



By Registered Mail

The Planning Inspectorate

The Chair, Ms. Trudi Elliott CBE MRTPI

Temple Quay House, 2 The Square

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Bristol

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March 22<sup>nd</sup>, 2021

Dear Ms. Elliott,

**Planning Inspectorate Reference APP/L3625/C/20/3252951, Section 174 Enforcement Appeal by  
Whiteoaks Development Ltd – Kings Barn, Kingswood, Surrey**

This is a serious formal complaint about the work of the Planning Inspectorate (PI), relating both to the decision under the reference above and the cumulative damaging effect of recent appeal decisions affecting Kingswood, Surrey.

The **Kingswood Residents' Association (KRA)** in Surrey is a voluntary organisation that aims to protect and promote the collective interests of around 1,200 local dwellings (of which more than 50% are fee-paying members). Much of Kingswood proudly carries a long-standing Residential Area of Special Character (RASC) designation, with large parts of the RASC being accorded Conservation Area (CA) status in 2009. This has been achieved by working with the Reigate and Banstead Borough Council (RBBC) and Surrey County Council (SCC) to ensure that our residents' needs and concerns in respect of planning applications, services, roads, public transport, parking and tree preservation are communicated. Our aim is to ensure Kingswood remains a unique and special place to live as we owe it to our local residents, who invest heavily not only in the architectural designs which precede bricks and mortar structures arising, but also in the aesthetic qualities of an environment which gives them a high quality of living in a beautiful neighbourhood and village – that small part of many which together, form the essential and globally-envied "soul" of the British residential landscape.

**Democratic Process and Local Planning:** The KRA has a long and proud history of constructive engagement with Central and Local Government in the planning policy arena, having contributed actively to the various RBBC Local Plans (LP) in the time between the last (2005) Borough LP and the extensively-updated September 2019 Development Management Plan/LP. These engagements are ongoing through participation in RBBC consultations on the Kingswood CA, RASC, and regional SPD's. The KRA wrote an extensive response to the Government's Planning White Paper Consultation in October 2020 ("PWP") and has reviewed and commented on individual planning applications in our borough during many decades.

Appendix 8 of the above PI APP/L3625/C/20/3252951 (the “Appeal”) refers to the DMP Policies DES1 and DES3 whereby criteria for the design of new development and (9) criteria for planning permission to be granted in a RASC respectively, are identified. DES3 continues with an Explanation at 2.1.14 – 2.1.6 which identifies key RASC characteristics. The Planning Inspectorate (PI) would have been intimately involved with the review - and approval - of the 2019 RBBC DMP/LP.

**Anomalous Planning Outcomes, Previous Correspondence:** During the past decade local residents have voiced growing concerns at the perceived direction(s) of planning applications in Kingswood, noting the number of RBBC decisions in relation to multiple occupancy dwellings which were being overturned at the PI level. While acknowledging the hazards of drawing comparisons across different and in some respects unique planning applications, the KRA’s planning team has nevertheless found itself increasingly unable to reconcile the seemingly random and contradictory path of various planning appeal decisions within the Kingswood RASC/CA. This includes both those leading to dismissal and those in which the appeal was allowed. We wrote to the Prime Minister, The Rt Hon Boris Johnson on the 10<sup>th</sup> January 2020 to express our concerns at the role of the PI, referencing in this case, several RBBC planning decisions which had been overturned on Appeal. This letter was copied to the Secretary of State for Housing, Communities and Local Government, The Rt Hon Robert Jenrick and we believe subsequently referred to the PI by the PM’s office. A PI response dated 20<sup>th</sup> March 2020 signed by Ian Kane, Customer Quality Officer, was returned to the Chair of the KRA. This letter singly failed to address the wider issues raised in the KRA letter to the PM, purporting instead to have reviewed the appeal decisions referred to in the KRA letter and have found these to be sound.

