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Helen Monger
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By email only

Your ref:
Our ref: Z2004383/JBY/JD3

16 April 2020

Dear Ms Monger

Proposed Holocaust Memorial and Learning Centre in Victoria Tower Gardens

Thank you for your letter dated 31 March 2020, regarding the "call in" of the application for planning permission for the development of the proposed Holocaust Memorial and Learning Centre ('HMLC') in Victoria Tower Gardens.

This letter is sent on behalf of the Secretary of State for Housing, Communities and Local Government (the 'Secretary of State') and responds to the points made in your letter.

We note that you have seen a copy of the letter from Richard Buxton Solicitors on behalf of the Thorney Island Society, sent to us on 19 February 2020, and that you adopt and endorse the points made by them. However, you do not say whether you have seen our reply of 9 March 2020 (although you appear to be aware of it). This reply only deals with the particular points that you have made in your letter. We enclose a copy of our reply of 9 March 2020 to Richard Buxton Solicitors.

If you intend to proceed with a legal claim, we would expect you to provide a fully drafted pre-action letter as required by the Pre-Action Protocol for Judicial Review, explaining the grounds on which you may seek to rely.

The core allegation of your letter appears to be that you consider that having the Secretary of State as the applicant for planning permission for the HMLC, and a Minister in his Department as the decision-maker in respect of that application, amounts to an unlawful conflict of interest, and that the Minister has prejudged the decision to be made. You say that because of the Conservative Party Manifesto 2019, the commitments made therein, and other statements of Ministers, the decision has been "prejudged".

We completely reject this allegation, and suggest that the views expressed in your letter are based upon an incorrect understanding of the established legal position with respect to predetermination and bias.

For the reasons given below, we are confident that the handling arrangements enclosed with this letter (and as provided by the Inspector at the pre-inquiry meeting) will enable the Housing and Planning Minister to exercise the statutory functions of the Secretary of State under the relevant planning and environmental legislation, and to make a decision on the planning application in a lawful, fair and proper manner.

Gilad Segal - Head of Division
Gary Howard - Deputy Director, Team Leader Planning, Infrastructure & Environment

In particular, those handling arrangements are set in the context of the statutory duties placed upon the decision maker under section 70 of the Town and Country Planning Act 1990 ('the TCPA'), section 38(6) of the Planning and Compulsory Purchase Act 2004 ('the PCPA'), regulation 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations'), the requirements of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 ('the Rules') and all other relevant enactments. Those handling arrangements fulfil the requirements of the common law or otherwise arising under statute, and will enable the Housing and Planning Minister to fulfil his obligations as the decision maker.

It follows that there is no need for the Secretary of State to consider the promotion of new regulations to enable the planning application to be determined by what you term an "independent decision–maker". As you are aware, an inspector has been appointed in accordance with section 77 of the TCPA to hold a public inquiry into the planning application and to report his conclusions and recommendations. Under the handling arrangements enclosed with this letter, it is the Housing and Planning Minister who will receive that report in accordance with rule 17 of the Rules.

In common with the Richard Buxton letter, you also raise the question whether, given the strong statements of support made in the manifesto and by the Prime Minister, the Secretary of State and other members of the Government for bringing forward the proposed Holocaust Memorial and Learning Centre, the Housing and Planning Minister is able lawfully and fairly to determine the planning application.

As you mention in your letter, the position at common law is to be found in the decision of the Court of Appeal in *R (Lewis) v Redcar and Cleveland Borough Council* [2009] 1 WLR 83. At [96], Rix LJ said that the test is whether there is an appearance of predetermination in the sense of a mind closed to the planning merits of the decision in question. Evidence of the adoption of policies towards a planning proposal will not for these purposes by itself amount to such an appearance of predetermination or bias. It is necessary to show the appearance of a predetermined, closed mind in the decision-making itself. See also Longmore LJ at [106] – [109]. We do not accept the way in which you have attempted to distinguish the use of the term "policy" in *Lewis* and in the present circumstances. There is no such distinction. Indeed, the Court explicitly acknowledged that ministers "take decisions on planning issues on which they have political views and policies" at [66]. The principles in *Lewis* are on all fours with the issues that arise here.

There is no arguable basis upon which it may reasonably be said that the appearance of predetermination as explained by the Court of Appeal in *Lewis* has either arisen, or is likely to arise, in the present case. There is no reasonable basis to infer other than that the Housing and Planning Minister will exercise the decision making functions to which we have referred properly, fairly and in accordance with the procedural requirements that they impose. This is the opposite of "topsy-turvy" logic; the Housing and Planning Minister can be taken to be aware of his obligations and to be ready to follow the proper requirements in reaching his decision, with the benefit of the appointed inspector's report on the planning application following the public inquiry.

For these reasons also, there is no need to resort to the novel approach to decision making that you suggest in the penultimate paragraph of your letter, and to appoint an alternative decision-maker. We are not to be taken as accepting that it would be open to the Secretary of State to legislate under present statutory powers for an alternative decision maker. Our point is that it is simply unnecessary to address that question.

It follows that we expect the public inquiry to proceed in accordance with the Rules, for a recommendation to be given by the inspector and for the decision to be made by the Housing and Planning Minister in due course.

Timing of the inquiry – Covid-19

We understand that the inspector, having considered your submissions together with those of other parties, has now postponed the inquiry start date until further notice. This means that the timetable and Bespoke Programme are now suspended, and revised deadlines will be issued once a new inquiry date has been agreed.

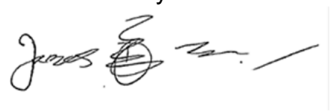
Email address for further correspondence and service of claims

Please send any further correspondence regarding this matter to my email address below, with copy to Sarah Spottiswood at sarah.spottiswood@governmentlegal.gov.uk.

Due to the on-going coronavirus pandemic, **service of new claims should be by email to:** newproceedings@governmentlegal.gov.uk. Please copy me and Ms Spottiswood to any such email and mark it for our attention quoting reference Z2004383/JBY/JD3.

Please visit https://www.gov.uk/government/organisations/government-legal-department for further information.

Yours sincerely



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