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Date: 15th July 2011

Dear Members of the Hertfordshire Planning Group

**RE: FIRE HYDRANTS AND PLANNING OBLIGATIONS
Applicability of the Building Regulations 2010**

I am instructed by Hertfordshire County Council and Hertfordshire Fire and Rescue Service in the above matter.

It has come to the County Council's attention that a number of district and borough councils in Hertfordshire have decided that a planning obligation for the provision of fire hydrants will no longer be sought when granting all planning permissions. I have been informed that such decision by several district councils has been communicated by planning officers to developers on new planning applications. It appears such decision has been made on a misconception of the applicability and relevance of the Building Regulations 2010. It has been suggested by a number of planning officers (and their building control colleagues) for various district councils that these regulations provide a legal obligation on developments to secure adequate fire hydrants. Such suggestion is incorrect at law.

It is particularly concerning that planning officers have made the decision to exclude a provision for fire hydrants without consultation with the County Council, and more importantly without consultation with officers from the Fire and Rescue Service. It is further concerning that such decision has not been formally advised to the County Council officers who became aware of such decision from third party developers. I will touch on this issue further at the end of this letter.

I have set out below an explanation as to why the Building Regulations 2010 do not legally impose a requirement on developments to provide fire hydrants to meet the Fire and Rescue's statutory duty to secure an adequate supply of water for fire fighting purposes. I have also set out the reason why the County Council believes the provision of fire hydrants should be provided as a planning obligation.

Building Regulations 2010

It has been suggested by several planning officers for various district and borough councils that the provision of fire hydrants for developments is covered by Regulation 4(1) and Part B5(2) of Schedule 1 of the Building Regulations 2010. Regulation 4(1) requires all building works to be carried out in compliance with the requirements of Schedule 1 of the Regulations. The applicable part of Schedule 1 is Part B5 'Access and Facilities for the Fire Service'. The relevant Part B5(2) states:

'Reasonable provision shall be made within the site of the building to enable fire appliances to gain access to the building' [emphasis added]

The Secretary of State has approved and issued Approved Document B for the purpose of providing practical guidance on the requirements of Schedule 1 Part B of the Regulations. The Approved Document B is split into two volumes:

- Volume 1 deals with the application of Schedule 1 Part B to dwellinghouse; and
- Volume 2 deals with the application of Schedule 1 Part B to buildings other than dwellinghouses.

A 'dwellinghouse' is defined by the Approved Document B as 'a unit of residential accommodation occupied (whether or not as a sole or main residence); (a) by a single person or by people living together as a family or (b) by not more than six residents living together as a single household including a household where care is provided to residents (dwellinghouse does not include a flat or a building containing a flat)'.

In reference to Part B5 of Schedule 1 for both Volume 1 and Volume 2, the Approved Document B states:

'In the Secretary of State's view the Requirements of B5 will be met:

- a. if there is sufficient means of external access to enable fire appliances to be bought near to the building for effective use;*
- b. if there is sufficient means of access into, and within, the building for firefighting personnel to effect search and rescue and fight fire;*
- c. if the building is provided with sufficient internal fire mains and other facilities to assist firefighters in their tasks; and*

- d. *if the building is provided with adequate means for venting heat and smoke from a fire in a basement.*

These access arrangements and facilities are only required in the interests of the health and safety of people in and around the building. The extent to which they are required will depend on the use and size of the building in so far as it affects the health and safety of those people.'

It is noted that the provision of fire hydrants is not covered by any of the categories listed by the Secretary of State as being required by Part B5.

For dwellinghouses, Volume 1 then details the need for adequate vehicle access and makes no reference to the need for fire hydrants to be provided.

For non-dwellinghouses, Volume 2 does make reference to private fire hydrants at section 15. It provides that where a building, which has a compartment of 280m² or more in area, is being erected more than 100m from an existing fire hydrant additional hydrants should be provided as follows:

- Buildings provided with fire mains – hydrants should be provided within 90m of dry fire main inlets; and
- Buildings not provided with fire mains – hydrants should be provided within 90m of an entry point to the building and not more than 90m apart.

The important thing to note with this reference to fire hydrants is that they are private fire hydrants within the 'site of a building' which will not be adopted by the Fire and Rescue Service but will be available for their use in the event of fire.

You will note my reference to within the site of a building above which is also an important part of Part B5(2) as highlighted in by quotation of that part above. The Approved Document B defines the site as 'the land occupied by the building, up to the boundaries of land in other ownership. The need for private fire hydrants referred to above for limited non-dwellinghouses is concerned with building works which do not have suitable access to public fire hydrants. The County Council's fire hydrant provisions concern the public fire hydrants and are generally not within the site of the building.

In summary, the County Council seeks fire hydrant provisions for public adoptable fire hydrants and not private fire hydrants. Such fire hydrants are generally not within the building site and, in any regards, are not covered by Part B5 as supported by Secretary of State Guidance 'Approved Document B'.

Planning Obligations

Whilst I have established that adoptable public fire hydrants are not covered by the Building Regulations 2010 there is the question of whether, as a planning obligation, the provision of fire hydrants is necessary to make a development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The short answer is yes.

The Fire and Rescue Authority has a statutory duty under section 38 of the Fire and Rescue Services Act 2004 to take all reasonable measures for securing that an adequate supply of water will be available for the authority's use in the event of fire. Such supply of water would be obtained by agreement with water undertakers (s39 of the Act) such as for public fire hydrants or by private agreement (s41 of the Act) such as for private fire hydrants.

In relation to public fire hydrants a water undertaker is statutorily bound to provide a fire hydrant to any of its water mains or other pipes if requested by the Fire and Rescue Authority (s57(2) of the Water Industry Act 1991). Pursuant to section 57(5) of the said Act the Fire and Rescue Authority is liable for any costs of the water undertaker in installing fire hydrants where requested by them.

Accordingly, the requirement for a public fire hydrant by the Fire and Rescue Authority when sought as a planning obligation for development is to meet the costs of the Fire and Rescue Authority in satisfying its statutory duty to secure the availability of a water supply to fight fires associated with the development, of which the need and cost has only and directly arisen from the development. If no requirement is imposed on the permission then the Fire and Rescue Authority will have no recourse to recover the costs of a public fire hydrant from the development that has caused the need to arise.

General Matters

As mentioned above, the County Council is concerned by the decision making process by a number of district and borough councils in determining without consultation with or formal notification to the County Council and/or officers of the Fire and Rescue Service that fire hydrants are covered by the Building Regulations 2010 and would not be required when considering planning applications.

The County Council would ask that all planning officers consider the information provided in this letter when considering whether fire hydrants should be sought on planning applications when requested by the County Council. If you have any questions officers of the County Council and the Fire and Rescue Service would be happy to meet with you to discuss.

Yours faithfully



Brendon Lee
Legal Assistant
Environment & Property Law Group