

Written Submission for Deadline 5
Complaint about statement by Mr Hereward Phillpot QC
At Issue Specific Hearing 5 on Coastal Geomorphology
14 July 2021

Woodbridge Town Council (WTC) wish to formally complain about the final part of the following statement (highlighted in bold) made by the Applicant's QC at the end of the Hearing before closure. WTC seek the ExA to consider our view and, if deemed correct, request Mr Hereward Phillpot QC to publicly rescind his statement and apologise for its misleading nature.

*"So far as Dr. Dolphin is concerned, you'll appreciate but it nevertheless, it's important to emphasise it given that this is a public forum, that when an applicant or indeed any other body seeks to take independent advice from someone that they have to pay, that doesn't mean that that person is no longer applying their independent judgement. They appear, as Dr. Dolphin has appeared before this examination in order to provide the independent evidence about the matters within their expertise and **It's rather a serious allegation to make against an expert, that they are not, in fact complying with their duties to provide that independent advice. And I have certainly seen nothing, which suggests that such an allegation can be made either against Dr. Dolphin, or indeed any of the independent experts that we have called upon to address the examination.**"*

We have noted that the ExA panel members have taken care to refer to the persons providing evidence on behalf of the Applicant as providing information on the basis of their expertise. We have no issue with that approach and consider it to be the correct terminology.

In our view a QC should know there is a world of difference between someone giving evidence based on their expertise and someone giving evidence as an "independent expert". The meaning of those latter two words in courts and, we believe, as understood to mean in other hearings such as planning inquiries, is important and needs to be clear to all those attending. As Mr Hereward Phillpot QC stated in the quote above, the Examination is a public forum and it is thus crucial that those present know the difference and are not misled by either error or injudicious words, as to the status of the evidence they are presented with.

Our understanding from Councillor Sanders, who has worked as an independent expert for over 20 years of his career at court and planning hearings, is that an expert is independent and has had no part in the work undertaken that forms part of the Applicant application/case. An expert does not represent the party paying him/her and that expert must in reports and statements detail the precise written and verbal instructions from the party paying the expert and sign a declaration of their independence. The expert's duty is to the court, or in the case of a planning hearing,

is to the Inspector or Examining Authority. The evidence presented is not “for” the party paying the expert.

Experts do not represent the paying party and if they say they do they debase the term expert as the evidence they provide is not that of an expert but of a person with expertise.

Dr Dolphin and others called upon by the Applicant have referred to giving evidence for the Applicant on numerous occasions. Whilst we accept that their evidence is that of a person with expertise it is not that of an expert.

For the courts of England and Wales an expert's duty and the precise role and behaviour of the expert is set down in the Ministry of Justice Civil Procedure Rules. In planning matters it is our understanding such rules are usually taken as appropriate if evidence is to be provided by a person to be termed an “independent expert”.