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OUR REF: RGA/KLA/01172593/1
DATED: 11 April 2024

By email only: service.legal@bristol.gov.uk

Copied to: CHagan@savills.com

LETTER BEFORE CLAIM

Dear Bristol City Council,

Proposed challenge to approval of demolition and redevelopment to provide co-living units (sui generis) and student accommodation (sui generis), associated amenity spaces, ground floor uses (Class E), access, servicing, landscaping, public realm, and associated works at Premier Inn, The Haymarket, Bristol BS1 3LR (ref. 23/02827/F)

PROPOSED CLAIMANT

1. This letter is sent pursuant to the Pre-Action Protocol for Judicial Review. We act for the proposed Claimant, Bristol Civic Society ("**BCS**"). BCS is a voluntary organisation and a registered charity with over 600 members, with a stated mandate to improve Bristol's built environment and celebrate its heritage.

LEGAL REPRESENTATIVES

2. The Claimant's legal representatives are:
   Leigh Day Solicitors
   Panagram, 27 Goswell Road
   London, EC1M 7AJ

PROPOSED DEFENDANT

3. The proposed Defendant is Bristol City Council ("**the Council**")
   Bristol City Council

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PROPOSED INTERESTED PARTY

4. The proposed Interested Parties are:

    (1) Branna Limited
    C/O Agent Ciaran Hagan Savills Bristol
    Embassy House
    Queens Avenue
    Bristol
    BS8 1SB

    (2) Premier Inn Hotels Limited

    See above for address details.

    (3) Olympian Homes Limited

    85 Buckingham Gate,
    Westminster,
    London SW1E 6PD

DECISION TO BE CHALLENGED

5. BCS intends to challenge the anticipated decision of Bristol City Council ("**the Council**") to grant planning permission for *"Demolition and redevelopment to provide co-living units (sui generis) and student accommodation (sui generis), associated amenity spaces, ground floor uses (Class E), access, servicing, landscaping, public realm, and associated works"* ("**the Scheme**") at Premier Inn, The Haymarket, Bristol BS1 3LR ("**the Site**").

6. On 6 March 2024, the Council's Development Control A Committee resolved to follow officers' advice and delegate approval of the Scheme to officers, subject to the resolution of certain issues. For the reasons given below, the advice of officers was materially misleading, and the Council's anticipated grant of permission will therefore be unlawful. As such, if the Council does not reconsider and redetermine the application for the Scheme, BCS will seek an order quashing any grant of planning permission by way of a claim for judicial review.

7. The applicants for the planning permission, Branna Ltd and Premier Inn Hotels Ltd ("**the Applicants**"), are Interested Parties in these proceedings.

BACKGROUND

8. On 14 July 2023, the Applicants applied for permission to redevelop the Site by demolishing the existing Premier Inn building and constructing two new buildings which would be used for student and co-living accommodation. The student accommodation building is designed to be 28 storeys high and provide 442 rooms. The co-living accommodation is designed to be 18 storeys high and provide 142 units and shared amenity facilities.

9. The Site currently hosts an 18-storey Premier Inn hotel, restaurants and cafes, a carpark, a clothing store, and a number of vacant retail units. It is located on the western side of St James Barton roundabout. To the north of the Site, there is a building called the IQ Block which contains student accommodation. The Site is surrounded by a large number of designated and non-designated assets.

10. On the south-east of the roundabout, approximately 100 meters away from the Site, there is a vacant unit which used to be occupied by Debenhams ("**the Debenhams Site**"). An application has been submitted to redevelop the Debenhams Site (ref. 23/04990/F) which has not yet been determined ("**the Debenhams Proposal**").

11. In May 2023, the Council issued a screening opinion which concluded that the Scheme was Schedule 2 development ("**the Screening Opinion**"). However, the Council concluded that the Scheme was not EIA development. It considered that although the Scheme was close to a number of other major development sites (including the Debenhams Site), the Scheme's cumulative impact with other development would not be "*such that it would be considered so significant... to warrant the requirement for an Environment Impact Assessment*".

