



# Government Legal Department

Sebastian Charles  
Aardvark Planning Law  
1 Parsons Close  
Ecton  
Northants  
NN6 0QJ

Litigation Group  
102 Petty France  
Westminster  
London  
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 [www.gov.uk/gld](http://www.gov.uk/gld)

By email only to:  
[sebastian.charles@aardvarkplanninglaw.co.uk](mailto:sebastian.charles@aardvarkplanninglaw.co.uk)

15 May 2024

Our ref: Z2308855/BDZ/JD3

Dear Mr Charles

## Response to “pre-action letter” dated 24 April 2024

1. I write on behalf of the Secretary of State for Levelling Up, Housing and Communities (the Secretary of State) in response to your letter dated 24 April 2024 (**the Letter**).

### Proposed Claimant

2. Bradford Rural Estates Limited

### Proposed Defendant(s)

3. We note that the Letter is addressed to the Secretary of State
4. It then copies in the Letter:
  - a. The Inspectors, who is materially the same defendant as above given that the Secretary of State appoints an Inspector to examine the Local Plan proposed by Shropshire Local Council; and
  - b. Shropshire Local Council
5. The above indicates that you believe that Secretary of State is the primary defendant.

### Details of the matter being challenge

6. The Letter alleges to comply with the judicial review pre-action protocol and Civil Procedure Rules Part 54.
7. However, the Letter:
  - a. fails to identify the decision that is being challenged (and, as such, any potential challenge would be premature); and
  - b. it is silent on grounds for challenging that decision

Gary Howard - Head of Division  
Fiona Montgomerie - Deputy Director, Team Leader Planning, Infrastructure & Environment



8. It cannot therefore be categorised as a pre-action protocol letter as it does not enable us to consider and help to narrow down the issues. We therefore cannot provide a substantive reply to your Letter.
9. Further, your Letter suggests that it objects to the “resolution to proceed as reported at the meeting with consultation upon:
  - 1) Sustainability Appraisal Report (April 2024)
  - 2) Housing and Employment Topic Paper (April 2024)
  - 3) Green Belt Topic Paper (April 2024)”
10. The above implies that, in so far as it seems your client’s position that there is a potential challenge to the Local Examination Process that leads to the adoption of the Local Plan for Shropshire Council, it should be addressed to the Local Authority rather than the Secretary of State. We therefore do not consider that your Letter is correctly addressed either.
11. In any event, there is plainly a suitable alternative remedy to the claim:
  - a. the Local Plan is going through the examination process and there will be hearings where representations can be made. Arguments, as those put forward in your Letter, can be raised and taken into account in the Local Examination Process;
  - b. without prejudice to the above, at the conclusion of the process, if you are still dissatisfied with basis on which the plan is either recommended by the Inspector or adopted by the Council then those aspects can be challenged by judicial review; and
  - c. a judicial review claim is a remedy of last resort as set out in the case of R (Archer) v Commissioner for HM Revenue and Customs [2019] EWCA Civ 1021. If there is another route by which the decision can be challenged and which provides an adequate remedy for the claimant, that alternative remedy should generally be used before applying to judicial review.
12. The complaints made, as presently formulated, do not fall within the stated aims of the pre-action protocol process. As a result, the Secretary of State asks that you refrain from labelling any such further correspondence as under the pre-action protocol and notes that it would robustly defend any judicial review claim and reserves its right to bring this correspondence to the court’s attention on the issue of costs.
13. We have also received an additional email on 25 April 2024 at 09:35 that states that:

*“notwithstanding our concerns, the Council have commenced consultation today. Would the Council and the Inspectors please confirm whether paragraph 2 of ID37 which states in relation to further consultation “It is not an effective use of the Council’s resource to do this until we are satisfied that the further work the Council has undertaken meets our requirements.”, has been complied with? If the Inspectors have confirmed the further work which the Council has undertaken and which is now being consulted upon meets their requirements, may we please see a copy of that confirmation and the reasons for the Inspectors being satisfied”.*

We refer you to Shropshire Council’s examination website ([Examination calendar | Shropshire Council](#)), which on 25 April 2024 published several updated documents in response to the additional work requested by the Inspectors including:

- GC44 – Shropshire Local Plan Updated Additional Sustainability Appraisal report – April 2024; and
- GC45 – Updated Housing and Employment Topic Paper – April 2024

These documents are now subject to public consultation. We therefore reiterate that there is an ongoing Examination Process and any potential challenge is premature and, in any event, addressed to the wrong Defendant as articulated above.

Yours sincerely,

**Marco Dall'Antonia**

**For the Treasury Solicitor**

**E [Marco.DallAntonia@governmentlegal.gov.uk](mailto:Marco.DallAntonia@governmentlegal.gov.uk)**