

By email

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Your Ref:

Our Ref: RGA/MAT/01025853/1

Date: 15 August 2023

Attn: Alastair Lockhart
alastair.lockhart@oxfordshire.gov.uk

Dear Oxfordshire County Council

Proposed disposal of land to Oxford United Football Club

We refer to our pre-action letter dated 21 July 2023 and your response dated 11 August 2023.

Your response fails to engage with the merits of the proposed grounds of challenge. You say that “the Council’s involvement in this matter is as freehold owner of the land OUFC wishes to buy, not as local planning authority for that land or as local planning authority for stadium”. The matters which are raised in the letter are not planning matters per se. They are about the principle of whether the land should be sold to OUFC for the construction of a new stadium, which falls squarely within the parameters of the consultation.

Had the justification for the sale of the land set out in the consultation been purely for the council to realise the commercial value of the land in order for the proceeds of the transaction to be used towards other council projects, then the council might justifiably have suggested that the information in the consultation might exclude information relating to the need for OUFC to move to another site. That is not the basis on which the council has chosen to consult. The express justification for the sale is to provide OUFC with a new home because of the apparent need for the club to leave its current stadium. The council has also listed seven key priorities that must be met in order for the sale to go ahead, relating to the potential public benefits of the sale. In that context, it is artificial to suggest that the council’s role in the sale is merely as a

freeholder seeking to negotiate a commercial deal. Consultees cannot intelligibly provide their views as to the public benefits of the sale without having the information referred to in the pre-action letter.

It is also plainly incorrect to suggest that a claim would be out of time. The deadline for judicial review is three months “after the grounds to make the claim first arose” (CPR 54.5(1)(b)). The grounds obviously did not arise when the council decided to consult on the proposal to dispose of the land. They arose when the council published consultation material which made clear that it was consulting *in a manner which did not allow consultees to provide an intelligible response*. If the contrary were true, that would mean that authorities could render themselves immune from judicial scrutiny of any consultation exercise by ensuring that the consultation materials were published sufficiently long after the resolution to consult to make a claim for judicial review impossible.

Nor would the judicial review be academic, as the council suggests. Simply because the consultation has closed does not mean that it cannot be found to be unlawful. If it were found to be unlawful, the council would need to reconsult.

Notwithstanding the above, our clients note the council’s view that, given the close of the consultation and officers’ intention to present the proposal to cabinet in September, a claim for judicial review would be premature. Our clients are willing to await the cabinet decision before commencing legal action. The target of a subsequent claim would be the cabinet decision itself, but our clients reserve the right to raise the substantive issues set out in their pre-action letter if those issues have not been resolved by the time of the cabinet meeting. In particular, as we said in our pre-action letter, we would be surprised if officers were to recommend to cabinet members that they approve the disposal of the Triangle without providing members with the information requested in our pre-action letter. For the same reason as that information is essential for consultees to be able to respond intelligibly to the consultation, it would also be essential for members to have that information in order to determine whether to sell the site.

There are two matters which it would be useful to resolve in advance of the cabinet decision:

1. First, the council has completely failed to address our request for information in accordance with its duty of candour. It has treated the request as if it were simply made in accordance with the Environmental Information Regulations 2004. That was not the case. We remind you that the duty of candour applies at

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the pre-action stage and the council should therefore have provided the requested information at the same time as responding to the pre-action letter. If you fail to provide a response to that request then our clients intend to draw the council's conduct to the court's attention in any judicial review proceedings, including in relation to a decision by the cabinet to sell the site.

2. Second, we note that the council is willing to discuss any proposal for ADR. Our clients would welcome a meeting with appropriate council officers in advance of the September cabinet meeting. They suggest that lawyers are not present at the meeting and that it is held on an open basis.

Please respond to this letter to address the council's failure to comply with its duty of candour and regarding the proposed ADR meeting, including with proposed dates. We suggest a response deadline of seven days from today, i.e. by 22 August 2023.

Yours faithfully



Leigh Day