P.M → file

Steve Atkinson MA(Oxon) • MBA • MIoD • FRSA
Chief Executive

Please ask for	Steve Atkinson
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Direct fax	01455 890229
Email	steve.atkinson@hinckley-bosworth.gov.uk
Your ref	
Our ref	SA/ ST
Date	4 March 2009

Hinckley & Bosworth Borough Council

A Borough to be proud of

Mr D M Haynes
56 Leicester Road
GROBY
Leicester
LE6 0DJ

Dear Mr Haynes

PLANNING APPLICATION 07/00813/COU – MOTORCYCLE TRACK, COW LANE, RATBY

I write further to my letter of 12 September 2008, in which I promised to contact you again on your complaint, once the Judicial Review process had been completed.

That process has now been completed with the Court making a Consent Order, granting the Claimants permission to withdraw the claim, which they have. That being the case, I am writing to you to ask if you still wish to pursue your complaint at Stage Two of our Complaints Process. I would appreciate it if you could advise me either way, so that I can make the necessary arrangements. For your information, and in compliance with my commitment in that previous letter, the complaint will be investigated by Bill Cullen, the Deputy Chief Executive, who has had no previous involvement in this particular complaint.

I trust that this letter is clear and look forward to receiving your further instructions.

Yours sincerely

Steve Atkinson
Chief Executive

Copy: Councillor David Bill – Group Leader, Liberal Democrats
Councillor Matthew Lay – Group Leader, Labour
Councillor Reg Ward – Group Leader, Conservatives
Bill Cullen – Deputy Chief Executive
Trevor Prowse – Director of Community and Planning Services
Tracy Darke – Development Services and Policy Manager
Carol Gardner – Information Governance Officer
Michael Rice – Solicitor, Corporate and Scrutiny Services

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Philip Metcalfe

From: Michael Rice
Sent: 23 December 2008 14:06
To: Philip Metcalfe
Subject: FW: Cow Lane Ratby-Judicial review

Philip,

My apologies for not forwarding this to you earlier.

Could we discuss the implications before we meet Mr O'D on 12/01/09?

Mike

From: Steven Gasztowicz [mailto:southgables@hotmail.com]
Sent: 03 December 2008 15:16
To: Michael Rice
Subject: Re: Cow Lane Ratby-Judicial review

Dear Mike,

I can now reply more substantively to the question raised, having considered this.

If buildings (or other permanent structures) have been placed on the land in connection with the motorcycle use they would appear to require planning permission.

If buildings on the site have permitted use (eg agricultural buildings) - although I do not understand this to be the case - it would be a question of fact and degree whether the motorcycle area is in the curtilage of them. However, all that is on the site so far as I am aware are small sheds and it does not seem possible to fairly describe the motorcycle track as being within the "enclosure of" them. As I understand it they have in any event been provided in connection with the motorcycle use and do not have any planning permission.

Accordingly, the General Permitted Development Order Sch 2 Part 4 Class B would appear to apply to temporary uses of the field. Under Class B, there can be up to 28 days temporary use, but if what is taking place/is to take place constitutes "motorcycle racing including trials of speed, and practising for these activities" that cannot take place for more than 14 of these days (together with up to 14 days' other temporary use).

The question therefore is whether the motorcycle riding taking place on the land here constitutes "motorcycle racing including trials of speed, and *practising for these activities*".

Again, this is a question of fact to be answered according to what precisely is taking place. The answer is not completely clear on the papers. The application for planning permission in July 2007 was (by reference to the accompanying details) for a change of use to a "recreational motor cycle and mountain bike track". There was reference in the material to the track being used "for practice not for organised events" but this may mean just practice in the handling of the bikes. It was, however, mentioned in paragraph 1.0 that "some of the kids have joined professional clubs and ride in competition". The impression I have, though (subject to any further information officers may have), is that this particular site is being used simply for recreational purposes. The aim appears to be to enjoy the riding of the bikes, in a way that is impossible, or dangerous, elsewhere.

So long as the occupiers are clear (and confirm) that the land is not being, and will not be, used for motorcycle racing or speed trials, or practising for these activities, the 28 day period will apply. If, however, it is to be used for motorcycle racing or speed trials, or practising for these activities, that should occur on not more than 14 of the 28 days. That will obviously be more difficult to monitor, however.

