

Appendix 16:

From: [REDACTED]
Sent: 19 June 2024 17:03
To: James McMurdo; [REDACTED]
Cc: [REDACTED]
Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU

Dear James

On behalf of Devon County, [REDACTED] has kindly reviewed my email to you and raised a few comments. For clarity and to ensure an accurate picture can we add the following additional/updated notes:

Capacity

1. The DfE website is not a reliable source for identifying NoR and Net Capacity as the figures shown are often out of date.
2. DCC do not simply look at the surplus number of places at the time a planning application is submitted to identify whether a contribution is required. DCC's approach is set out in their policy, 'Education Approach for Developer Contributions (2021)' [Pupil place planning - Planning \(devon.gov.uk\)](https://www.devon.gov.uk/pupil-place-planning-planning) (Please see policy documents.)
3. The Cranbrook Education Campus (CEC) currently has capacity for 1020 pupils. This includes 420 primary places and up to 600 secondary places. The schools PAN for primary (yr R) is 60. The yr7 cohort is 120 pupils which is made up of the yr 6 pupils from the previous academic year who choose remain at CEC plus the PAN for general admissions (e.g. 45 staying on plus PAN 75)
4. In relation to the above, the catchment areas for the schools in and around Cranbrook will be updated accordingly as new housing development and education provision is delivered as part of the Cranbrook expansion areas.
5. It is forecast that there will be a shortfall of primary and secondary school places in Cranbrook unless new education infrastructure is delivered. (current forecasts take us to spring 2026 for primary and spring 2029 for secondary.)

Also to confirm from a policy perspective, application 19/1798/MOUT is part of the Cranbrook expansion allocations, specifically the Grange and as such is subject to policy in the adopted Cranbrook Plan. This position is reflected in DCC's education response.

Kind Regards

[REDACTED]
[REDACTED]
[REDACTED]
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From: [REDACTED]
Sent: Monday, June 17, 2024 3:51 PM
To: James McMurdo ; [REDACTED]

Cc: [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi James

Thanks for the details that you have set out below - In replying I have taken the liberty of copying in the County Council so that they can further review my observations as ultimately education provision is a County function. While I understand your wish to start the story with the EIP reps, then explore what is reasonable and fairly-related to the development, and finally back this up by looking at local capacity; for me, the starting point is the 1990 Planning Act (as amended!). As will be very familiar to you, the Act sets out the fundamental tenets of planning and in section 70 recognises that in determining planning applications we should have regard to

- The provision of the development plan, so far as material to the application; and
- any other material considerations.

(I have only highlighted the two relevant sections).

Based on the above therefore, we need to firstly turn to the development plan which is relevant for the Gribble Lane site – namely the up to date and recently adopted Cranbrook Plan... and in particular Policy CB7 (Phasing). The following extracts from the policy identify the key requirements:

- **“School land as required by Policies CB2 – CB4 (for Bluehayes, Treasbeare and Cobdens) shall be identified before planning permission is first granted for development in each of these three expansion areas”.**
This doesn't affect Gribble Lane as site falls within the allocation provided for by Policy CB5 (Grange)
- **“Where the delivery is by the LEA/SP, then for the first school the secured land must be transferred, with construction access, prior to the commencement of any dwelling*, while for the second school the land should be similarly transferred by the 750th dwelling*”**
- **“* = trigger point to be assessed across all 4 expansion areas”**
- **“Four expansion areas – references the expansion areas set out within this policy document and identified through Policies CB2 – CB5 (inclusive) – namely Bluehayes, Treasbeare Cobdens and Grange”**

I recognise that it is this limb of the policy that is causing difficulty, but I believe that it is very clearly expressed. (To assist I included the definitions both from the policy itself and the glossary to The Plan which further help to clarify the scope of the policy).

