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Our ref AEC/RMS/BEL.430-17

Your ref 17/02534/COND

14 August 2017

Dear John

**Location of Pelican Crossing on Land at Spofforth Hill, Wetherby ("the Site")**  
**Application Reference 17/02534/COND ("the Application")**

Thank you for providing copies of the background documents in relation to the above Application, which is due to be considered by the North and East Plans Panel ("**the Panel**") on 17 August 2017. Specifically, the Application seeks that condition 20 of an outline planning permission (reference 13/03051/OT) ("**the Outline Permission**") dated 2 April 2015 granted by Leeds City Council ("**the Council**") be discharged. A copy of the Outline Permission is enclosed for ease of reference.

The Outline Permission granted planning consent for residential development at the Site of up to 325 dwellings and associated works, including access, open space, and structural landscaping ("**the Development**"). The description of development approved by the Outline Permission also expressly referred to the addition of a "pelican crossing to Spofforth Hill" ("**the Pelican Crossing**"). Condition 20 of the Outline Permission ("**the Condition**") required that a scheme for the provision of off-site highway mitigation works be submitted to and approved in writing by the Council. The Condition prescribed that this scheme provide details of (amongst other matters) "the Pelican Crossing and footway".

A Reserved Matters Approval was subsequently issued by the Council pursuant to the Outline Permission on 29 July 2016 (reference 15/07291/RM) ("**the Reserved Matters Approval**") (copy enclosed). Condition 6 of the Reserved Matters Approval ("**the RMA Condition**") required that a 'Community Liaison Management Plan' be submitted to and approved by the Council, including details of a working party ("**the Working Party**") to consider "matters associated site construction, mitigation works, vehicle deliveries and greenspace". The RMA Condition specified that this Working Party would involve (amongst other persons and organisation) the "2 residents of Spofforth Hill affected by the footway and pelican arrangements".

We understand that the Working Party has subsequently been established and has convened on 3 separate occasions, the most recent meeting taking place on 16 June 2017. However, we are informed that the two residents identified in the RMA Condition are dissatisfied with the location of the Pelican Crossing, and are therefore seeking that it be repositioned to an alternative area.

In the absence of agreement upon the location of the Pelican Crossing within the Working Party, we understand that the Council is minded to refer this issue back to the Panel to determine. Indeed, we have had sight of a report prepared by the Chief Planning Officer ("**the Officer's Report**") (enclosed) seeking a resolution from the Panel as to the precise location of the Pelican Crossing. The Officer's Report recognises that the position for the Pelican Crossing specified in the Outline Permission "best meets the highway

safety needs of the development, and is therefore policy compliant and acceptable". Paragraph 11.1 of the Officer's Report therefore concludes that this location ought to be approved by the Panel.

However notwithstanding this recommendation, it is clear that the location of the Pelican Crossing has already been approved and granted planning consent by the Outline Permission. To this regard, the position of the Pelican Crossing is not a matter which the Panel or the Working Party can seek to alter in determining the Application.

As specified by condition 2 of the Outline Permission, issues relating to access were not reserved for future determination, and were approved by the terms of that consent. Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("**the DMPO**") confirms that 'access' in the context of reserved matters means "the accessibility to and within the site for vehicles, cycles, and pedestrians in terms of the positioning and treatment of access...and how these fit into the surrounding access network". It is clear the Pelican Crossing constitutes a pedestrian access to the Site which is within the scope of this definition, and as access was approved at the Outline stage, so was the crossing in the location shown on the approved plans. This is therefore beyond the scope of further determination or consideration save as set out below.

The Plans Schedule to the Outline Permission ("**the Schedule**") lists various plans which were approved in issuing the consent, and which confirm the nature of the development which has been authorised. The Schedule, refers to various "Access Plans", including plan reference 7029/025C ("**the Plan**") (copy enclosed). The Plan identifies the specific location of the Pelican Crossing, with condition 3 of the Outline Permission expressly directing that the Development be carried out in accordance with these details. The planning officer's report to the City Plans Panel in respect of the Outline Permission (enclosed) also made various references to the Pelican Crossing being located between the junction into the Site and Chatsworth Drive (see paragraphs 5.6 and 10.49 respectively).