Clearly this does not mean that features created by engineering operations, permanent structures, (including fencing), etc, without planning permission will be permissible, of course.

I hope this helps. I would be happy to discuss further with the officer, or following further in-house consideration following my comments, if necessary.

Steven Gasztowicz

From: Michael Rice
To: Steven Gasztowicz
Sent: Monday, December 01, 2008 11:58 AM
Subject: RE: Cow Lane Ratby-Judicial review

Dear Steven

Thank you,

mike

From: Steven Gasztowicz [mailto:southgables@hotmail.com]
Sent: 01 December 2008 11:57
To: Michael Rice
Subject: Re: Cow Lane Ratby-Judicial review

Dear Mike,

Sorry for not getting back to you on this - I was stuck in Cardiff all last week. I will look into it and let you know.

Regards,

Steven

----- Original Message -----
From: Michael Rice
To: Steven Gasztowicz
Cc: clerks@2-3graysinnsquare.co.uk
Sent: Thursday, November 20, 2008 2:32 PM
Subject: FW: Cow Lane Ratby-Judicial review

Dear Steven,

My apologies but I forgot to raise this point with you yesterday

Do you have sufficient clarity in Philip`s email or do you require an amplification of the issue?

Best wishes

Mike

From: Philip Metcalfe
Sent: 12 November 2008 16:58
To: Michael Rice
Cc: Cathy Horton
Subject: RE: Cow Lane Ratby-Judicial review

Hi Mike,

Sorry I'm on annual leave after tomorrow until the 1st December so won't be able to meet next week, can you let me know how you get on. A new application has not been submitted as yet, the applicant has asked how many days a year he can use the track without planning permission. Given that there are structures on the site and earth jumps and banks related to the motorcycle track use which would be permanent perhaps you could discuss this with Steven?

Can you let Cathy know what you decide please, she has kindly agreed to go back to applicant and let him know in my absence.

Thanks,

Phil

From: Michael Rice
Sent: 12 November 2008 14:58
To: Philip Metcalfe
Subject: FW: Cow Lane Ratby-Judicial review

Hi Philip,

Are you ok to meet with Steven next Wednesday afternoon about 3.30ish?

Would you email me details of the current postion re the site in terms of applications?

thanks

mike

From: Michael Rice
Sent: 12 November 2008 14:52
To: 'Steven Gasztowicz'
Cc: 'clerks@2-3graysinnsquare.co.uk'
Subject: Cow Lane Ratby-Judicial review

Dear Steven,

We have had a letter from the claimant`s solicitors asking whether a further application has been made, following the expiry ot the temporary permission.

They propose that, if it is the case that no further application has been submitted, and if the Council is prepared to confirm that it will take into account the issues raised by their client, should there be a further application, then their client is prepared to withdraw the proceedings provided each party meets its own costs.

I would be grateful if we could discuss this issue following our meeting next Wednesday on the Tomlinson matter. If that is convenient, do you want me to send through any of the paperwork on the Drummond case before next week`s meeting?

Best wishes

Mike

Charnwood Forest Area

12. I produce marked "PM5" a copy of the Key Diagram to the Structure Plan. This states in the bottom right hand corner "*[quote]*".

13. A copy of Strategy Policy 14 (relating to Charnwood Forest Policy Area) which the Claimants' complain (in paragraph 4.3 of their Grounds) should have been taken into account but was not is at p 97 of their own bundle. The first line states "The defined boundary of the Charnwood Forest Policy Area will be shown on local proposals maps."

14. I now produce a copy of the Hinckley & Bosworth Borough Council local proposals map. I have marked the site on it with a [.....]. It is plainly not within the Charnwood Forest Policy Area.

15. Accordingly, as the site was not within as the Charnwood Forest Policy Area as defined by the Structure Plan, the requirements in Strategy Policy 14 did not apply to it.