12. The Scheme generated a considerable number of objections, including from BCS and statutory consultees. Historic England ("**HE**"), for example, voiced *"very strong concerns"* about the Scheme on heritage grounds. HE advised the Council *inter alia* that:

    (a) The Scheme would result in harm to the significance of individual heritage assets, including the Churches of St Nicholas, Christ Church and St Peter's (all Grade II*), and it would also result in cumulative harm to the historic environment; and

    (b) There were *"alternative options... in line with [the Council's] Urban Living SPD"* that could minimise the harm to heritage assets. HE advised in particular that (i) *"a meaningful reduction in height and further mitigation through design would help preserve the setting of nearby heritage assets..."* and as such *"the proposed development should be reduced in height by at least eight storeys..."* and (ii) the Council should *"fully assess the possibility of retrofitting the existing*

building" in order to *"preserve and potentially enhance the setting of nearby heritage assets".*

13. The application for the Scheme was considered at a meeting of the Council's planning committee on 6 March 2024. Ahead of that meeting, officers prepared a report ("**the OR**") and supplementary report ("**the SOR**") which recommended the grant of permission. At the committee meeting, members voted to delegate the approval of the application to officers, subject to the resolution of concerns that had been raised by the Health and Safety Executive and Transport Development Management, the completion of a s. 106 agreement, and the imposition of certain conditions.

PROPOSED GROUNDS OF CLAIM

Ground 1: unlawful assessment of the Scheme's heritage impacts

14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("**LBA 1990**") provides that *"in considering whether to grant planning permission... for development which affects a listed building or its setting, the local planning authority... shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."* Section 72 provides that, with respect to buildings or land in a conservation area, *"special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area"* in an authority's exercise of its functions under *"the planning Acts"*.

15. Paragraph 205 of the NPPF provides that *"when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be)"*. Paragraph 206 provides that *"any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification".*

16. Policy BCS22 of the Bristol Development Framework Core Strategy (2011), which forms part of the Council's development plan, provides that development proposals should safeguard or enhance assets, including conservation areas, and its supporting text states that *"conservation area character appraisals... will be used to inform and understand"* the contribution which heritage assets make to *"the city's character, identity and history"*.

17. Officers materially misled committee members as to the Scheme's harm to heritage assets and conservation areas (and therefore the proper application of s. 66(1) and s. 72 of the LBA 1990 and the relevant policies in the NPPF) in several respects.

18. First, officers failed to consider the significance of, and/or quantify the harm that would be caused to, certain heritage assets. In summary:

(a) The OR failed to assess the Scheme's impacts on heritage assets that the OR had itself identified as relevant and significant. At [OR/11.12], the OR identified the following assets as *"being impacted by the proposals":* Nos 31-34 Portland Square (Grade I); Nos 1-6 Portland Square (Grade I); Nos 7-12 Brunswick Square (Grade II); the Chapel Wing of the Old Bristol Royal Infirmary (Grade II); and the Bristol Eye Hospital (Grade II). However, in considering the Scheme's *"impact on heritage assets"* [OR/11.13-11.19], the OR made no reference to these designated assets. Officers were obliged to assess the significance of each of these assets, consider what impacts the Scheme would have on their setting, and ascertain the consequences of these impacts for their significance. They failed to do so.

(b) The OR failed to assess the Scheme's impact on various assets in respect of which consultees had raised specific concerns. HE considered that as a result of the Scheme's topographical dominance – and in particular its impact on views of the city from the south of the Site – the Scheme would have harmful *"wider impacts on a number of key, highly graded heritage assets"*, including the Churches of St Nicholas, Christ Church and St Peter's (all Grade II*) and various other Grade II and non-designated assets. Historic Buildings and Places raised similar concerns. In spite of these representations, the OR did not consider that these assets could be potentially impacted by the Scheme and failed to consider the Scheme's impact on their setting.

(c) The OR (i) failed to quantify the level of harm that the Scheme would cause to each of the individual assets that had been identified as being potentially impacted by the Scheme and (ii) failed to consider or quantify the level of the Scheme's cumulative harm. The OR stated that *"officers are satisfied that given the context the proposal would... result in less than substantial harm"* [OR/11.19] but did not identify the level of harm in relation to each of the individual assets that would be affected. Furthermore, despite the fact that HE had identified the Scheme's *"cumulative impact"* on the historic environment as one of the reasons for its *"very strong concerns"* about the Scheme, the OR did not consider whether and how the Scheme's impacts on individual assets would cumulate.

19. Second, officers failed to quantify the extent of the Scheme's *"less than substantial"* harm, provide reasons for not doing so, and/or provide rational reasons for this finding. In summary:

(a) After apparently finding that the Scheme would result in *"less than substantial harm"*, the OR failed to articulate the extent of the Scheme's harm within this category [OR/11]. This is despite the fact that the Planning Practice Guidance ("**PPG**") on the Historic Environment advises that *"within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated"* and, in *R (Kinsey) v London Borough of Lewisham* [2021] EWHC 1286 (Admin), Lang J held at [89] that

"where a planning officer decides to depart from [the PPG guidance] ... he should give reasons for doing so..." Officers erred in failing to follow the PPG guidance or give reasons for not doing so.