In summary and enshrined in the policy there is a requirement that relevant land must be transferred prior to the commencement of any dwelling (or the 750th dwelling depending on whether it is the first or second school) in any of the four expansion areas. This doesn't caveat this requirement by suggesting that for small parcels, it is OK to release “x” number of houses without complying - it is an overarching requirement that affects all housing in all 4 areas. As such it is not something that we can just set aside to accommodate a particular site. Leaving aside impacts on school place availability, I am sure that you will appreciate the risks in doing so - if 180 (or even 450 houses) are considered OK to be released without the education phasing restriction, then what happens to the rest of the Grange allocation? Or the potential fragmentation of Treasbeare or Bluehayes? Once the argument has been accepted and a threshold set, there is a real risk it will be used by other sites.

At examination the Education Authority (supported by East Devon) explored in depth the pressing need for additional educational places in the expanded town and put in place an appropriate policy to ensure that housing didn't run ahead of school delivery. I recognise that the counter concern is that the application of the policy risks delaying the delivery of much needed housing, but it was a risk that East Devon were prepared to take at the time of examination. Since then and within only 18 months or so of adoption, we already have outline planning permissions in place for two of the school sites and a s106 which is well advanced for the third. At this stage therefore I see no difficulty with the first school land coming forward in a timely manner in 2025 and the first school trigger being adequately met. This means that there is no need to even consider making an exception for smaller housing sites within the expansion allocations. As an aside I note your reference to application 19/1799. However, the policy position is very different from that relevant to the Pinhoe application which was considered under the East Devon Local Plan rather than the Cranbrook Plan.

In recognising other material considerations I note your assessment of capacity at surrounding schools and have the following observations.

Firstly, Whipton Barton Primary and Clyst St Mary Primary schools are both in the order of 6 miles from your site (well in excess of the 2 and 3 miles designations) and out of catchment. It is not appropriate to identify the capacity in these schools as being able to resolve the challenges that you have identified – such locations do not represent sustainable locations and are not easily accessible from your site. In addition, you highlight capacity at Whimble Primary School. Using the DCC multiplier of 0.25 pupils per dwelling, 180 dwellings would be expected to generate

45 primary age pupils (aged 5-11). This is substantially in excess of the 14 pupil places that you have identified in Whimple.

Looking at secondary provision, you have identified capacity at the Education Campus based on the .gov website information. As I understand it, the figure provided is the total school figure and does not disaggregate the primary and secondary components of the through-school. Looking at DCC's own website it appears that in the academic year commencing Sept 2023, the school had a published admission number of 60 in Reception and 75 in year 7 and offered places for admission which matched these figures - meaning in effect the latest year groups are at or close to capacity. Any residual capacity identified through the national figures is more likely to be in the older secondary years which are still in effect "filling up" due to the age of the school and the on-going build-out and ageing of the children in Cranbrook. This is a typical pattern in many new towns and urban extensions and doesn't mean that there is capacity for further housing.

I am afraid that having spent quite a bit of time today looking at the pupil numbers in local schools, I do not share your belief that there is spare capacity which can be used to support an argument based on "other material considerations" contrary to the identified policy. The policy is robust, recently adopted and well founded. Equally with school sites having been recently approved, there is no likelihood that school land transfer will unduly delay development.

I say that, recognising that before houses could even start being built on the Gribble Lane site, you still need to complete the section 106 agreement, discharge pre commencement conditions, and undertake significant enabling work to access to the site (such work is permitted by the phasing policy). As such my advice remains to work with us in getting the legals agreed - especially as this is still likely to take a number months. Beyond that I am expecting the first school land to be transferred from either Cobdens or Treasbeare in 2025. This means that the period in which house building (as opposed to enabling works) is restricted on your site is in reality, likely to be narrow at best! To move this forward, do we need a teams meeting to discuss the 106 as I note from the last iteration of the draft agreement that we commented on, there seemed to be a significant distance between us on a number of the schedules?

Kind Regards

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From: James McMurdo ■■■■■

Sent: Tuesday, June 11, 2024 1:25 PM

To: ■■■■■

Cc: ■■■■■

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi ■■■■■

18003 Land at Rockbeare Section 106 Stuart Partners Ltd Mr T Stuart 19/1798 and 23/0662/COU

Thank you for your email today.