While disappointed at the failure to address the wider issues of principle it had raised, the KRA opted to continue its activities in resolute support of the local DMP and took steps to determine whether the concerns we had raised in our letter to the PM, were of wider relevance across the country. It is fair to say that a significant body of current concerns has been identified which are closely aligned with our own, and the recent Appeal decision referred to in the heading of this letter has given us further urgent cause to write this letter to the PI, apart from any other steps that we are considering.

**Kings Barn:** A brief history of the case is included herewith as Annexure I.

**The Kings Barn Appeal:** It is difficult to compute the cumulative resources of time, money and energy that have been expended by individual residents, the KRA, the RBBC Planning Committee and the PI during a 7 year period in which 12 distinct planning applications and at least 6 appeals were heard as part of a process in which the developer (Whiteoaks') plans for Kings Barn were surely given a fair hearing. The KRA and individual respondents involved in making written submissions were not motivated by narrow self-interest, but by a common desire to enhance and protect the RASC designation of our village, Kingswood. Following on the guidance/precedent provided by the 2014 and later appeal decisions referenced in Annexure I, a local application for the development of 9 flats was ultimately approved by the RBBC on 13<sup>th</sup> December 2017 under reference 17/02292/S73. While residents and the KRA were disappointed at the RBBC’s approval for flats in this location, the community was able to rationalise and accept that somehow, the result of its nearly decade-long constructive, if critical commentary, employment of paid planning consultants and significant mobilisation of local responses and opinion (all, “Local Democracy”) had led to plans which ultimately incorporated all these reasonably and democratically-delivered inputs.

Imagine therefore the disappointment and bewilderment of the community to learn that an Appeal related to a structure erected at variance with the accepted and approved plans had not only been heard, but allowed. This, even though in relation to the Kings Barn development:

- Plans presented by Whiteoaks to the RBBC's contracted building inspectors during construction, were found to have been materially at variance with those previously approved under the terms of RBBC's application 17/02292/S73 – and that this variance could only have been premeditated;
- TPP's were violated (Paragraph 4.4 of the Appeal);
- Whiteoaks' multiple breaches of the Planning Act had not impacted their seemingly limitless right of appeal – even when the residents' locally-elected representatives, the RBBC were defending the right to demand compliance with approved plans, which in turn included the RASC Planning requirements defined in the DMP, a Local plan which represented the wishes of the local population - and which content had been approved by the PI in the first place;
- The PI had dismissed the RBBC's rightful demand for compliance and enforcement on the grounds that, to quote the Inspector at page 4 of the Appeal decision: "I therefore cannot insist the development is constructed in accordance with previously approved plans in circumstances I do not find Planning Harm".

**"No Planning Harm":** Apart from comparing and contrasting the approved structure contained at Appendix 4 (page 34) of the Appeal with that representing the built structure contained at Appendix 6 (page 39) and wondering whether these documents were indeed consulted on the way to making a decision, it is difficult to imagine greater Planning Harm being done than by a process in which:

- i) The PI fails to uphold the DMP, the very content of which it was consulted on and which it approved – and instead over-rules it with a "...I do not find Planning Harm.";
- ii) The PI contradicts and over-rules its own prior decisions in relation to Kings Barn in which appeals were dismissed for structures representing materially the same over dominant characteristics/over development of the site. When reading paragraphs 7 – 16 of the Inspector's Appeal decision, it beggars belief to note that the very criteria cited for prior dismissals of appeals, are now considered, yet their relevance dismissed simply through "I do not find..."-opinions being given without respectfully and in detail citing (as a judge would), precisely the reasons for a variance with a respected colleague's prior decision. Note at paragraph 10 the reference to "...the building does not appear significant within the street scene..." and "...the variations nevertheless respect the character of the surrounding area". Really? What has changed?

Since when was respect an element of the design, process or execution of this project? Were these not the very reasons advanced by the Inspector in the 2014 case for declining a structure of materially similar dimensions? At Paragraph 11 the Inspector goes further in a masterstroke of under-statement when he says: "The quantum of (*unapproved* – KRA's addition in Italics) variations between the approved schemes and that as built are not minimal..."(KRA's underlining) and "The variations to the building, because they *primarily* (KRA's emphasis in Italics) relate to an increase in height, as

opposed to changes to the footprint of the building, therefore do not harm the otherwise spacious, open and verdant character of the area. For the same reasons, the development would preserve the setting of the CA”.