(b) Further and alternatively, the OR's apparent finding of *"less than substantial"* harm was not supported by *"rational reasons"*, as was required: see, for example, *R. (Wyeth-Price) v Guildford BC* [2020] EWHC 3355 (Admin), [13]. The OR's basis for determining the Scheme's harm to be *"less than substantial"* was the fact that HE had made no determination to the contrary: at [OR/11.19], the OR noted that "*Historic England do not claim substantial harm, and in this case officers are satisfied that given the context the proposal would therefore result in less than substantial harm"* (emphasis added). Officers therefore failed to provide *positive* reasons for their finding of *"less than substantial"* harm. They instead relied on the fact that HE had not made a finding of *"substantial"* harm.

20. Third, the OR materially misled members as to the level of heritage harm (and therefore as to the proper application of s. 72 and Policy BCS22) by failing to consider the impact of the Scheme on the character and appearance of certain conservation areas. Although the OR recognised that the Scheme would have a *"visual impact"* on Portland and Brunswick Square Conservation Area [OR/11.12], it failed to consider the impact of the Scheme on this area at [OR/11.13-11.19] as well as the conservation area character appraisals.

21. Further and/or alternatively, officers materially misled members as to the weight that should be afforded to the OR's findings of heritage harm in the overall planning balance. In summary:

(a) Although the OR was obliged to place *"considerable importance and weight"* on a finding of harm to a designated asset in the planning balance (see *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2015] 1 WLR 45, [22] and [29]), in carrying out the overall planning balancing exercise at [OR/17] and summarising the exercise at [OR/1.5], the OR made no reference to the weight which should be accorded to the OR's earlier findings of *"less than substantial"* harm and, instead, treated this finding of as one factor that should be weighed in the balance like any other factor (such as overshadowing. As such, there is positive evidence to indicate that the OR failed to apply a *"tilted balance"* in favour of the finding of heritage harm at *"the critical stage"* of the OR (see *R (Forge Field Society) v Sevenoaks DC* [2015] JPL 22, [47] and *R. (Wyeth-Price) v Guildford BC* [2020] EWHC 3355 (Admin), [33]-[56].

(b) Furthermore, in considering para. 208 of the NPPF at [OR/11.20-21], the OR made no reference to the fact that *"great weight"* should be accorded to its apparent finding of *"less than substantial"* harm and, instead, stated that the *"key consideration"* in the exercise was *"whether [the Scheme's public]*

benefits could be provided with a lesser degree of harm and would they outweigh the harm". Again, this provides positive evidence to indicate that the OR failed to apply the *"weighted or tilted balancing exercise"* in determining the overall planning balance: *Kinsey,* [81(ii)].

22. Further and/or alternatively, officers failed to accord great weight to, provide adequate reasons for departing from, and/or accurately summarise HE's advice. In summary:

    (a) Although HE had advised the Council that the wider setting of certain designated assets would be harmed and that the Scheme would result in *"cumulative impacts",* the OR did not consider this advice. Officers therefore failed to accord great weight to, or provide cogent and compelling reasons for departing from, HE's advice: *Smyth v Secretary of State for Communities and Local Government* [2015] PTSR 1417, [85] and *R (Akester) v Department for the Environment, Food and Rural Affairs* [2010] EnvLR 33, [112].

    (b) Although HE had advised that *"a meaningful reduction in height [by eight at least eight storeys] and further mitigation through design would help preserve the setting of nearby heritage assets..."*, the OR dismissed this advice by reference to viability considerations which were unsupported by evidence given that no viability evidence had been submitted with the application [OR/11.21]. In doing so, the OR also inaccurately summarised HE's advice: contrary to what the OR suggested, HE had *not* advised that a reduction of 8 storeys would result in the Scheme having *"no harm"*.

23. It is well established that an officer's report must not be materially misleading, and that members can be presumed to have followed officers' advice unless there is evidence to suggest otherwise: *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, [42]. Members were plainly misled by the advice in the OR. As such, in resolving to grant permission, members failed to have regard to relevant considerations, failed to discharge the requirements of s. 66(1) and s. 72 of the LBA 1990, and failed to determine the application in accordance with the development plan (as was required by s. 70(2) of the Town and Country Planning Act 1990 ("**TCPA 1990**") and s. 38(6) of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**")).

