

Name: C Bending

3 October 2023

BETWEEN:

Croudace Homes

Appellant

and

Wealden District Council

LPA

WITNESS STATEMENT OF CHRISTOPHER BENDING

I, Christopher Bending, of Wealden District Council, Council Offices, Vicarage Lane, Halisham, BN27 2AX make this witness statement pursuant to the costs application lodged by the Appellant dated 2 October 2023.

1. I am employed by Wealden District Council as the Director of Place. My directorate includes the development management function for an on behalf of the Local Planning Authority. I am duly authorised to make this statement.
2. I make this statement to assist the rebuttal of the application for costs lodged by the Appellants and specifically to address some factual inaccuracies.
3. The facts and matters set out in this statement are true. I am a member of the Royal Town Planning Institute (Chartered Town Planner, MRTPI) and have been for 14 years. As a Member of the RTPI, I am bound by the Institute's Code of Professional Conduct, which is based around five core principles: competence, honesty and integrity; independent professional judgement; due care and diligence; equality and respect; and professional behaviour.
4. I have read the costs application lodged by the Appellants. Within it there is reference to a letter I sent to Landmark Chambers, in June 2023. This concerned the instruction of Counsel, [REDACTED] by the Appellants in the current appeal.
5. The papers will reveal an earlier Inquiry at the Bird in Eye site, which in 2009 was conjoined with two other sites in Uckfield. It is material that [REDACTED], then QC, represented the Council at that appeal. The Council was his client. Both myself and Mr. Robins, the Council's Head of Planning and Environmental Services, were working at the Council at the time of the earlier Inquiry. We both assisted with the Inquiry at different stages, though to be clear were in more junior positions at that time. For me, I distinctly recall discussions with [REDACTED]. I am also aware that some objectors and other interested parties were present in 2009 and remain just as interested in the current appeal.

6. At the CMC (26 June 2023) [REDACTED] appeared representing the Appellants. That was the first the Council knew of [REDACTED] involvement. Neither he nor the Appellants had mentioned that [REDACTED] was to be advocate for the Appellants. The Council was concerned about a conflict of interest. That had two aspects to it. That [REDACTED] having represented the Council, as Local Planning Authority, and argued against the development of said site did not seek consent to be discharged of any duty he still held to the Council. This is contrary to the Bar Standard Handbook C.21/3. Further, it did not seem right that [REDACTED] advised and represented us, and such representation would have involved [REDACTED] being privy to confidential information, but now was to act against the Council in this case.
7. My team signaled concern about this straight away. This was at the PINS CMC before it concluded and then the next day, I wrote to Landmark Chambers about these concerns. I cannot share the reply which Landmark sent as Landmark has not consented to that and had asked that the exchanges remain private and confidential. It has not been possible to get them to review that in the time given for the costs rebuttal.
8. It is important to note that my letter to Landmark did not threaten them about future business and instructions. It did say we were considering our position, including a possible approach to the Bar Council. However, rather than contacting the Bar Council, we immediately we sought their views. No further action was required as [REDACTED] recused himself and handed back the instructions to the Appellant, to avoid any suggestion of improper conduct. I can categorically say that we did not place [REDACTED] under any pressure other than to set out our concerns regarding conflict of interest. Given the terms of the Bar Handbook, I stand by that.
9. After my letter, we held a MSTeams call with [REDACTED] of Landmark on the 4 July 2023. [REDACTED] wrote to me the same day.
10. It was not my intention to disrupt proceedings as alleged by the Appellants. All we wanted was fairness and to avoid any perception that the Council was not defending the appeal properly. It is material that the Council argued that the site was unsustainable in 2009 and the same arguments are now raised in the current appeal case.
11. It is notable that during the MSTeams call I had with Landmark Chambers, they advised me that the potential for a conflict of interest was discussed with the Appellant when they instructed [REDACTED]. Rather than contact the Council to establish its position, the Appellant chose simply to instruct [REDACTED]. Given the potential for a conflict had been identified, I do not understand why either the Appellant or Landmark did not contact the Council to seek its views prior to the instructions being given to [REDACTED].
12. Overall, I do not agree that the Council has behaved unreasonably or that it has caused the Appellant to incur additional costs. The Council properly raised concerns with Landmark Chambers regarding the instruction of [REDACTED] as soon as it became aware of his involvement. Upon sending that letter and discussing the issue with Landmark, [REDACTED] decided to return the instructions. Given the fact that the issue of a conflict of interest was discussed between Landmark and the Appellant at the point when instructions were sent to [REDACTED], either party could (indeed should) have got in touch with the Council to establish its position. Had this been done, then the Appellant would not have had to switch barristers when it did.

STATEMENT OF TRUTH

The facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or caused to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: .......

CHRIS BENDING

Director of Place, Wealden District Council

Dated: 3 October 2023