

LADACAN comments on 8.29 Roles and Responsibilities of Luton Borough Council (REP1-018) IP ref 20040757

Glossary

19mppa application	Application 21/00031/VARCON on the Luton Borough Council Planning Portal to increase capacity and noise contours at Luton Airport
Airport	London Luton Airport
Applicant	Luton Rising (London Luton Airport Ltd), whose Board until recently comprised solely of Members and Officers of LBC
Application	This application TR020001 for a Development Consent Order
CSPL Paper	Local Government Ethical Standards - A Review by the Committee on Standards in Public Life (January 2019) ¹
LBC	Luton Borough Council, owner of and Local Planning Authority for LLA
LLAOL	London Luton Airport Operations Ltd, the operator of the Airport under a concession agreement with the Applicant
mppa	million passengers per annum – a measure of throughput at an airport
Project Curium	The development application 12/01400/VARCON to increase capacity at Luton Airport to 18 mppa over a 15-year period to 2028
PWLB Guidance	PWLB Guidance for Applicants, June 2023 ²

¹ Available from:

https://assets.publishing.service.gov.uk/media/5c5c3f68e5274a3184bac66f/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

² Available from: <https://www.dmo.gov.uk/media/np5d235e/pwlb-lending-guidance-15-june-2023a.pdf>

This Table sets out verbatim extracts from submissions in REP1-018 and LADACAN’s comments to the ExA on these submissions.

I.D	Topic	Submission in REP1-018 (verbatim)	LADACAN comments
1	Ownership of the Airport	2.1.4 It is common for airports in the UK to be wholly or partly under public ownership. Please refer to Appendix 1 for examples of such airports.	<p>As far as we are aware Luton Airport is the only major UK airport wholly owned by its local planning authority.</p> <p>The claim that REP1-018 Appendix 1 offers comparison of commonality between Luton Airport ownership and that of other UK airports is actively misleading.</p> <p>Appendix 1 of REP2-049 shows unequivocally that there is no comparable relationship between a local authority and a major airport anywhere else in the UK.</p> <p>The uniqueness and historic lack of governance of this clearly conflicted relationship has attracted numerous objections, complaints and freedom of information requests by and on behalf of community members and neighbouring local authorities ever since the application by LLAOL to LBC for Project Curium.</p> <p>We have seen little change, except very recently some window-dressing in preparation for this Examination, but fundamentally the unresolved conflict of interest remains. This is an increasing cause of concern because of the large sums of public money which are at stake, as well as the possibility of an ultimately unsuccessful commercial venture having destroyed Wigmore Park.</p> <p>We therefore urge the ExA to keep governance very much in scope as the Examination progresses.</p>

I.D	Topic	Submission in REP1-018 (verbatim)	LADACAN comments
2	Ownership of DART, PWLB loans and borrowing	<p>2.1.5 Luton Rising is also the owner of the Luton DART (Direct Air-Rail Transit), the automated people mover in operation between the Airport and Luton Airport Parkway railway station.</p> <p>2.1.6 LBC has also provided several shareholder loans to Luton Rising.</p>	<p>The PWLB Guidance (for reference see Glossary above) expresses clear concerns about Local Authority capital investment projects, stating:</p> <p><i>“56. The government is committed to the prudential system. We expect the local authority’s section 151 officer (or equivalent) to make an assessment on whether a project or transaction complies with the terms of the PWLB.”</i></p> <p><i>“57. Local authorities should expect that their auditors will review their internal decision-making processes around borrowing and investment, including the assessment of whether their plans are compliant with the lending terms of the PWLB. Local authorities should make sure that these processes are robust.”</i></p> <p>LBC’s auditors have expressed concerns about lack of transparency over financial decision-making in relation to the Airport (see REP1-095 Appendix 1 para 110). The Applicant’s auditors clearly questioned value-for-money on the DART project by applying a significant write-off: the Applicant’s 2022 accounts show an impairment of plant property and equipment totalling £191.2 million (page 21).</p> <p>We ask the ExA to request the justification from LBC’s section 151 officer that concludes its PWLB borrowing and lending to the Applicant is within PWLB Guidance.</p>