It is therefore clear that the Outline Permission granted planning consent for the provision of the Pelican Crossing in this location, with such matters not being reserved for future determination. Indeed, the Officer's Report appears to acknowledge this fact in noting that the delivery of the Pelican Crossing in the position shown on the Plan "could be argued to have planning permission". In fact, the Officer's Report is wrong in law to have any equivocation on the matter at all. As is confirmed in the National Planning Practice Guidance, details submitted as part of an outline application "must be treated by the local planning authority as forming part of the development for which the application is being made", and "conditions cannot be used to reserve these details for subsequent approval" (see paragraph 21a-005-20140306). The location of the Pelican Crossing is not a matter which can be altered through the discharge of conditions or reserved matters approvals on this basis.

Although the RMA Condition envisaged that the Working Party would be involved in establishing the details of mitigation works associated with the Development, it is clear that such participation could not extend to altering the location of the Pelican Crossing. Any such approach would directly conflict with the terms of the Outline Permission itself, and the fact that matters related to access have already been granted planning consent. It is well established that reserved matters approvals and any conditions attached to the same cannot be used to materially derogate from the development for which outline permission has been granted (*see R vs. Newbury DC Ex parte Stevens and Partridge [1992] 65 P & C.R 438*).

Notwithstanding this fact, the requirements of the Condition and the RMA Condition could not be sensibly applied on their own terms if indeed the Pelican Crossing could be provided in an alternative location to that shown on the Plan. The Condition is clear in referring to the submission of a scheme providing details of "the pelican crossing and footway" (our emphasis). The natural language of the Condition would therefore confirm that it relates to a specific crossing, rather than a notional access, the location of which has yet to have been established.

Similarly, the RMA Condition directed that 2 specific residents of Spofforth Hill "affected by the pelican improvements" be members of the Working Party. Plainly, if the location of the Pelican Crossing was able

to be altered to that previously approved by the Outline Permission, then these persons would not necessarily be 'affected' by the works in this manner. The 2 residents identified by the RMA Condition would not need to be members of the Working Party in such circumstances, frustrating this requirement of the condition entirely.

A proper and lawful interpretation of these conditions confirms that they relate to the approval of technical designs and specifications associated with the Pelican Crossing, as opposed to its location. Indeed, the reasons specified for both conditions refer to the need to ensure highway safety and the approval of 'precise details' regarding the crossing, rather than its position in relation to the Site. The Plan does not prescribe the technical specifications for the Pelican Crossing, further suggesting that such details were intended to be finalised through the submission of the scheme required by the Condition on this basis.

This position appears to be accepted by the Council, with paragraph 10.3 of the Officer's Report accepting that "a plan showing the location for the crossing was approved under the approved plans list", and that "condition 20(b) was imposed on the Outline Permission to require details of the crossing". Similar comments are made in respect of the RMA Condition, with the Officer's Report noting that the Working Party was established "to specifically consider the detail of the pelican", rather than the principle or location of the crossing itself.

To this regard, and although the Officer's Report identifies the approved position of the Pelican Crossing to be the Council's preferred location for the same, as a matter of law this is not an issue which the Panel or the Working Party can seek to alter in determining the Application. Planning permission has been granted for the Pelican Crossing in the location identified on the Plan, and neither the Condition nor the RMA Condition can be lawfully applied so as enable such matters to be altered. Indeed, the Officer's Report acknowledges that further planning permissions would be required should the Pelican Crossing be required to be provided at either of the possible alternative locations discussed. The Council would therefore appear to accept that any repositioning of the crossing would be outside of the scope of the Outline Permission and the Reserved Matters Approval for these purposes and cannot be sought through the discharge of this condition.

We trust that the above sufficiently addresses the matters upon which we have been asked to advise. However, please contact us if you require any further information.

Yours sincerely,

A handwritten signature in blue ink, consisting of several loops and a long tail, positioned below the text 'Yours sincerely,'.

**Walker Morris LLP**

Enc

CC: S Carr, Bellway Homes Limited (Yorkshire)