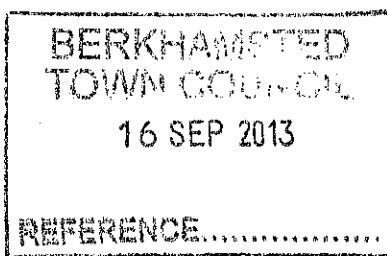
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A copy of the appeal decision will be published on the Government's Planning Portal.

Yours faithfully

Planning and Regeneration



INVESTOR IN PEOPLE