

Dear Sir/Madam

PLANNING APPLICATION LA05/2022/0033/F

On the 17 May 2024 we had access to information shared by the Planners in respect of the above planning application. A review of one of the files (three others remain to be interrogated) has raised significant issues relating to the handling of this application. The actions taken by Planners in their contact with the developer is in our opinion detrimental to us and suggests a compromised and complicit planning process.

Our complaints relate to the following:

1. On 2 February 2024 (14.03 hours) an email from Angela Wiggam (Director, Head of Planning Ireland, Turley) to Conor Hughes and Rosaleen Heaney and copied to William Orbinson KC (Developer's Counsel) and Gary Dodds (Associate Director, Turley) states:

'On the advice of Senior Counsel and on behalf of our client, I am writing in relation to the above planning application.

Having reviewed the case officers report we note that there are a few errors which need to be amended, in order that the reader is presented with the correct policy analysis.

The planning application is due to be presented on Monday [5 February 2024] for consideration by members of Planning Committee. We respectfully seek that the application is removed from the schedule and rescheduled for March.

This would permit that Council can amend their report, and all parties thereafter will have the opportunity to review the same.

Can you please acknowledge receipt of this note, and advise on the course of action'.

Issues of concern regarding this email

- (i) On what date and time did the developer, his agent or representative receive a copy of the 'case officers report'?
- (ii) Who authorised forwarding the 'case officers report' to the developer, his agent or representative?
- (iii) What was the reason for sharing the 'case officers report' with the developer, his agent, or representative?
- (iv) Was the Chair of the Planning Committee's consent obtained prior to sharing the 'case officers report' with the developer, his agent or representative?
- (v) Did the developer, his agent or representative receive a copy of the 'case officers report' before Councillors who are members of the Planning Committee?

- (vi) Is it usual for a '*case officers report*' to be made available to Senior Counsel prior to the matter coming before the Planning Committee?
- (vii) Were the speaking notes provided by the Quarterlands Group for the Planning Committee meeting scheduled for 5 February 2024 shared along with the '*case officers report*'?
- (viii) Who made the decision to remove the application from the agenda for the Planning Committee Meeting scheduled for 5 February 2024?
- (ix) What date and time was that decision made and when were other parties notified that the application had been removed from the agenda for the Planning Committee meeting scheduled for 5 February 2024.
2. On 16 February 2024 (12.02 hours) Gary Dodds (Associate Director, Turley) emailed Maire Claire O'Neill, copied to Rosaleen Heaney and Angela Wiggam stating that: '*Following the application being removed from February's agenda, we have had further discussion with the applicant and we have been directed to confirm to you the intention to provide a fourth dwelling as affordable housing to ensure the proposal fully complies with the requirements of Policy HOU10. In accordance with the Council's approach to this matter in other Section 76 Agreements we will amend the S 76 Agreement to contain a clause requiring that prior to the commencement of development the Developer commits to confirming in writing, to the Planning Authority, the type of affordable housing product to be delivered and details of the same.*' Despite this commitment to confirm in writing to the Planning Authority prior to the commencement of development information about '*the type of affordable housing product to be delivered and details of the same. We trust you will agree that this approach to the section 76 Agreement is acceptable and would be grateful if you could confirm this to be the case.*' Mr Dodds wrote to the Planners on 21 February resiling from that position.
3. Mr Dodds in the email of 21 February 2024 (09.37 hours) wrote to Maire Claire O'Neill in response to an email from her asking: 'Can you advise if you intend to submit an amended site layout drawing with the 4th Affordable house identified'. Mr Dodds' email of 21 February 2024 was copied to Angela Wiggam. It stated: '*It is not our intention to submit an updated plan. The current plan shows the houses which have been earmarked for occupation as social housing by Habinteg however the 4th unit would be affordable due to the lack of further social demand in Drumbeg. As such we would not be able to identify exactly which unit someone would want to purchase under an affordable product as this is a buyer specific arrangement and agreement. I trust this provides sufficient clarification on our proposed approach and you consider this to be agreeable.*'

Issues of concern regarding emails of 16 and 21 February 2024

- (i) Within three working days Mr Dodds' emails provide diametrically opposite positions. On 16 February 2024 he confirmed that information would be provided to the Planning Authority on '*the type of affordable housing product to be delivered and details of the same.*' This position having been agreed following discussion with the applicant since the removal of the application from the agenda of the 5 February 2024 Planning Committee. Yet on 21 February 2024 he wrote: '*we would not be able to identify*

exactly which unit someone would want to purchase under an affordable product as this is a buyer specific arrangement and agreement.'