Please can you respond to the points in this email when you can.

Background - Representations

Please see page 8 of the reps we made in 2021 to do with DCC as Education Authority.

Planning Obligations

On planning obligations, the Government tells us that planning obligations “assist in mitigating the impact of unacceptable development to make it acceptable in planning terms...and may only constitute a reason for granting planning permission if they meet the “tests””.

The “tests” which apply (whether CIL is “in-play” or not) are:

1. “necessary to make the development acceptable in planning terms;
2. directly related to the development; and,
3. fairly and reasonably related in scale and kind to the development”,

all as set out in [regulation 122](#) (as amended by the 2011 and 2019 regulations) and in the National Planning Policy Framework.

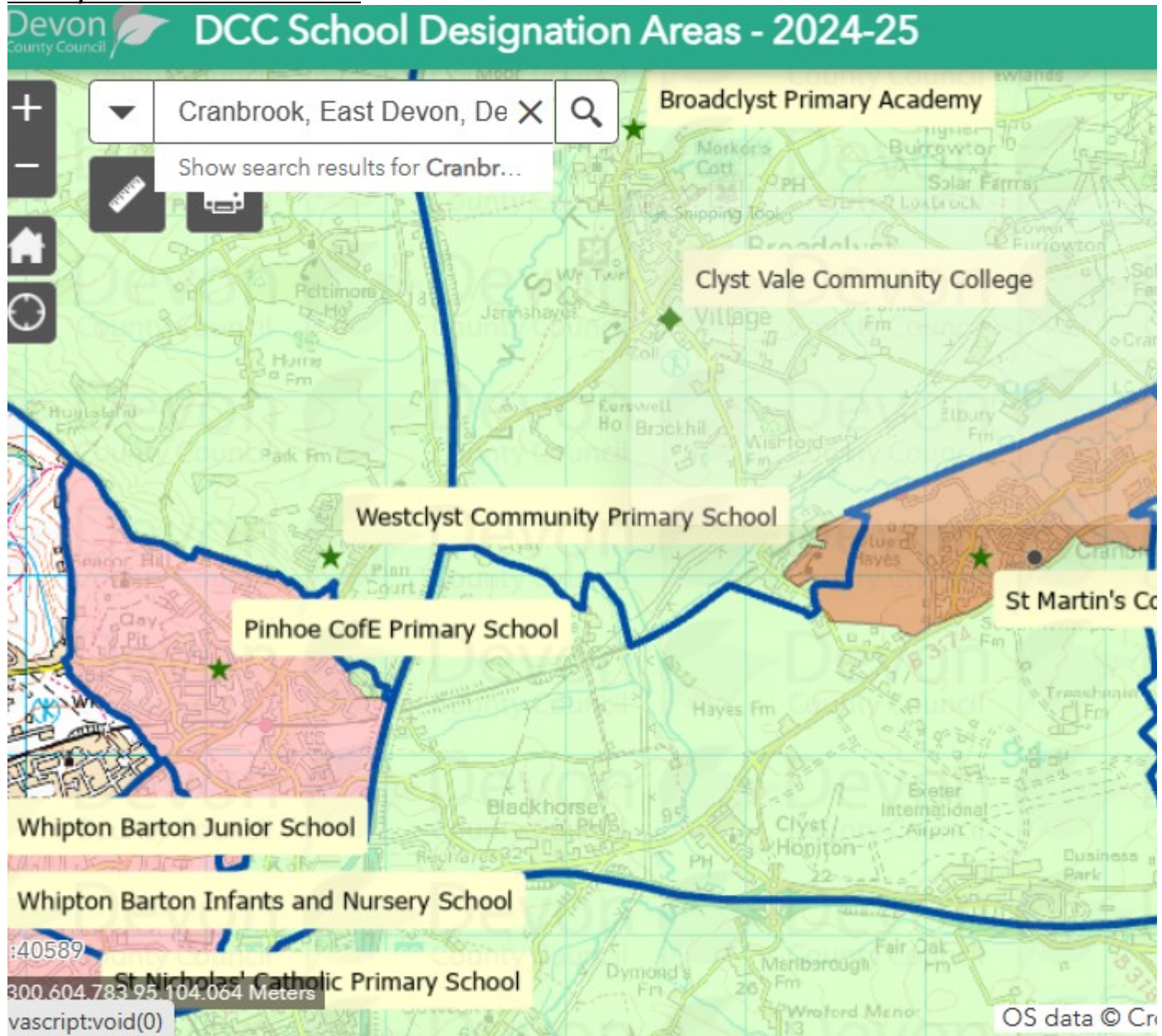
Consequently, together with the LPA, we could agree an item in a Section 106 **provided it meets the “tests”**.