Ground 2: failure to have regard to relevant policies in relation to the design and/or findings of harm in the planning balance

24. Section 12 of the NPPF contains policies to assist decision-makers with *"achieving well-designed and beautiful places"*. Paragraph 131 states that *"the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve".* Paragraph 135(c) states that planning decisions should ensure that developments *"are sympathetic to local character and history, including the surrounding built environment and landscape setting"*. Paragraph 139 states that *"Development that is not well designed should be*

refused, especially where it fails to reflect local design policies and government guidance on design".

25. Policies BCS2 and BCS21 of the Bristol Development Framework Core Strategy (2011) and Policy DM26 of the Site Allocations and Development Management Policies (2014) make clear that development proposals must protect *"key views"*, contribute positively to an area's character and identity, and respond appropriately to existing skylines and roofscapes. The Urban Living SPD states that a tall building should not be located where *"it harms valued views from key vantage-points"* and *"has a detrimental impact on the city's historic environment".*

26. The Bristol Central Area Plan, which is part of the development plan, contains similar policies. The supporting text to Policy BCAP33 states that conservation area character appraisals, which contain *"local analysis including important short, medium and longer distance views"*, will be *"used to inform decisions on proposals affecting views and landmarks"* when they are considered against Policies BCS21 and DM26.

27. For the following reasons, the OR failed to adequately consider whether the Scheme protected "*key views"*, contributed positively to the character and identity of the wider city, and responded appropriately to existing skylines and roofscapes (as required by Policies BCS2, BCS21 and DM26):

    (a) First, although the OR acknowledged that *"there will be a range of impacts as a result of the development"*, it failed to identify those impacts, quantify their harm, or determine whether they result in a breach of Policies BCS2, BCS21 and DM26.

    (b) Secondly, in spite of the fact that the Bristol Central Area Plan states that conservation area character appraisals will be used to assess proposals' compliance with these policies, the OR did not consider those appraisals in its assessment. There is no consideration in the OR of the *"short, medium and longer distance views"* that are contained in the appraisals and, as such, the OR has not used these views *"to inform"* its assessment of the Scheme's impact on views and landmarks. Similarly, there is no consideration of the *"key vantage points"* from which the Scheme would be viewed, in spite of the Urban Living SPD's advice that these should be considered.

28. The OR also failed to consider whether and how the Scheme was adaptable to changing social, technological, economic and environmental conditions (as required by Policy BCS21) and whether the Scheme could be modified in future to facilitate future refurbishment and retrofitting (as required by Policy BCS15, as well as the National Design Guide and National Model Design Code to which reference is made in para. 139 of the NPPF). Moreover, the OR failed entirely to apply these policies in relation to *other* buildings that would be affected by the Scheme. For example, in considering the impact of the Scheme on the levels of daylight and sunlight in the nearby IQ Block, the OR noted the Applicant's case that the Scheme's impact on this

block should be given less weight given that it was student accommodation whose use was *"transient in nature"* [OR/14.4]. In doing so, the OR failed to consider whether the Scheme would prevent the IQ Block from being adapted or modified in future.

29. Furthermore, the OR failed to advise members as to the NPPF policies on beauty, despite the fact that these policies were introduced to further an important national policy objective and despite members raising concerns at the committee meeting as to the Scheme's design. The OR also failed to consider whether the Scheme would be *"sympathetic to local character and history"* (as required by para. 135(c) of the NPPF).

30. Further still, in the overall planning balance, the OR failed to consider the harm that the OR *had* found. The OR considered that the Scheme's scale was *"challenging"* and *"would set the building out as a significant landmark"*, before concluding that *"if the additional height is considered justified it is considered that the design quality would produce a successful development"* [OR/12.10]. However, in carrying out the overall planning balancing exercise [OR/17], the OR did not refer to this harm.

31. Accordingly, the OR materially misled members as to the Scheme's compliance with the development plan and other relevant policies and, as a result, members failed to determine the application in accordance with s. 38(6) of the PCPA 2004 and s. 70(2) of the TCPA 1990.

Ground 3: failure to accurately summarise representations in relation to sustainability, to have regard to relevant considerations, and/or to follow or accurately summarise the advice of the Council's Sustainability City Team

32. Paragraph 157 of the NPPF states, amongst other things, that the planning system should help to *"encourage the reuse of existing resources, including the conversion of existing buildings"*. In *Marks and Spencer plc v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 452 (Admin), Lieven J considered at [55] that para. 157 contains *"some encouragement for the reuse of buildings"*, albeit not contain a "*presumption*" that they will be reused.