- (ii) The Planner asked for Mr Dodds intention to submit an amended drawing rather than required same. As the Planning Authority is aware of the degree of opposition to the proposed development, we think that it should have required an amended plan or drawing. Especially as in Mr Dodds' email of 16 February 2024 he stated: *'We trust you will agree that this approach to the section 76 Agreement is acceptable and would be grateful if you could confirm that this is the case.'*
 - (iii) We have, as yet no access to information showing any contact which may have occurred between the Planners and the developer, his agent and/or representative between the 16 and 21 February 2024 which would help to explain such a change in position within this brief time scale. We are concerned about the nature of the relationship between the Planners and the developer, his agent and/or representatives which we set out below in relation to email correspondence of 7 March 2024.
 - (iv) As residents we are concerned that a developer is not re-submitting plans citing as a reason that *'we would not be able to identify exactly which unit someone would want to purchase under an affordable product as this is a buyer specific arrangement and agreement.'*
 - (v) It is our fear that should planning permission be granted without greater specificity regarding the proposed 4th dwelling that it would be easier for the developer to have consequential changes made with minimal effort in the future.
 - (vi) Up until the email of 21 February 2024 reference to the additional social housing was to a '4th dwelling' the terminology has now changed to '4th unit'. The significance of this change is unknown to us but we think it is likely to be used by the applicant in the future should planning permission be acquired. We also note the term *'affordable product'* has entered the applicant's lexicon, with no details as to its meaning.
 - (vii) The non-social housing which is proposed in the development is large, detached homes with a marketable value of at least £500,000. The idea that an *'affordable product'* could be delivered in the form of a dwelling for one family is derisory. The Co-ownership cap is currently £195,000. Again, the use of language *'affordable product'* is a cause for concern. We have seen no evidence that Planners are pursuing these issues with the applicant. In addition, our request for sight of the floor plan or a copy of the Section 76 Agreement has been denied.
4. On 22 February 2024 (5.52pm) Rosaleen Heaney emailed Maire Claire O'Neill copied to Conor Hughes. She stated: *'I returned a call to the Agent just now. The Agent made reference to the recent submission from the Quarterlands Group and asked if the application was being presented to the March 2024 [4 March 2024] Committee meeting. I explained that this matter had been raised internally earlier today and that officers required time to consider the matters that had been raised and for this reason, it had been agreed that the application would not be presented to the Committee in March. The Agent acknowledged the Council's position and indicated that it was their intention to give some consideration to the matters too.'*

5. We are particularly aggrieved with the content of an email dated 7 March 2024 (10.45) from Sharon Carville (Admin Support, LCCC) probably to Gary Dodds. While the name is redacted the email states: *'Hi Gary. Speaking notes from Quarterlands group as requested.'*
6. On 12 March 2024 (12.55) Maire Claire O'Neill emailed Mr Dodds. She stated: *'Gary Please see email and submission received from Quarterlands Group [Comment on Atkins Report Final pdf].'*

Issues of concern regarding emails of 22 February, 7 and 12 March 2024

- (i) It is apparent from the 22 February 2024 email that the applicant had been provided 11 days notice that the Planning Committee would not be considering this application at its 4 March 2024 meeting. Such notification was not provided to the Quarterlands Group. Instead, group members continued to book annual leave from work to attend the planning meeting.
- (ii) The Group's speaking notes, were prepared and submitted on 1 February as required under planning requirements, in advance of the 5 February 2024 planning meeting. On 7 March 2024 our speaking notes were shared with Mr Dodds (Associate Director, Turley) at his request. We consider this a complete breach of trust. By revealing our thinking to the developer in this manner we consider that this materially disadvantaged us. We consider the sharing of our speaking notes at the request of an Agent of the Applicant without our prior consent reprehensible behaviour. The hearing of application LA05/2022/0033/F was removed from the February Planning Committee meeting. It is, therefore, probable that our speaking notes were shared with the Agent of the Applicant in advance of planning Councillors having access to them. We further consider it a potential breach of the Council's GDPR requirements. In our opinion the Council may have breached the lawfulness, fairness and transparency principle. We, therefore, ask for the lawful basis under GDPR for sharing the speaking notes given that the meeting they were prepared for had been cancelled. The Council's action in this regard was outside of the data subject's reasonable expectation that the data should be shared with the Agent of the Applicant in these circumstances. In light of our concerns, in addition to making this complaint, we intend to proceed with a complaint to the Information Commissioner's Office.
- (iii) The 12 March 2024 email from Maire Claire O'Neill to the Applicant's Agent was sent showing the name and email address of the sender. Again we consider this to be a data breach.

In our opinion, the Council should seek to have our complaint independently considered given that members of the Planning Department already have been named in the email chain listed above. As already noted we have to date only considered one of the four files provided to us. Given the serious nature of the issues identified, however, we wished to raise this matter as a formal complaint immediately given the disadvantage which we considered we have experienced due to the management of this planning application.

Yours faithfully,

Quarterlands Group