Conversely, if an item does not meet the “tests” (e.g. it is not necessary to make the development acceptable in planning terms) then together with the LPA, we may not agree an item in a Section 106 mainly because it may leave a permission open to challenge.

A Section 106 would “run with the land” and could:

- “a. restrict.. the development or use of the land in any specified way.
- b. require.. specified operations or activities to be carried out in, on, under or over the land.
- c. require... the land to be used in any specified way; or,
- d. require...a sum or sums to be paid to the authority.”

Primary Schools in Catchment Area



From DCC’s website, we can see that there are a number of primary schools in the site’s catchment area.

DCCs Education Response to 19/1798

DCC's education response to this Gribble Lane application is confusing and perhaps links to the perceived need to have land for primary schools before this site "goes".

DCCs Education Response to 19/1799

However, Officers, for our client's application at Pinhoe (19/1799) stated:

- *"We have forecast that the local primary schools have enough capacity to accommodate the pupils expected to be generated from this development and therefore a contribution towards primary education would not be required."*

[19/1799/MOUT | Erection of up to 200 no. dwellings with associated access, infrastructure, and areas of public open space/landscaping; outline planning application with all matters reserved except the access. | Land At Park Farm \(Phase 3\) West Clyst Exeter \(eastdevon.gov.uk\)](#)

School Capacity

From this link [Search results for " - GOV.UK \(get-information-schools.service.gov.uk\)](#) we can see that:

Secondary School Capacity

There are 122 secondary school places "free" in Cranbrook (898 pupils/ 1020 capacity).

Primary School Capacity

Whilst Cranbrook and Broadclyst are oversubscribed there are 14 free spaces at Whimble Primary School (126 pupils/140 capacity), 34 free school places at Clyst St Mary (176/210), and 174 free school places at Whipton Barton (456/630).

Conclusions

We can see why the Council would be heavy handed when dealing with a site for greater than, say, 450 houses, however, we cannot see either that:

- Section 106 obligations currently sought for education from our client would meet the "tests" as outlined above because there is capacity in the area and our resolution to grant is for C180 houses only ; and/or
- It is in DCC's and EDDC's interests, actually, to hold us back when there is capacity and when the money that would flow into their coffers would help deliver the primary school on other land, quicker. (That is how a "roof tax" should function).

In short, because the resolution to grant is for only C180 houses, and since there is primary and secondary school capacity in the area to accommodate pupils from the development, asking our client to sign a S106 that prevents its site from coming forward until education land is released elsewhere, is not "necessary to make the development acceptable in planning terms", nor is it "directly related to the development", nor is it "fairly and reasonably related in scale and kind to the development".

Perhaps you will feel that we should look at this together in more detail?

I hope I haven't overstepped any marks here and we look forward to hearing from you.

Thank you and have a good afternoon.