It seems very much a case of “Another day, same rules, different opinion.....”, emanating from the same PI, the same planning location and materially similar building?

- iii) The RBBC, as representatives of the local population and residents of Kingswood, has been well undermined in its reasonable endeavours - and its duty - to demand compliance with the terms of approvals granted and enforce planning decisions made in compliance with a Local Plan which to repeat, was devised with the integral participation and approval of the PI during a decade of intensive, wide-ranging and democratic consultations – as befits a Local Plan and as foreseen by the Localism Act (2011), (the “Act”). The RBBC Local Planning Enforcement Plan 2018 appropriately quotes at paragraph 1.1: “The National Planning Policy Framework states that: Effective enforcement is important as a means of maintaining public confidence in the planning system”. It is difficult to conceive of anything which would more surely, in the expedient and indifferent manner of the Inspector’s dismissive reasoning for allowing the Appeal, undermine public confidence in the planning system.
- iv) The Localism Act (2011) is a casual bystander and casualty of an unelected PI employee’s decision. The power of an inspector to make decisions which in reality cannot be submitted to the courts of the land for further scrutiny, centralises decision-making with the Secretary of State, thereby effectively negating prior community involvement in the key stages of Local Planning and is in breach of the Localism Act (which seeks to give effect to the Government’s ambitions to decentralize power away from Whitehall and back into the hands of local Councils, Communities and individuals to act on local priorities). The PI process is therefore fundamentally undemocratic.

We quote the Rt Hon Greg Clark MP, Minister of State for Decentralization, in the Foreword of the November 2011 Department for Communities and Local Government – A plain English guide to the Localism Act (“Guide”), when he says: *“The Localism Act sets out a series of measures with the potential to achieve a substantial and lasting shift in power away from central government and towards local people. They include: New freedoms and flexibilities for local government; new rights and powers for communities and individuals; reform to make the planning system more democratic and more effective and reform to ensure that decisions about housing are taken locally.”* (Underlining by the KRA).

And lest the reader suggests that 10 years is a long time in politics, we quote the Rt. Hon. Robert Jenrick in the 2020 Planning White Paper where he says: *“Communities will be reconnected to a planning system that is supposed to serve them, with residents more engaged over what happens in their areas”* (PWP page 8) and *“We have democratized and localized the planning process by abolishing the top-down regional strategies and unelected regional planning bodies and empowered communities to prepare a plan for their area...”* (PWP page 16). A fair description of the RBBC DMP indeed.

The Guide goes on to devote its overwhelming bulk to “Reform to make the planning system clearer, more democratic and more effective” and “Reform to ensure that decisions about housing are taken locally” (page 11 – 17), from which we will quote selected paragraphs to further confuse the reader:

“There are, however, some significant flaws in the planning system that this Government inherited. Planning did not give members of the public enough influence over decisions that make a big difference to their lives. Too often, power was exercised by people who were not directly affected by the decisions they were taking. This meant, understandably, that people often resented what they saw as decisions and plans being foisted on them. The result was a confrontational and adversarial system where many applications end up being fought over”.

The Guide goes on to explain how the Act introduces a new right for communities to draw up a Neighbourhood Plan to determine their planning environment – and what is the RBBC DMP, if not in essence a Neighbourhood Plan determined on a wider, Borough-wide scale, in the nature of a portfolio of (local) neighbourhood plans?

The Guide goes on to say that reform to the way Local Plans are made, will be brought about (page 13): “Local planning authorities play a crucial role in local life, setting a vision, in consultation with local people, about what their area should look like in the future”. Does this not aptly describe the RBBC DMP/LP? And here’s the clincher in conclusion of the above paragraph:

“The Government thinks it is important to give local planning authorities greater freedom to get on with this important job without undue interference from central government. *The Localism Act will limit the discretion of planning inspectors to insert their own wording into local plans.*” (KRA underlining & italics). Really? What about the near-unchallengeable discretion to amend Local Plans after the fact?