I.D	Topic	Submission in REP1-018 (verbatim)	LADACAN comments
3	Demarcation	<p>2.1.7 LBC therefore maintains oversight of Luton Rising’s business on an arm’s length basis in its capacities as sole shareholder of, and lender to, Luton Rising. Given LBC’s interests in Luton Rising, arrangements have been in place since the implementation of the airport transfer scheme in 1987 (described in paragraph 2.1.3) to ensure the due and proper demarcation of roles and responsibilities. These arrangements are subject to frequent review and update to ensure best practice is observed at all times. Please refer to paragraph 2.5 for more details of these arrangements.</p>	<p>Available evidence does not support these statements.</p> <ol style="list-style-type: none"> 1) It is impossible to see how a subsidiary whose board has (until very recently) comprised of Members and Officers of LBC can be overseen on an arm’s length basis when Board Members frequently change and take part in other Committees with various durations of overlap between those roles. 2) Councils do not make or influence decisions, people do, and that is where probity in demarcation is key. Until recently Cllr Andy Malcolm was simultaneously Finance Portfolio Holder and Council Executive Member as well as being Chair of Luton Rising; and Robin Porter was simultaneously Chief Executive of both the Council and of Luton Rising. 3) With the same Council Leader, Chief Executive and Chief Planning Officer in place throughout the period from Project Curium to the present day, opportunity for a fresh approach and robust oversight is limited. 4) The current LBC Monitoring Officer Mark Turner is also Company Secretary and Governance Officer of Luton Rising. <p>The ExA can have no confidence that the recently implemented governance and demarcation controls are anything but window-dressing, and not arm’s length.</p>

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			<p>The CSPL Paper (see Glossary for reference) gives clear guidance on arm’s length operations:</p> <p>Under “Leadership and Culture” on page 13 it states: <i>"Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision making processes"</i></p> <p>In “Best Practice item 14” on page 19 it states: <i>"Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place."</i></p> <p>In Chapter 7 on page 90 it states: <i>"However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest."</i></p> <p>It is clear that Luton Rising is not in any way a genuinely arm’s length entity, but is deeply embedded in LBC.</p> <p>The CSPL Paper is not just stating best practice guidance because it is a good thing in itself, but because it is the best defence against corporate failures such as those we have seen in numerous local authorities recently.</p>

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4	Management and Airports Act	<p>2.2.1 Luton Rising, in its capacity as the public airport company responsible for the Airport, has arranged for the management and operation of the Airport to be carried out by an entirely separate company - London Luton Airport Operations Limited (“LLAOL”) - under a long-term concession agreement, which runs until August 2032. Pursuant to a Direction issued under Section 17 of the Airports Act 1986 in relation to the Airport, the Secretary of State for Transport has confirmed that these arrangements are adequate to secure that those participating in the management of the Airport are suitably qualified to do so by virtue of their experience in airport management.</p>	<p>LADACAN has consistently represented that whilst the Airports Act requires separation of the management of an airport from the ownership unless the owners are qualified to operate an airport (which they are not in this case), the Applicant and LBC did directly influence the operation of the Airport through the financial Growth Incentivisation Scheme to which LBC, LLAL and LLAOL were all parties.</p> <p>We note an apparent denial of LBC’s involvement: LBC’s Monitoring Officer responded on 21 Oct 2019 to a letter from LADACAN raising concerns about this Scheme by stating:</p> <p><i>“Firstly to clarify your comment ‘In particular, I draw attention to the growth incentive scheme put in place between LLAL, LBC and LLAOL.....’ <u>Luton Council is not party to the Growth Incentive Scheme.</u> Growth in the air travel sector, with new operators emerging at that time, contributed to the growth in passenger numbers.”</i> [our underlining. The full text of the letter is in Appendix 1]</p> <p>Yet the Deed of Variation 2015 to the concession agreement including the Incentivisation Scheme is indeed between LBC, LLAL, LLAOL as well as London Luton Airport Group Ltd (https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/19/3b/193b80fd-2049-4d92-94ab-7c78851434ce/deed_of_variation_aug_2017.pdf)</p>