Other Matters

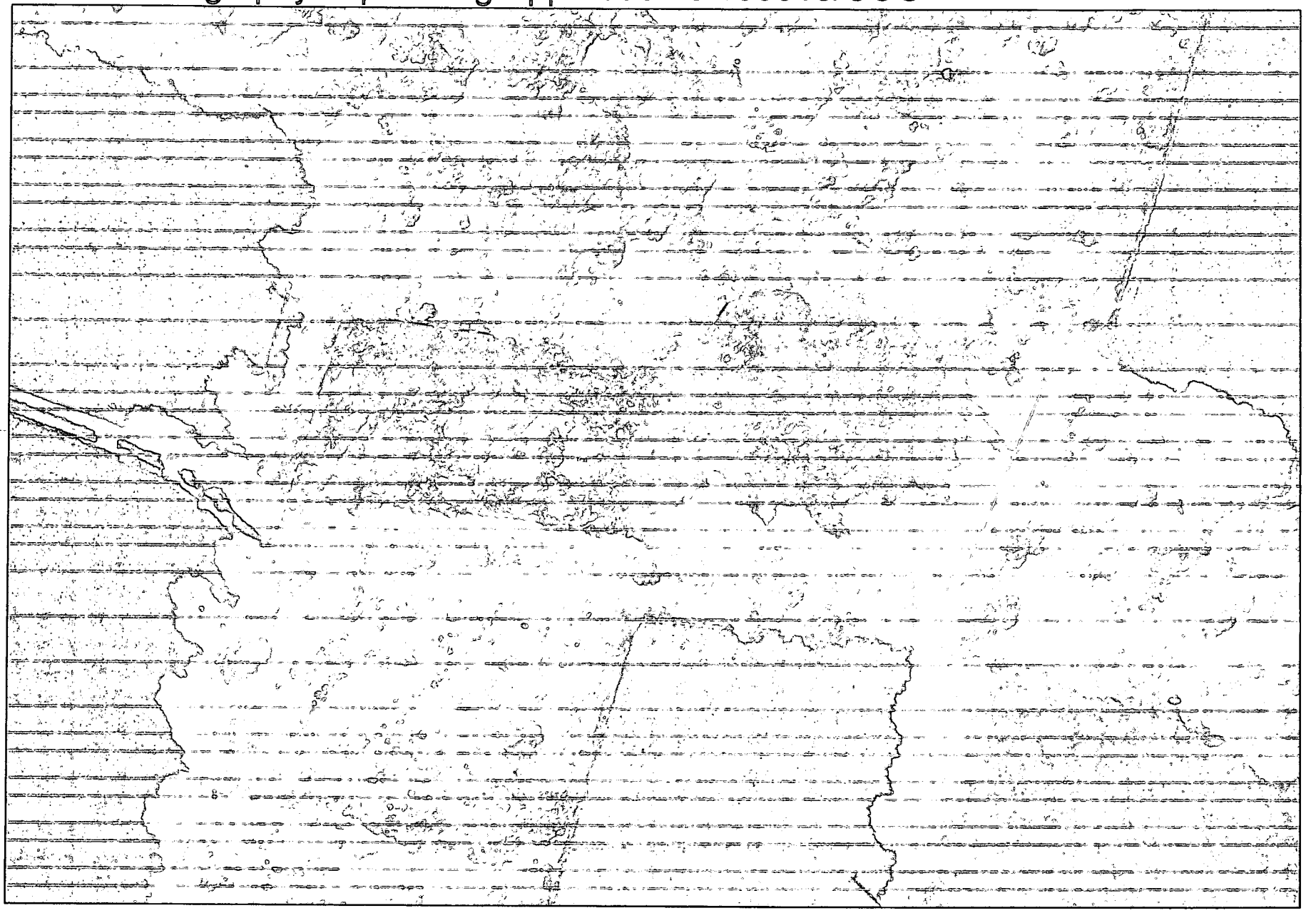
16. For completeness, I produce, marked "PM6", a copy of the Planning Committee Late Item document relating to this site which was also before the planning committee at the time permission was granted, and also a copy of the committee minutes. *[Note: I have yet to see these].*

I believe that the facts set out in this statement are true.

…….. Date ……..