33. Policy BCS13 of the Bristol Development Framework Core Strategy (2011) provides, amongst other things, that *"Development should contribute to both mitigating and adapting to climate change, and to meeting targets to reduce carbon dioxide emissions"* and avoid *"responses to climate impacts which lead to increases in energy use and carbon dioxide emissions".*

34. The OR stated that "*whilst there are no objections on design and heritage grounds to the removal of the existing building, it is noted that the existing building represents a significant quantity of embodied carbon"* [OR/13.2]. This was wrong and misleading. HE, for example, advised the Council to *"fully assess the possibility of retrofitting the existing building"* in order to *"preserve and potentially enhance the setting of nearby heritage assets".* Other consultees and objectors made similar representations.

35. Furthermore, officers also failed to apply relevant policies and/or follow or accurately summarise the advice of the Council's Sustainability City Team. In summary, the OR failed to consider the advice of the Council's Sustainability City Team that: (a) *"in contravention"* of Policy BCS13 and para. 157 of the NPPF, the Scheme's design increased the Scheme's vulnerability and reduced its resilience; and (b) the Scheme's *"use of comfort cooling will increase energy use and carbon dioxide emissions and therefore does not comply with Policy BCS13".* Instead of advising members as to these identified breaches of development plan policy, the OR simply stated that there were *"technical issues [with the Applicant's whole life carbon assessment"* that were being reviewed.

36. Accordingly, officers materially misled members and, as a result, members failed to determine the application in accordance with s. 38(6) of the PCPA 2004

Ground 4: unlawful determination of application in light of outstanding concerns

37. A number of consultees had raised concerns about the Scheme which were yet to be resolved by the date of the committee meeting. There were outstanding concerns in relation to highways (the SOR noted that Transport Development Management had safety concerns amongst other things *"about the stepped access from the Western Entrance to the Bearpit"*), fire safety (the SOR noted that Health and Safety Executive had raised a fire safety concern with the proposal which needed to be resolved and would likely result in substantive changes to the design of the Scheme), and sustainability (the OR stated that there were *"technical issues [with the Applicant's] whole life carbon assessment"* that were still being reviewed).

38. Despite the fact that these concerns amounted to potential reasons for refusing the application and remained outstanding, committee members decided to follow officers' advice and delegate approval of the application to officers. In doing so, members failed to receive advice in relation to substantive matters on which they ought to have received advice (*Mansell*, [42]). Further and/or alternatively, the decision to approve the application without further advice contravened the Council's constitution and/or scheme of delegation, because it resulted in officers in effect determining the application for themselves.

Ground 5: reliance on irrelevant considerations in relation to purported transport benefits

39. The OR advised members that the contributions to transport infrastructure which would be secured through s. 106 contributions could and should be regarded as benefits that should be weighed in the overall planning balance. For example, the OR advised that contributions towards *"improved access to the bus station, additional space for the bus stops…"* should be given weight in the balance: [OR/17.3].

40. However, these were not *"benefits"* that were capable of being weighed in the overall planning balance. As the OR noted in [OR/16], the Applicant's contributions to transport infrastructure, including *"additional space for the bus stops"*, were necessary to *mitigate* the Scheme's impact on local transport infrastructure. The OR noted, for example, that the Scheme would *"increase demand on the bus stops and bus services in the vicinity of the St James Barton roundabout and as such further improvements to bus stop infrastructure in the vicinity is key"* [OR/16.9]. Accordingly, these measures were simply designed to offset the negative impacts that would otherwise be caused by the Scheme on local transport infrastructure.

41. By treating the s. 106 contributions to transport infrastructure as positive benefits, officers' advice to members was materially misleading and members therefore had regard to an irrelevant consideration in deciding whether to grant the Scheme permission.

Ground 6: failure to discharge public sector equality duty and/or have regard to job losses

42. Section 149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard to the need to *"(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the Equality Act 2010]; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it"* ("**the PSED**"). The courts have held that the PSED can involve a duty of inquiry and must be *"exercised in substance, with rigour and with an open mind"*: *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, [26].