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5	Lack of scrutiny	(Scrutiny of the airport operation by LBC via the ESG or otherwise is not mentioned in REP1-018)	<p>The Section 106 Agreement for Project Curium obliges LBC to monitor LLAOL’s performance of the agreement, but there has been a lack of engagement with such scrutiny, as evidenced by REP1-095 Appendix 1 paras 45 and 46.</p> <p>The Monitoring Officer’s letter (Appendix 1 below) links to papers for the Oversight and Scrutiny Board meeting of Sep 2018 (4 years into Project Curium and after the first noise contour breach) under the heading “Apparent lack of effective scrutiny of the Airport operation”.</p> <p>Those OSB papers on “<i>approaches to the scrutiny of the impacts of London Luton Airport</i>” state on page 11/2 at item 7:</p> <p><i>“7. Whilst aircraft noise is also a concern for some residents, aircraft noise is not currently a statutory nuisance in the UK. It is not covered by the Environmental Protection Act 1990 or the Noise Act 1996. This means that local authorities do not have the legal power to take action on matters of aircraft noise. Any recommendations on this topic would be subject to consideration and adoption by the operator.”</i></p> <p>This is misleading advice to a Scrutiny Board of the LPA responsible for enforcement of its planning conditions to limit noise, which at the time of the meeting had been breached. We invite the ExA to share the view of local communities which have ‘no confidence’ in this LPA.</p>

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6	Imbalance of power	2.2.2 LLAOL is indirectly owned 51 per cent by Aena (a Spanish state-owned company and the world's largest airport operator by passenger volume), and 49 per cent by InfraBridge (a diversified mid-market infrastructure manager with a focus on key sectors including transport and logistics, digital infrastructure, and energy transition).	<p>There is a very significant imbalance in the commercial relationship between LBC/Luton Rising, and LLAOL.</p> <p>It is clear from the cited paragraph that LLAOL’s owners Aena and Infrabridge are substantial global organisations which will have commercial / legal capability to match.</p> <p>The declared occupations for directors of the Applicant who have held office since 2010 include: Teacher, Legal: Risk & Compliance Professional, Business Support Manager, Transportation, Property Manager, Chief Executive, Councillor, Lecturer, Barrister, Manager, Logistics, Local Government Officer, Project Manager, Travel Agent, Civil Servant, Social Worker, Chartered Accountant, Self Employed, Driver, Scientist.</p> <p>The same imbalance would apply to the local authority members of the Environmental Scrutiny Group and the council members of Technical Panels: local councillors do not and cannot reasonably be expected to have the detailed knowledge or the commercial bargaining skills necessary to challenge the Airport Operator over its failure to adhere to Limits or its proposed Level 2 Plans or Mitigation Plans under Green Controlled Growth arrangements (see REP3-019 and REP3-021).</p> <p>We invite the ExA to conclude that these are simply not adequate scrutiny and enforcement mechanisms in the context, nor are they likely to be sufficiently resourced.</p>