Philip Metcalfe

Aerial Photography of planning Application 07/00813/COU



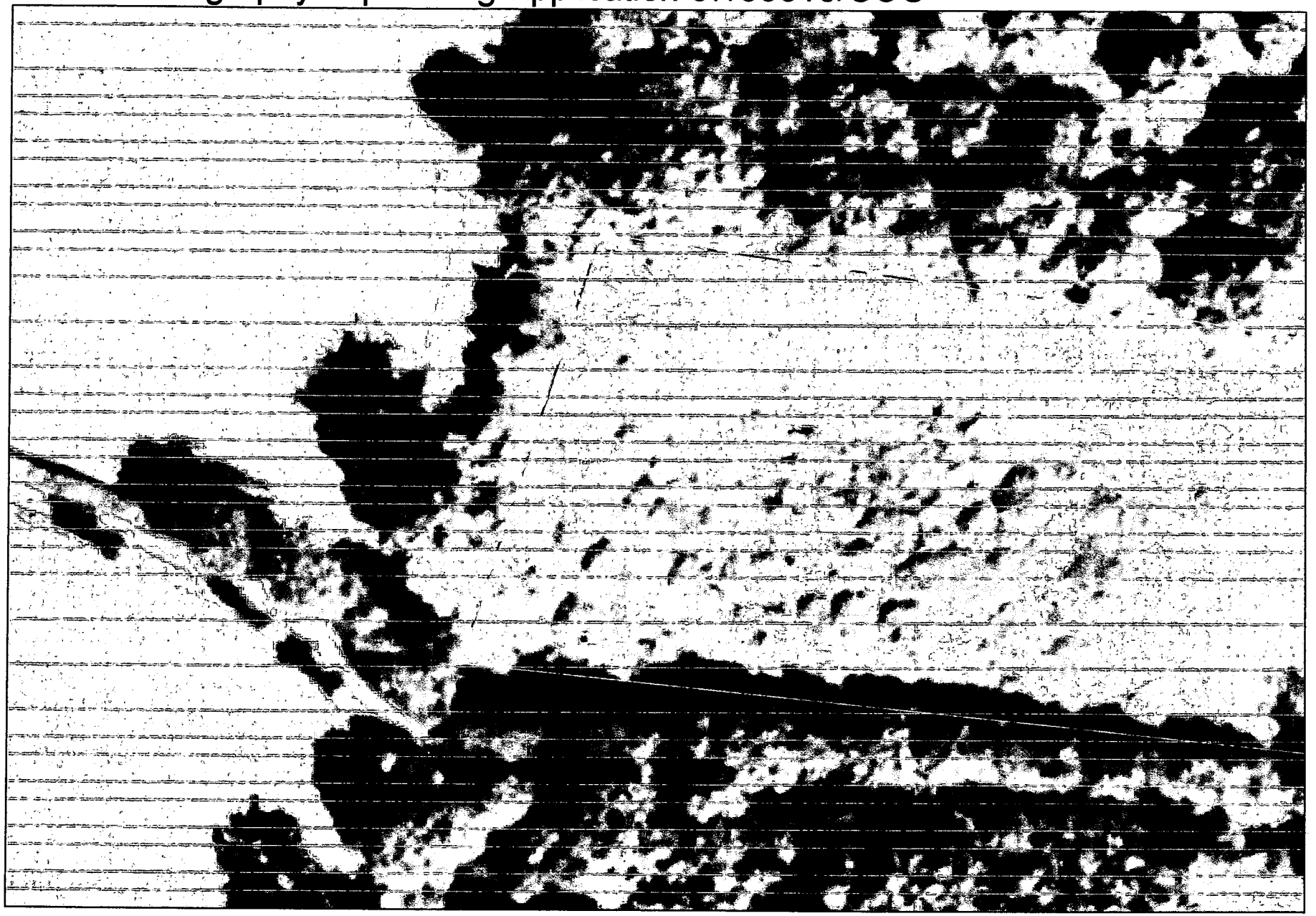
Legend

07/00813/COU

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Aerial Photography of planning Application 07/00813/COU



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07-00813-COU

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PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

CONTENTS

INTRODUCTION

ANNEXES
A LETTER BEFORE CLAIM
B RESPONSE TO A LETTER BEFORE CLAIM
C NOTES ON PUBLIC FUNDING FOR LEGAL COSTS IN JUDICIAL REVIEW

INTRODUCTION

This protocol applies to proceedings within England and Wales only. It does not affect the time limit specified by Rule 54.5(1) of the Civil Procedure Rules which requires that any claim form in an application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose.(1)

1 Judicial review allows people with a sufficient interest in a decision or action by a public body to ask a judge to review the lawfulness of:

- an enactment; or
- a decision, action or failure to act in relation to the exercise of a public function.(2)

2 Judicial review may be used where there is no right of appeal or where all avenues of appeal have been exhausted.

ALTERNATIVE DISPUTE RESOLUTION

3.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued

Health & Safety and Electricity Pylon.