It is fair to say that Government’s messaging about the power of local communities to devise LP’s has not changed in the decade since the Act was published and during which time the Kings Barn applications and appeals were being heard. It seems evident that the power of local communities to see LP’s actually materialise was not intended as this is inconceivable existing alongside an unaccountable PI.

- v) An unelected Inspector can interpret and vary the terms of an Act of Parliament: One wonders whether the authority of the PI as outlined in the 20 March 2020 PI response to the KRA where in closing its author quotes: “When acting on behalf of the Secretary of State, each Inspector is technically a tribunal and the decision-making process is quasi-judicial in character. Inspectors are governed by relevant Acts of Parliament, Statutory Instruments and case law”, extends to expedient breaches or modifications of Acts of Parliament on the hoof because challenges by the Parties involved to the courts of the land are not realistically in prospect? Quasi we see, Judicial we do not.

One can only imagine Inspectors being appointed to deal with immigration appeals, tax appeals and a host of other matters which like Planning, also impact materially on the lives of people, without recourse to proper jurisprudence – we shall soon save ourselves

the cost of the entire edifice of the coiffed and toga'd judiciary and vest in our Secretaries of State the Powers to interpret at the whim of the political wind of the day, a wide range of laws voted into being by our elected MP's.

Perhaps the repeal of the Localism Act as an impediment to the unfettered functioning of the PI ought to be on the Secretary of State's agenda in the run-up to the next General Election as the only honest and decent thing to do?

- vi) No veneer of compliance with planning laws, or respect for due process appears to qualify the right of appeal. The KRA believes that compliance is central to the success of any Planning Policy. The clearly written – and communicated - DMP *should* encourage compliance, however without reasonable local *control* over compliance or backing from the PI to enforce or punish transgressions, the DMP will not prevail. As with all rules and laws, policies, principles and ideals, their achievement will come to naught without first setting out and communicating clear consequences of breach and secondly providing Councils (in the case of Planning) the means (and backing they deserve) to enforce.

The Guide referred to at (iv) above makes reference to the Act “Strengthening enforcement rules” (page 13): “For people to have a real sense that the planning system is working for them, they need to know that the rules they draw up will be respected. The Localism Act will strengthen planning authorities’ powers to tackle abuses of the planning system, .....”. How does this chime with the “No Planning Harm” statement in the case of the Kings Barn Appeal?

Instead, as an unelected body the PI seems confident that no Planning Harm arises from pulling the rug from under the RBBC and casually rewarding serial & material breaches of planning laws and due process as a seemingly normal part of considering – let alone allowing - an Appeal.

We submit with the greatest respect that the PI decision on Kings Barn will loom every day as a monument of indifference and disrespect to an entire community, let alone the authority and credibility of the RBBC, and stand as an example of the impunity with which a developer can circumvent planning processes, build in breach of approvals and be the subject of enforcement notices while in the process consuming extraordinary levels of public resources through unlimited rights to appeal – and prevail regardless. It will immeasurably increase future difficulties for local Councils nationwide to secure respect for and compliance with planning laws, especially in RASC or Conservation Areas. The Appeal decision makes a mockery of Government Ministers’ much-touted Local Plans and errs in law by breaching the Localism Act which we believe should have formed the basis for a Judicial Review.

These widespread and growing concerns may be reflected by Customer Satisfaction data reported in the latest PI Annual Report for 2019/20, where the Ministerial objective: “To ensure that 80% of parties surveyed are satisfied or very satisfied with the appeal process/procedures”, chalks up a score of 55% for 2019/20, down considerably from 74% in the previous year.

At the very least it would be interesting to see the PI consider and present a side-by-side comparison of all the appeals heard in relation to Kings Barn and explain to our community how decisions made since 2007 set any PI consistent precedents that can be relied upon.