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7	Over-dependency on the Airport revenue, and intermingling of roles	<p>2.3.3 In its role as the owner of the Airport, Luton Rising has a long-term strategic vision and plan for the Airport’s future, including to ensure that potential benefits relating to the Airport are fully realised. The grant of a DCO for the Project is the cornerstone of this future vision and plan for all the reasons set out in Luton Rising’s application. In particular, if the DCO is granted, Luton Rising will be able to invest further in activities that create social benefit for the people of Luton and the wider region. Luton Rising – and the jobs and economic activity created by the Airport it owns – is instrumental in supporting the Council and its key partners in delivering the Luton 2040 vision of a healthy, fair, and sustainable town where everyone can thrive, and no one has to live in poverty.</p>	<p>The commercial bargaining position of the Luton Rising board is fundamentally weakened because of its and LBC’s well-publicised and heavy economic dependency on the airport for the well-being of Luton.</p> <p>Because of LBC’s failure to diversify the local economy, and the Applicant’s determination to grow the Airport, LBC is apparently locked into a spiral of increasing debt and increasing risk: more spending on the Airport in turn increases its dependency on Airport revenues.</p> <p>This is in direct conflict with instructions given by DLUHC as a condition of emergency funding in 2021 to reduce financial exposure to the Airport (REP1-095 para 78).</p> <p>Indication of this commercial vulnerability is provided by the very large force majeure settlement of £45 million extracted from LBC/Luton Rising by the Airport Operator as compensation for lost business during COVID, at a time when the Council’s financial position was perilous.</p> <p>Furthermore, Luton Rising as a public airport-owning company should not be funding services: that role falls to LBC, since service provision within the Borough should be open to democratic safeguards and accountability.</p> <p>We invite the ExA to conclude that the roles and responsibilities between LBC and the Applicant would need substantial revision to ensure safeguarding of public money and proper democratic accountability.</p>

I.D	Topic	Submission in REP1-018 (verbatim)	LADACAN comments
8	Arm's length operation (see also item 3 above)	<p>2.5.7 In addition to:</p> <p>(a) the legal separation of the Airport from the Council which is achieved by having a separate legal entity, Luton Rising, act as owner of the Airport on an arm's length basis as described in paragraphs 2.1 and 2.2;</p>	<p>The CSPL Paper states in its Executive Summary on page 12: <i>"The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts."</i></p> <p>Mark Turner, the Monitoring Officer for LBC was the author of the papers in 2014-16 reporting Luton Rising's performance against growth targets set by LBC, which went beyond levels that could be achieved within the noise conditions (REP1-095 Appendix 1 paras 68-78). He is also Secretary and Governance officer of Luton Rising. It is impossible to see how these conflicting roles could be conducted on an arm's length basis by one individual.</p> <p>In the next paragraph under "Councils' Corporate Arrangements" the CSPL Paper states <i>"Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public. Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture."</i></p>

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			<p>There is no opportunity for such accountability by Luton Rising either to the public or to the Council.</p> <p>LADACAN raised a formal complaint to LBC in July 2019 about the way Luton Rising had acted to incentivise growth. The second stage response, after escalation to LBC’s Head of Development Management, said:</p> <p><i>“Firstly, I should point out that I can only investigate those matters that are relevant to the Council. I cannot investigate matters relating to LLAL, which although the Council are a majority shareholder, is a public limited company and a separate legal entity and therefore not covered by the Council’s formal complaints procedure. Instead, complaints about them should be directed to them separately. Similarly, for the same reasons, I cannot investigate as part of this response any complaints about London Luton Airport Operations Limited (LLAOL). Therefore, I am unable to respond to the issues you have raised in relation to LLAL and how it operates and how it promoted its incentivisation scheme.”</i> (complaint ref MACCOC130284778 B12544)</p> <p>There is similarly no transparency as advocated by CSPL: Luton Rising operates under the veil of corporate secrecy and its board minutes are not published.</p> <p>We invite the ExA to conclude that failing to implement clear CSPL guidance increases commercial risk to LBC.</p>

Appendix 1:
Response by LBC Monitoring officer to concerns raised by LADACAN

Contact:	[REDACTED]
Direct Line:	[REDACTED]
Email:	[REDACTED]
Our Ref:	
Your Ref:	
www.luton.gov.uk	

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Mr [REDACTED]
[REDACTED]
By email: [REDACTED]

21 October 2019

Dear Mr [REDACTED]

Thank you for your letter of 22.08.2019. Firstly I would like to apologise for the delay in replying, I have spent some time investigating your letter's content.

