

RICHARD BUXTON SOLICITORS

ENVIRONMENTAL, PLANNING & PUBLIC LAW

Office A, Dale's Brewery
Gwydir Street
Cambridge CB1 2LJ

Tel: (01223) 328933

www.richardbuxton.co.uk
law@richardbuxton.co.uk

Friary Park 1 LLP
c/o Barton Willmore LLP
7 Soho Square
London
W1D 3QB

Attn. Mr Gary Stevens, Agent for Friary Park 1 LLP

By email only: gary.stevens@bartonwillmore.co.uk
cc. planning@ealing.gov.uk (Council Ref: 215857FUL; 193424HYBRID)

Your Ref: 31564/A5/GS

Our ref: (ACT1/1)-MM/RS
Email: mmcfeeley@richardbuxton.co.uk; rstewart@richardbuxton.co.uk

23 December 2021

Dear Sirs

Friars Place Green – Proposed works on the Common Land

1. We are instructed by a number of local resident groups in Acton and Ealing in relation to your client's activities at Friar's Place Green. We refer primarily to a planning application submitted to Ealing Council (ref 215857FUL) to carry out "*landscape enhancements including the installation of children's play equipment, hard and soft landscaping, seating, lighting and siting of a cycle hub facility for a temporary period of 6 years*" at Friars Place Green, Friary Road, Acton, London W3 6AE (**'the Site'**).
2. We understand from the Planning Statement submitted in support of the application that it is asserted that "*The landscape enhancements are being brought forward in support of the Applicant's regeneration of the neighbouring Friary Park Estate*" and that "*the Application seeks temporary planning permission for a period of 6 years for these enhancements. On or before the expiry of the temporary period, the Applicant intends to bring forward the more extensive, permanent enhancements to the area of open space pursuant to the requirements of Schedule 1, Part VIII of the Section 106 Agreement that accompanied the Planning Permission*" which include enlarging Friars Place Green across the spur road to the southwest of the open space.
3. Our clients strongly object to the proposed works to the existing open space. The Site has long been enjoyed as an open field and is relied on for recreation such as dog-walking and picnics in this built-up residential area. The open, unlandscaped character of the land is an important aspect of the Site given a general lack of open, unlandscaped land in the area; the proposed works will significantly erode this quality of the Site. The drawings submitted show that children's play equipment will be dispersed across the Site, leaving little open

space to be enjoyed by members of the community. Additionally, the cycle-storage facility is proposed to be housed within a shipping container, which is incongruous and incompatible with the natural, undeveloped character of this piece of land. Likewise, the proposed benches and planters are unnecessary and will detract from the open character of the land, which is valued by local residents.

The Law

4. The Applicant will be aware that whilst planning permission is required for the proposed landscaping works, so too is consent from the Secretary of State for Environment, Food and Rural Affairs under section 38 of the Commons Act 2006 which requires consent from the relevant national authority for the carrying out of any “*restricted works*”, which include: “(a) *works which have the effect of preventing or impeding access to or over any land to which this section applies; and (b) works for the resurfacing of land*”. Whilst there are a number of exceptions to the requirement for consent (e.g. adding direction signs) none are relevant here.
5. No such consent has been granted – nor applied for, as far as our clients are aware. Our clients will resist any such application, but in any event, without such consent, carrying out any such works would be unlawful. If such works are carried out without the necessary consent, our clients reserve the right to take immediate civil action against Friary Park 1 LLP under section 41 of the Commons Act 2006.
6. We also understand that a temporary fence has recently been installed at the Site whilst nearby construction works take place. As above, our clients are not aware of the Applicant having acquired the necessary consent from the Secretary of State for these works. As such, the fence is unlawful and should be removed unless and until such consent is obtained.

Planning Application for redevelopment of Friary Park Estate (193424HYBRID)

7. As above, the Applicant indicates that it intends to carry out works on the common land for a “*temporary period*” of 6 years, and that it later “*intends to bring forward the more extensive, permanent enhancements to the area of open space pursuant to the requirements of*” the Section 106 Agreement which accompanied application ref. 193424HYBRID.
8. Surprisingly, the final Section 106 Agreement does not appear to be available on the Council’s planning portal for this application despite Government Guidance requiring that “*Local planning authorities are required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publicly available on their planning register.*”¹
9. **We have copied Ealing Council’s Planning Department into this letter and ask that they provide a copy of the Section 106 Agreement so that we may consider its contents with our clients.**
10. It may be noted, however, that neither the Council nor the Applicant can reasonably assume that consent will be granted by the Secretary of State for works on the common land, and so it is not clear that the planning obligation can be fulfilled.

¹ Planning Practice Guidance Paragraph: 031 Reference ID: 23b-031-20190901; available at: <https://www.gov.uk/guidance/planning-obligations>.

Conclusion

11. As above, should your client proceed without consent from the Secretary of State, please be aware that our clients will consider immediate civil action to prevent/remove such works.
12. We look forward to receiving the executed S106 Agreement, and, of course, reserve our clients' rights to raise further points in relation to compliance with that agreement and conditions on the relevant planning permissions more generally.

Yours faithfully

Richard Buxton Solicitors

Richard Buxton Solicitors

Environmental, Planning & Public Law