It would appear that the proposed development has been designed to comply with the relevant Health & Safety legislation. However, if permission were granted for the proposed development, the operation of the facility would also need to comply with the legislation and would therefore be monitored and inspected.

Despite the presence of an electricity pylon within the site in a letter from National Grid that accompanies the application which gives general advice, it appears that no objection is raised to the principle of developing the field for recreational facilities.

Ecology.

The County ecologist has confirmed that the site is of no known ecological importance. However, a number of conditions relating to hedgerows and protected species have been given.

Conclusion.

The proposed development would detract from the countryside location, given the remote location of the site traffic associated with the proposed use would impact upon highway safety and noise arising from the proposed use would have a detrimental impact upon the amenities enjoyed by local residents. Accordingly the proposed development conflicts with Strategy Policy 8, Accessibility and Transportation Policy 1 and Leisure Policy 7 of the Leicestershire, Leicester and Rutland Structure Plan (2005) and Policies C2 and L1 of the Blaby District Local Plan (1999).

— The certificate reference number.

ANNEX B

RESPONSE TO A LETTER BEFORE CLAIM

INFORMATION REQUIRED IN A RESPONSE TO A LETTER BEFORE CLAIM

PROPOSED CLAIM FOR JUDICIAL REVIEW

1 **The claimant**

(Insert the title, first and last names and the address to which any reply should be sent)

2 **From**

(Insert the name and address of the defendant)

3 **Reference details**

(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue)

4 **The details of the matter being challenged**

(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate)

5 **Response to the proposed claim**

(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where it is not proposed to disclose any information that has been requested, explain the reason for this. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included)

6 **Details of any other interested parties**

(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant)

7 **Address for further correspondence and service of court documents**

(Set out the address for any future correspondence on this matter)

ANNEX C

NOTES ON PUBLIC FUNDING FOR LEGAL COSTS IN JUDICIAL REVIEW

Public funding for legal costs in judicial review is available from legal professionals and advice agencies which have contracts with the Legal Services Commission as part of the Community Legal Service. Funding may be provided for:

- ***Legal Help*** to provide initial advice and assistance with any legal problem; or
- ***Legal Representation*** to allow you to be represented in court if you are taking or defending court proceedings. This is available in two forms:

  — ***Investigative Help*** is limited to funding to investigate the strength of the proposed claim. It includes the issue and conduct of proceedings only so far as is necessary to obtain disclosure of relevant information or to protect the client's position in relation to any urgent hearing or time limit for the issue of proceedings. This includes the work necessary to write a **letter before claim** to the body potentially under challenge, setting out the grounds of challenge, and giving that body a reasonable opportunity, typically 14 days, in which to respond.

  — ***Full Representation*** is provided to represent you in legal proceedings and includes litigation services, advocacy services, and all such help as is usually given by a person providing representation in proceedings, including steps preliminary or incidental to proceedings, and/or arriving at or giving effect to a compromise to avoid or bring to an end any proceedings. Except in emergency cases, a proper **letter before claim** must be sent and the other side must be given an opportunity to respond before *Full Representation* is granted.

Further information on the type(s) of help available and the criteria for receiving that help may be found in the Legal Service Manual Volume 3: "*The Funding Code*". This may be found on the Legal Services Commission website at:

www.legalservices.gov.uk

A list of contracted firms and Advice Agencies may be found on the Community Legal Services website at:

www.justask.org.uk

FOOTNOTES

1 While the court does have the discretion under Rule 3.1(2)(a) of the Civil Procedure Rules to allow a late claim, this is only used in exceptional circumstances. **Compliance with the protocol alone is unlikely to be sufficient to persuade the court to allow a late claim.**

2 Civil Procedure Rule 54.1(2).

3 Civil Procedure Rules Costs Practice Direction.

4 See Civil Procedure Rule 54.1(2)(f).

5 See Civil Procedure Rules Pre-action Protocol Practice Direction paragraphs 2–3.

6 See Civil Procedure Rule 54.5(1).

7 See Civil Procedure Rule 54.1(2)(f).

8 The relevant address should be available from a range of sources such as the Phone Book; Business and Services Directory, Thomson's Local Directory, CAB, etc.

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