Taking the points you've raised in turn.

Role of the Monitoring Officer.

As you correctly state, the Monitoring Officer has the specific duty to ensure that the Council, its officers, and its elected members, maintain the highest standards of conduct in all they do. The Monitoring Officer's legal basis is found in Section 5 of the Local Government and Housing Act 1989 (as amended).

I utilise a number of mechanisms to support me in undertaking my duties and exercising oversight over the governance and management at Luton Council. This includes the identification of changes to the legal framework and any potential breaches of relevant legal provisions.

I have the statutory duty to advise all elected members on the Council, in writing, if I consider any proposal, decision, or omission made by, or on behalf of Luton Council, is illegal or would be illegal. This is not a duty to write a report every time an allegation of illegality is made, but only if, in my personal opinion, that it did, or will occur. The duty is a personal duty that I cannot delegate to someone else. I have not had to advise the Elected Members of any concerns in relation to the contents of your letter.

I also take assurance from a number of external sources. A significant source is the views and conclusions of the Council's External Auditors, Ernst Young, as stated in their annual audit report and annual audit letter. These documents are reported to the Council's Audit & Governance Committee and are available in the public domain

if you wish to read them. Ernst Young also have the power to issue reports and recommendations on specific matters coming to their notice which are in the public interest. I'd like to confirm that the Council's external auditors haven't reported any concerns in relation to the contents of your letter.

The actions of London Luton Airport Ltd (LLAL) in respect of the expansion of Luton Airport

The points you raise in this section of your letter resemble the complaint you registered on 11.07.2019 (reference B12544) which was responded to by [REDACTED], Joint Interim Development Management Service Manager, on 14.08.2019. For that reason I won't repeat Ms [REDACTED] response.

However, I would like to respond on a couple of your observations. Firstly to clarify your comment "*In particular, I draw attention to the growth incentive scheme put in place between LLAL, LBC and LLAOL.....*" Luton Council is not party to the Growth Incentive Scheme. Growth in the air travel sector, with new operators emerging at that time, contributed to the growth in passenger numbers.

Secondly, you refer to potential conflicts of interest. Elected members of Luton Council are obliged to adhere to the Code of Conduct for Members and Co-opted Members in accordance with the requirements of the Localism Act 2011 – I've provided the link below.

https://www.luton.gov.uk/Council_government_and_democracy/Lists/LutonDocuments/PDF/Legal_Services_Division/Council_Constitution/Part%209%20Code%20of%20Conduct%20Members.pdf

The Code of Conduct sets out the conduct expected of the Council's Members and Co-opted Members when acting in their official capacities. The Code is consistent with the seven 'Nolan' principles of conduct in public life: selflessness, integrity, objectivity, openness, honesty, and leadership. It also includes provisions for the registration and disclosure of pecuniary and non-pecuniary interests at Part 2: "Registration, Disclosure and Duties of Interest held by A Member".

The Council maintains a Standards Committee, which, amongst other duties, is responsible for: - promoting and maintaining high standards of conduct by Councillors; monitoring the operation of the Members' and Officers' Codes of Conduct and considering and determining allegations that individual members have breached the Members' Code of Conduct.

If you believe that any elected member has breached the Code of Conduct by their actions, the link below explains how to make a complaint.

https://www.luton.gov.uk/Council_government_and_democracy/Local-democracy/Your%20local%20councillors/Pages/Complaints%20about%20the%20conduct%20of%20councillors.aspx

Apparent lack of effective scrutiny of the Airport operation

The Council's Overview and Scrutiny Board at its meeting on 24.09.2018 considered a report on this subject area – link overleaf.