43. The sum total of the OR's attempted compliance with the PSED is found at [OR/8.3], where the OR concluded that *"there is no indication or evidence (including from consultation with relevant groups) that different groups have or would have different needs, experiences, issues and priorities in relation to this particular proposed development. Overall, it is considered that this application would not have any significant adverse impact upon different groups or implications for the Equality Act 2010".* Contrary to the OR's conclusion, it was clearly possible that certain groups could be affected by the Scheme more than others. For example, as BCS noted in its representations, the Scheme would result in the loss of many jobs in the hospitality and retail sectors, which could affect certain groups more than others. By failing to consider these possible impacts, the OR failed to discharge the PSED *"in substance"* and *"with rigour"*.

44. Furthermore, the OR failed to consider the *"loss of employment opportunities"* in the overall planning balance. Despite noting this harm at [OR/6.2.1], the OR failed to weigh job losses in the overall planning balance at [OR/17], even though job *creation* was listed as a key benefit of the Scheme in the SOR.

45. Accordingly, officers materially misled members and members therefore failed to have regard to relevant considerations and discharge the PSED under s. 149 of the Equality Act 2010.

Ground 7: failure to have regard to construction impacts

46. The PPG on Air Quality states that *"where air quality is a relevant consideration the local planning authority may need to establish... whether the proposed development could significantly change air quality during the construction and operational phases..."*. Whether a proposal would *"involve construction sites that would generate large heavy goods vehicle flows..."* and *"give rise to potentially unacceptable impacts (such as dust) during construction for nearby sensitive locations"* are also listed by the PPG as *"considerations that may be relevant to determining a planning application"*.

47. The relevance of a development proposal's construction impacts is also noted in the PPG on Noise, which states that *"decision making need to take account of the acoustic environment"*, which includes *"identifying whether the overall effect of the noise exposure (including the impact during the construction phase wherever applicable) is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation"*.

48. The OR noted that an issue had been raised in representations as to whether the Scheme would *"lead to noise and disturbance during the construction process and may result in potential damage to neighbouring buildings"* [OR/6.2.8]. Yet in spite of the clear relevance of construction impacts to the determination of the application for the Scheme, the OR advised members that such considerations could not be a reason for refusing the application, given that they were *"covered by other legislation"*.

49. The officers' advice failed to have regard to the PPG guidance, which indicates that such considerations can and should be considered in determining an application for planning permission. Accordingly, members were materially misled and failed to have regard to a relevant consideration.

Ground 8: failure to provide advice in relation to PBSA demand

50. The OR considered that the Scheme's provision of purpose-built student accommodation ("**PBSA**") could contribute towards the Council's housing delivery. However, the OR provided no information as to whether the Scheme would address existing demand, or alternatively create new demand, for student accommodation in Bristol. In the committee meeting, one committee member specifically asked officers this question, however the officer responded by stating that the Council did not have this information at present.

51. The officers' advice was materially misleading. The Council's most recent local housing need assessment *did* contain information about the current and expected

demand for PBSA in Bristol and in particular whether it would free up private rented sector housing. Officers should have made members aware of this information given that it was a matter on which advice was expressly sought (*Mansell*, [42]). Accordingly, members were materially misled and failed to have regard to a relevant consideration.

ACTION THAT THE DEFENDANT IS EXPECTED TO TAKE

52. The Council is asked to agree to withdraw its resolution to grant planning permission for the Scheme and to reconsider the application for the Scheme.

REQUEST FOR INFORMATION

53. The OR does not refer to the advice that was (presumably) provided by the Council's conservation officers to the Council's planning officers. This advice is requested and should be disclosed. Please also confirm when such advice was sought by planning officers and when any response was provided.

AARHUS CONVENTION CLAIM

54. The definition of an "environmental" claim under the Aarhus Convention "is arguably broad enough to catch most, if not all, planning matters": see Venn v SSCLG [2014] EWCA Civ 1539 at [11].

55. As this challenge concerns planning/land use and is brought by a member of the public it is an Aarhus Convention claim to which Aarhus cost capping applies. Please confirm your agreement to this.

ADR PROPOSALS

56. Although we are open to discussions that may narrow the issues and/or avert a legal claim, we do not consider this is a case that is suitable for ADR.

THE ADDRESS FOR REPLY AND SERVICE OF COURT DOCUMENTS

57. We accept service of documents by email to rgama@leighday.co.uk and kipek@leighday.co.uk.

58. Please ensure you quote our reference number RGA/KLA/01172593/1 in all correspondence and communications with this office.

59. A response is requested by **<u>5pm on 25 April 2024.</u>**

Yours faithfully

Leigh Day.

<u>Leigh Day</u>