

08 June 2012

By E-mail

Mr Jonathan Rosenberg
West Ken & Gibbs Green Community Homes Ltd
rosenberg@freeuk.com

Dear Mr Rosenberg,

Ref: *letter in response to the TRAs' letter of 29 May 2012*

Thank you for your letter of 29 May 2012. I am responding to it on Melbourne Barrett's behalf, as he is at present on annual leave.

You refer to a deadline of 30 May 2012 for comments on the information contained in the 23 April 2012 Cabinet report. In fact, Melbourne Barrett's letter of 14 May 2012 set a deadline of 28 May 2012. In any event, as set out in Mr Barrett's letter dated 1 June 2012, the Council has agreed to extend this deadline until 4pm on 8 June 2012. I appreciate that this is a tight timeframe. In the circumstances, I can also confirm that, so far as is possible, any comments that are received after that deadline will be taken into account when any final decision is taken by the Cabinet.

You claim in the first paragraph of your letter that the Council "concealed" the proposed Conditional Land Sale Agreement (CLSA) from residents and the public. I am unsure what you mean by this. If you are referring to the fact that the 23 April 2012 Cabinet report did not attach a draft of the CLSA, then I would note that in fact the report contained detailed information on the structure of the CLSA. The draft CLSA itself was not published for the 23 April 2012 Cabinet meeting because it remained the subject of negotiations and contained some information that was still commercially confidential.

The TRAs' response of 12 March 2012 is being considered by officers together with all the responses submitted by residents. I can confirm that it will be taken into account when a final decision is taken.

You object in your letter to the fact that the Council has sought to impose a limit on the length of time for which an individual could inspect the consultation responses. As you note, the Council decided on this approach for data protection reasons. You argue that this is “insupportable”, and that the data in question either can be viewed or cannot. The issue is however one of the appropriate management of risk. In particular, although the forms in question have been redacted to remove personal information that may identify individual consultees, there remains a risk that individual consultees could nevertheless be identified on the basis of their handwriting. Further, the longer someone is able to study the responses, the higher the likelihood will be that an individual consultee may be identified in this way. On this basis, the Council decided to set a time limit of 45 minutes per individual (although I understand that Ms Kuklowsky was in the event allowed to inspect the responses for 1½). The Council has however carefully considered your concerns, and has decided that this time limit should no longer be applied. Ms Kuklowsky (or any other representative of the TRAs) is therefore free to make further appointments to inspect the redacted responses, should she wish to do so.

You also make a number of complaints about the Council’s analysis of the consultation responses.

First, you claim a systematic bias in favour of identifying support for the Council’s proposals and/or minimising opposition. The analysis and categorisation of the consultation responses inevitably involves questions of judgment, not least because consultees were asked questions in an unguided way. There may therefore be room for different opinions when characterising certain individual responses. However, overall, officers have conducted the analysis in a fair and even-handed way. I entirely reject the claim that there has been any systematic bias one way or the other.

Secondly, you complain that there is no procedure for dealing with duplicates. In fact, where a resident was found to have submitted more than one identical response only one such response was counted.

Thirdly, you complain that there is no procedure for dealing with response forms from residents who have changed their mind. In fact, there was such a procedure. Where the dates of the responses from an individual resident were clear, the latest in time was chosen. Where it was possible to tell which was supposed to be the final response from the comments made in the form (e.g. the form contained words to the effect, "I have changed my mind..."), that form was chosen. In the small number of cases where it was not possible to gain a clear understanding of the consultee's ultimate view on either of these bases, the responses were not counted.

Fourthly, you argue that forms have been discounted "for no apparent reason". This is incorrect. Where forms were discounted, this was because they were duplicates, earlier forms from residents who had changed their minds, or forms from children under 12 (see paragraph 3 of Appendix 5 to the 23 April 2012 Cabinet report).

Fifthly, you refer to 18 "in favour" forms in the same handwriting. However, there are also many "objection" forms that appear to be in the same handwriting. Officers have treated both categories in the same way.

Finally, you suggest there are difficulties in reconciling the numbers in the Council's analysis with the number of forms in each category. You do not however identify any particular errors. The Council considers that the numbers in question are accurate.

In summary, the Council rejects your complaints regarding the analysis of the consultation responses, and considers that the analysis conducted to date may properly be relied on by Cabinet members. It follows that the Council will not be commissioning the independent analysis of the consultation forms that you have requested.

The Council also notes the final paragraph on the third page of your letter, which comes very close to (or is perhaps intended to be) an allegation of bad faith on the

part of Council officers. Any such allegation would be extremely serious. It follows from the above that it would also be entirely baseless. I specifically reject it.

In truth, the Council has sought to operate with a high degree of transparency in this matter. The 23 April 2012 Cabinet report put much more financial information into the public domain than would be usual for a local authority involved in such a potential transaction, and no information was placed in the private / exempt part of the agenda. This spirit of openness has also been applied to the consultation responses. It is not unusual for only summary information to be placed in the public domain about the consultation responses received. But the Council has permitted members of the public to inspect the forms themselves (subject to necessary redactions). In addition, it is clear that the majority of residents on the Estates who replied to the consultation (which was only a proportion), are against the proposals, and equally clear that this has not in any sense been hidden from the Cabinet. The point was made in the Cabinet report of 23 April 2012 (see Appendix 5), and it will be re-emphasised again in the subsequent report to Cabinet.

Finally, you ask in your letter that the Council institutes a formal review under the Freedom of Information Act 2000 (FOIA) into the Council's handling of the TRAs' request of 18 April 2012. It appears that the Council did not respond substantively to that request, for which I apologise. However, FOIA is not the appropriate statutory scheme. The TRAs' request was not made under FOIA, and indeed did not make any reference to it. More significantly, the Council did not grant inspection rights under FOIA (FOIA is concerned with unrestricted access rights to information, as opposed to inspection rights that are subject to the type of restrictions that the Council has imposed here).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Derek Myers', with a long horizontal line extending to the right from the end of the signature.

Derek Myers
Joint Chief Executive