<https://democracy.luton.gov.uk/cm5public/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=BDF3L2Mi0O92%2faBCiem38GjHAef0hECJJkna%2b4bv997uXYIINjxSnQ%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNih225F5QMaQWCtPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFfXsD GW9IXnlg%3d%3d=hFfiUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFfiUdN3100%3d&uJovDxwdjMPoYv%2bAJvYtyA%3d%3d=ctNJff55vVA%3d&FgPIEJYlotS%2bYGoBi5oIA%3d%3d=NHdURQburHA%3d&d9Qjj0ag1Pd993jsyOJqFvm yB7X0CSQK=ctNJff55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJff55vVA%3d&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3d>

It was resolved (extract from the minutes of that meeting):

- (i) That the report of the Director Place and Infrastructure regarding agreeing an approach to scrutinise the impact of London Luton Airport on the Town and its residents (Ref: 11) be noted.
- (ii) That the Director of Place and Infrastructure be requested to submit a report on Pollution and Air Quality of London Luton Airport, including details on how air quality is monitored to the Overview and Scrutiny Board meeting on 19th November 2018.
- (iii) That following the report at (ii) above, and proposal for a time limited Tasks and Finish Group, that a meeting of the Overview and Scrutiny Committee be convened at the conclusion of the OSB meeting to establish a Tasks and Finish Group in respect of (i) above

Subsequently the Council's Overview and Scrutiny Committee, at its meeting on 19.11.2018, agreed the establishment of a Task & Finish Group (London Luton Airport Pollution and Air Quality to investigate air pollution and air quality impact with a focus on the wards around close proximity of the Airport.

Use of money derived from the Airport operation

As part of its corporate social responsibility, London Luton Airport Limited (LLAL) donates funds in line with its Community Funding Policy (link below).

www.llal.org.uk/Documents/LLAL%20-%20Community%20Funding%20Policy.pdf

The majority of LLAL donations are distributed to small local organisations, who are assessed for their eligibility and ability to contribute to the agreed, published objectives. Given the size of some of these organisations, a 'proportional' light touch approach has been undertaken, so that we don't overwhelm community organisations with bureaucracy. Organisations who are the recipients of donations will have signed up to a safeguarding policy, and be monitored for performance. A Service Level Agreement (SLA) will be in place for each recipient.

For the larger donations, namely Active Luton and Luton Culture, we undertake a more formal engagement approach, with a written relationship agreement and agree areas of priority and how this should be measured. Unlike other providers, Active Luton and Luton Culture regularly report on progress to elected Members.

LBC effectively applying to itself for planning permission which facilitates

LLAL's objectives.

I enclose a link to the report I believe you're referring to which was considered by the Council's Development Control Committee on 27.03.2019.

<https://democracy.luton.gov.uk/cm5public/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=YnakQdiGLDLLGg8H9boPMToaTIRBkbHSLCMTHU47UXpmP0pWG1y8XQ%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNIh225F5QMaQWCtPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFfXsD GW9IXnlg%3d%3d=hFfIUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFfIUdN3100%3d&uJovDxwdjMPoYv%2bAJvYtyA%3d%3d=ctNJFf55vVA%3d&FgPIIEJYlotS%2bYGoBi5oIA%3d%3d=NHdURQburHA%3d&d9Qjj0ag1Pd993jsyOJqFvm yB7X0CSQK=ctNJFf55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJFf55vVA%3d&WGewmoAfeNQ16B2MHuCpMRKZMwaG1PaO=ctNJFf55vVA%3d>

I'd like to draw your attention to paragraph c) which states; "*In the event that Members resolve to grant planning permission for the development, the subject of this application, then this would be subject to its referral to the Secretary of State (following the expiry of the further consultation period), as required by the Town and Country Planning (Consultation)(England) Direction 2009*". T

The Secretary of State for Ministry of Housing, Communities and Local Government, has subsequently determined not to call the planning application in for review.

I hope my letter requires the clarification you've requested.

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Yours sincerely



Service Director (HR) & Monitoring Officer