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13 February 2006

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(“the Leaders”)

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(“the Councils”)

Dear Sirs

**Proposed Claim for Judicial Review: Pre-Action Protocol Letter Before Claim
The Wye Concordat**

The undersigned are representatives of the Wye Future Group, whose contact details are as above. This is a letter before claim sent in accordance with the judicial review pre-action protocol.

1. To: (i) Paul Clokie;
(ii) Paul Carter;
(iii) Ashford Borough Council; and
(iv) Kent County Council.
2. The Claimant is the Wye Future Group.
3. Reference: N/A.

4. The details of the matter being challenged: the agreement to and/or the signature of the Concordat by the Leaders and/or the Councils on 8 December 2005, with Imperial College London.
5. The issues are as follows.
 1. The Wye Concordat is an agreement signed by the Leaders with Imperial College London (“the College”), a local landowner with plans for the development of its substantial estate. The College has plans to develop a science park at Wye, to be known as Wye Park. The Concordat recognises the existence of a project known as the Wye Park Project.
 2. The Concordat commits the Councils to co-operating and working together collaboratively with the College as landowner, to bring about the development of the College’s land at Wye so as to achieve the Wye Park Project.
 3. This commitment is reinforced by Kent County Council’s statement in its press release of 8 December 2005 that “Wye *will* become the home for a new £1 billion, world-class science research and manufacturing facility”, and Paul Carter’s statement that “working together we *must* make this a reality” (emphasis added). Cllr Paul Bartlett, deputy leader of Ashford Borough Council, stated the Concordat was “an expression of hope as to what *should* happen in the future” (Kentish Express, 22.12.05, p5). The Leader of Ashford Borough Council has stated in correspondence to local residents that the Concordat gives rise to a commitment to explore the College’s proposition.
 4. The Concordat commits the Councils to sharing key and sensitive information with the College in relation to the development. Further, the Concordat records the agreement of the Councils that the development will “need” to include particular elements, such as leisure and housing developments. The Concordat also records the Councils’ agreement that the development will “*need* to be of sufficient scale” and that the first phase “*has* to be large enough” to make a practical start on the Project (emphasis added).
 5. In the Concordat the Councils recognise that funding must be derived from the College’s landholding. This can only be through the sale of land for other development. The Concordat therefore embodies an understanding between the College and the Councils that development of other land at Wye will be necessary in order to allow the Wye Park Project to proceed. As the Councils have committed themselves to the Wye Park Project, there is a similar commitment to this other development as well.
 6. The Concordat also pre-judges the benefits which could arise from the development, recording that Wye Park “*will* be a world-class” facility, “*will* bring prosperity and sustainable regeneration and act as a major economic driver” (emphasis added). These benefits have been restated since by the Councils, including in Kent County Council’s press release of 8 December 2005 which states that the Project will deliver some 12,500 job opportunities.

7. Although the Concordat is signed by the Leaders of the Councils, the substance of the agreement is between the College and the Councils. Signature by the Leaders is a mere pretence. The published summary of matters considered by the College's Management Board on 24 November 2005 states that the science park would be established "in partnership with Kent County Council and Ashford Borough Council and would be launched with a public announcement on 6 December". That announcement was about the signing of the Concordat.
8. That the Councils are the real parties to the Concordat is reflected by press statements made by the Councils corporately about the signing of the Concordat. In particular, Kent County Council said in its press release of 8 December 2005 that the primary purpose of the Concordat was to establish "co-operation and collaboration between the three principal stakeholders in the Project, namely – Ashford Borough Council, Kent County Council and Imperial College London". This has been repeated by the College (see for example the College's Reporter, Issue 159, 8.12.05). Moreover, the Kent County Council draft Medium Term Plan 2006-2009 contains a commitment on the part of the Council to "progress key regeneration opportunities such as the Wye Concordat". It is clear that the Councils intend to implement the Concordat, regardless of which persons signed the document.
9. Kent County Council has stated that it is routinely involved in early consideration of development concepts, but the Concordat is not at all analogous to pre-application discussions that may occur with developers, discussions with landowners as to strategic development planning, or masterplans or development briefs for particular areas. Indeed, the Concordat is described by the College as a "unique accord". The Concordat is a clear commitment on the part of the Councils to work with a landowner to facilitate a particular development. Kent County Council's press release dated 8 December 2005 describes the Concordat as "one of the key components" to achieve the Project.
10. The 'disclaimer' as to the legal effect of the document does not avoid any of the matters noted above. The document may not be legally enforceable directly, but the Concordat itself recognises that it will be "binding". Moreover, as a result of the Concordat, the College would have the benefit of an actionable legitimate expectation that the Councils will act in accordance with the Concordat.
11. At the time that the Concordat was signed, the College had disclosed to the Councils no details of the proposed development or the Wye Park Project. At a public meeting, Kent County Council's director of strategic planning stated "there are no plans of what will go where" (Kentish Express, 12.1.06, p6). The Leader of Ashford Borough Council has confirmed in correspondence that he did not have any detailed information beyond a broad concept when he signed the Concordat.

12. In letters to local residents, the chief executive of Ashford Borough Council has confirmed that no formal Council approval was sought for the signature of the Concordat. Similarly, in letters to residents the Leader of Kent County Council has confirmed that there was no Council approval of him signing the Concordat.
13. In the circumstances, the Leaders of the Councils were acting *ultra vires* and unlawfully when signing the Concordat without due authorisation from the Councils. Moreover, as the Councils are the true parties to the Concordat, the Councils were acting *ultra vires* and unlawfully when agreeing to and/or causing or permitting the signature of the Concordat, in that such was done without due authorisation from the Councils. Further, the Leaders and/or the Councils were acting *ultra vires* and unlawfully when agreeing to the Concordat, in that there is no statutory power which enables the Councils to take such action.
14. Further, the agreement to and/or the signature of the Concordat by the Leaders and/or the Councils was unlawful by reason of irrationality in the circumstances, and in particular because:
 - a. it was wholly unreasonable so to act when:
 - i. there had been no or no proper consideration of the Wye Park Project and its implications;
 - ii. there was no or no sufficient information available as to the Wye Park Project;
 - iii. there was no evidence provided of the likely benefits said to arise from the Wye Park Project;
 - iv. so acting will cause very substantial prejudice to the proper exercise of the Councils' statutory functions in relation to planning and development control, which ought to be exercised in the public interest, and in particular a substantial risk of the appearance of bias, fettering of discretion and pre-determination in later decision-making; and
 - b. there was a failure to have regard to relevant considerations, including in particular the social and environmental harm likely to arise from the Wye Park Project.
6. The details of the action that the defendants are expected to take: To rescind the Wye Concordat, including by issuing public statements to the effect that the defendants will not be bound by the Concordat and will treat the College's development plans no differently to any other. In the event that this action is not taken the Claimant will apply to the Court for permission to bring a claim for judicial review, seeking a declaration that the defendants have acted unlawfully and that the signing of the Concordat be quashed.

7. The details of the legal advisers dealing with this claim: N/A.
8. The details of any interested parties: N/A.
- 9/10. The details of any information sought and the details of any documents that are considered relevant and necessary:
 1. all correspondence passing between the defendants and the College in the last year; and
 2. all documents relating to the Wye Park Project and/or the land owned by the College in Kent.
11. The address for reply and service of court documents: As at the head of this letter.
12. Proposed reply date: 5 working days from the date of this letter.

Yours faithfully

For the Wye Future Group

Copies to:

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