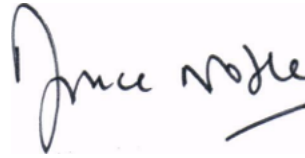
Yours faithfully,

Justus van der Spuy



Planning Policy Committee

Bruce Noble



Planning Policy Committee

Copies To:

- The Chair, The Kingswood Residents' Association, Ms. Valerie Evans
- The Chief Executive. The Planning Inspectorate, Ms. Sarah Richards
- Secretary of State for Housing, Communities and Local Government  
The Rt Hon Robert Jenrick  
c/o Melanie Dawes, Permanent Secretary  
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- Local MP, Reigate, Crispin Blunt MP  
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- Local Councillor, Simon Parnall  
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## Annexure I

**Kings Barn:** A brief history of the case location, which was one of those referenced in the KRA letter to the PM, may serve:

- Planning permission was granted for demolition and replacement with 2 dwellings under ref 13/02017/F in Dec 2013.
- Flatted Development: In April 2014, two parallel planning applications were made for 7 and 9 flats respectively (14/00563/OUT and 14/00564/OUT) and in July 2014, one for 7 flats (14/01359/OUT), all of which were declined by RBBC and dismissed on 24 December 2014 under a combined PI hearing of appeal numbers APP/L3625/W/14/3000035 (A), 3000031 (B) and 3000026 (C).
- This combined appeal dismissal noted that the RBBC's Core Strategy was adopted after the local planning applications were made for (A) and (B), but before (C).
- The combined PI decision at paragraphs 7, 8 and 9 of the 2014 appeal makes reference to the key issues (including scale, height, bulk) that are relevant to development in a RASC/CA location as well as noting at paragraph 10, key differences to another flatted development (Kingsworthy House), located nearby in the CA and which had been the subject of a prior appeal approval. Further reasons for dismissal of the 2014 appeal are listed on the grounds of the plans being contrary to local plan policies Ho9, 13, 15 and Pc13 and deemed harmful to the character of the RASC.
- In providing a detailed reasoning for the dismissal of the 2014 appeal, the Inspector provided a basis for future planning applications to be evaluated – in essence creating a reasoned precedent to be relied upon in the (appropriate) manner of a judge delivering a verdict while referencing the applicable law.
- What followed on this appeal dismissal was a large number of further local planning applications for flats and (some) related appeals (listed in Paragraph 3.0 of the 2021 Appeal decision), all of which were dismissed until, following on the guidance/precedent provided by the above-referenced 2014 and later appeal decisions, a local application for the development of 9 flats was ultimately approved by the RBBC on 13<sup>th</sup> December 2017 under reference 17/02292/S73. Related planning applications are referenced in the PI (2021) Appeal decision at paragraph 1.2.
- Plans presented by Whiteoaks to the RBBC's contracted building inspectors during construction, were subsequently found to have been materially at variance with those previously approved under the terms of RBBC's application 17/02292/S73;
- Development was undertaken without complying with the relevant tree protection plan condition and a temporary stop notice (TSN) was served in October 2018 (reference made in Paragraph 4.4 of the 2021 Appeal);



- The built structure that arose was materially at variance with the Council's approved plans and sat somewhere between the iteration refused and dismissed at previous appeals and that approved by RBBC. It appears to exceed in scale the plans for 9 flats declined in 2014 by the PI under APP/L3625/W/14/3000035 (A), 3000031 (B) and 3000026 (C). The 2014 appeal decision makes reference to a stepped-down roof structure leading to a reduction of height/bulk and this feature being contributory (but in that event, insufficient) grounds for an approval – what is not in doubt is that by constructing the building in a manner whereby the roofline continues in a straight line up to the highest point above the ground elevation on the Western side of the property, it departed (materially in our view) from the approved plans and the stepped-down roofline approved by RBBC (which had been meant to mirror the Westerly declining elevation of the land);
- During the course of the construction it was necessary for RBBC to serve a Breach of condition notice (BCN), enforcement notice (EN) and Temporary Stop Notice (TSN). These were subsequently complied with.