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Date 19 July 2021  
 Our Ref LT.M-00861617

Dear Sir

**DONCASTER LOCAL PLAN INSPECTOR'S REPORT 30 JUNE 2021  
 PROPOSED EMPLOYMENT ALLOCATIONS  
 FLOOD MAP CHALLENGE - BRADHOLME FARM THORNE**

We are instructed by Harworth Estates Property Group Ltd in relation to the above.

Following our review of the Local Plan Inspector's Report on the Examination of the Doncaster Local Plan dated 30 June 2021 ("IR"), we have identified a number of fundamental flaws with the Inspector's approach to the assessment of relative flood risk. We refer specifically to this in the context of our client's site and those other sites referred to in paragraph 98 of the IR.

We are of the view that these are significant legal errors which could potentially result in any adopted Plan being subject to legal challenge. We are anxious that the Council does not open itself up to the possibility of challenge (given the delay to formal adoption and expense that this would incur), and so we are keen that the Council has notice of these legal errors now while it still has time to rectify these potential legal errors.

**Flood Risk Assessment – Legal Errors**

As indicated above, we have identified a number of concerns and flaws with the Inspector's approach to the assessment of relative flood risk in relation to our client's site and those other 3 sites referred to in paragraph 98 of the IR.

The 4 sites subject to the relative flood risk assessment are identified in paragraph 92 and 93 of the IR as i) Thorne North ii) Thorne South iii) West Moor Park North and iv) West Moor Park East.

Notwithstanding the Inspector's conclusions on the issue of relative flood risk, the Inspector has fallen into legal error in reaching those conclusions. First, it is clear that the Inspector did not have the same level of detailed information available to him for each of the sites referred to and compared, which raises an issue of consistency of approach, procedural fairness and potential irrationality arising from his decision. Secondly and critically, it would seem that the Inspector has failed to have regard to a significant material consideration; being the change of the Environment Agency's position with regard

to potential flood risk associated with our client's site. That change in position has arisen following our client's successful "*Flood Map Challenge*".

You will be aware, of course, that there has been previous correspondence between our client's planning consultants handling the Local Plan process, (Spawforths), and the EiP Inspector and Programme Officer, raising concerns around the approach taken to the assessment of relative flood risk on these 4 sites. As part of that ongoing correspondence and pre-issue of the IR, the Council (and Programme Officer), were provided with a copy of the EA's letter of 24 June 2021 confirming that the EA had changed their stance on the "Areas benefitting from defences" issue.

That change in stance arose following direct engagement with the Environment Agency ("EA"), by BWB on our client's behalf and the successful "*Flood Map Challenge*" referred to above, submitted to the EA by BWB in June 2020. A further copy of the EA's letter of the 24 June 2021 is enclosed for your kind attention.

### **The Environment Agency's Letter dated 24 June 2021**

As stated above, the EA has accepted the arguments made on behalf of our client and changed their stance on the "Areas benefitting from defences" point.

Within the supplementary detail of the BWB flood zone challenge issued on 25<sup>th</sup> May 2021, BWB highlighted in the EA's current mapping that the extent of the ABD zone at Bradholme Farm was incorrect and presented to them what they regarded as being the correct ABD extent for the area. As stated in the EA's attached response they concur with this observation and state: (emphasis added).

*"We can however confirm that the representation of the Areas Benefitting from Defences produced in your letter of 25 May 2021 appears to meet the criteria for inclusion within the ABD GiS layer. **As such, we would be able to review and update our published dataset to reflect this**"*

The EA also refer to a National level review which is taking place on the published ABD dataset, which also places significant doubt on the accuracy and robustness of the existing data.

This is highly relevant in the context of the Doncaster Local Plan, which made use of this dataset within its Sustainability Appraisal to substantiate site allocations and provide preferential scoring of one Flood Zone 3 site over another Flood Zone 3 site. Based on this methodology and the EA's confirmation of the ABD being corrected, Bradholme Farm should have been granted this preferential scoring as being in an Area benefitting from Defences. In addition, it highlights the methodology to rely on such rudimentary information to be flawed and **contradicts the Council's assertions that a Level 2 SFRA was not required to inform the Plan.**

Given this shift in position by the EA and the obvious need to commission additional work to address the gaps in the Flood risk data identified, it follows that the Council is now at risk of falling into significant legal error if it moves forward with the proposals for this part of the Local Plan absent a Level 2 SFRA and any other evidence required to address those matters raised in the EA's letter

Clearly, this new information and the data required to be assembled in order for the EA to correctly assess flood risk is highly material to the sequential approach to site selection. Critically, we anticipate that this further work will provide further support for our client's submissions that Site 160 is sequentially preferable in flood risk terms to other sites, including Thorne North (site 001).

This is not a point of insignificance or of a minor nature. The concerns raised in previous correspondence and MM33 representations together with what we consider to be the Inspectors legally flawed conclusions on relative flood risk raise substantial issues which go to the heart of the Local Plan process.

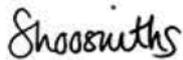
In the circumstances, we would formally invite the Council to carefully consider how it intends to move forward from here and how it intends to address the legal errors we have identified. In the meantime, we would respectfully request that the Council delays formal adoption of the Local Plan until such time as up-to-date, credible and legally robust evidence on relative flood risk is available and made subject to scrutiny in a public forum as part of a transparent, fair and lawful decision- making process.

Could we please have your response on the issues raised and the Council's proposed next steps on or before **5.00pm on Tuesday 3 August please.**

In the absence of these assurances or changes to the Council's current position as regards its approach to these specific site allocations, it is our view that any decision taken by the Council to progress and ultimately adopt the Local Plan (and specifically those parts of the Plan discussed above), would result in the Council falling into legal error and leave the Council open to potential legal challenge.

As stated above that is an outcome that we our client is keen for the Council to avoid in all the circumstances.

Yours faithfully



**SHOOSMITHS LLP**

Enc.

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