James

James McMurdo MRTPI MRICS

Director

McMurdo Land Planning and Development Ltd

a The Basement Office, 4 Baring Crescent, Exeter, EX1 1TL

e [REDACTED]

m [REDACTED]

t [REDACTED]



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From: [REDACTED]

Sent: Tuesday, June 11, 2024 12:02 PM

To: James McMurdo [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Good morning James

I assume you are referring to the planning permission that has been issued to Carden Group (Treasbeare allocation) yesterday. Like the Persimmon scheme for Cobdens that was issued at the end of April, these both have the potential to release land for both the first and second school. Until the first school site is transferred to DCC from one or other of these sites then no occupations are permitted. This affects both host sites (ie Persimmon Cobdens and Carden Treasbeare) as well as all others within the Cranbrook allocations. The policy is clear in this approach and Devon County as education authority consistent in its application.

Any permission that you draw down will be implementable but will need to have the same restriction as all other expansion areas. This means restrictions prior to first occupation and prior to 750 area dwellings (that is dwellings measured across all four expansion areas). While I recognise that this is a potential impediment to delivery of your site, the expectation is that land for the first school will come forward during 2025 and therefore we should be using this time to conclude your s106 agreement; discharge relevant conditions and be looking at a pre app for the reserved matters. I'm happy to support this approach.

Can I check where you are with providing further comment on the 106 that Kathryn returned to your side on 21st May?

Many thanks

[REDACTED]

[REDACTED]

[REDACTED]

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From: James McMurdo [REDACTED]

Sent: Monday, June 10, 2024 4:36 PM

To: [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi [REDACTED]

Hope you're well.

Please can you confirm that in principle because the S106 has been signed and the permission for 1,000 released on the back of it that we can now draw down an implementable planning permission.

Thanks

James

James McMurdo MRTPI MRICS

Director

McMurdo Land Planning and Development Ltd

a The Basement Office, 4 Baring Crescent, Exeter, EX1 1TL

e [REDACTED]

m [REDACTED]

t [REDACTED]

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From: [REDACTED]

Sent: Wednesday, April 24, 2024 11:23 AM

To: James McMurdo [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi James

Thanks for agreeing the EoTs with Ben.

In terms of the Persimmon application, we are expecting to complete their s106 and issue permission imminently. Rather than the NCP I think that you are referring to the Treasbeare and Bluehayes expansions areas (we have no NCP outside of Cranbrook Phase 1). In terms of Treasbeare, which is being brought forward by the Carden Group, there is a very well advanced 106. Bluehayes's 106 (whose applicants are Hallam Land and Taylor Wimpey) is making good progress.

In respect of your own legal agreement it appears that we issued a draft agreement to Sarah Howard on the 19th December. I have seen no comment or response from her - my apologies if I have missed something.

We can now either

- i. await or review comments from Sarah if they are either soon to be provided or can be resent if already prepared; Or
- ii. review our initial draft update with any learning that we have already obtained from other agreements and then reissue for comment by Sarah and your team.

Given that we are seeking to secure as much coherence between agreements as possible, I am very happy to follow the latter of the two options outlined above, but please do let us know how you wish to take this forward.

I am pleased that there now a keenness to move this along and will look to support this as much as possible in the coming weeks.

Kind Regards

[REDACTED]
[REDACTED]
[REDACTED]

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From: James McMurdo [REDACTED]
Sent: Wednesday, April 24, 2024 10:03 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi [REDACTED]

Thanks.

Yes; of course. Both applications.

Please can you update me on Persimmon 106 and NCP106?

Thanks

[REDACTED]

[REDACTED]

Director

McMurdo Land Planning and Development Ltd

a The Basement Office, 4 Baring Crescent, Exeter, EX1 1TL

e [REDACTED]

m [REDACTED]

t [REDACTED]



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From: [REDACTED]
Sent: Wednesday, April 24, 2024 9:46 AM
To: James McMurdo [REDACTED]
Cc: [REDACTED]
Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi James

Thank you for your email, and the update regarding the S106. Our Legal Department have their own workflows and time scales which we can't directly influence from Planning. However, I can send a polite reminder/chase to see whether that helps move things along.

On the subject of the EOT's, are you able to confirm whether the EOT (of 31st May 2024) you agreed to in your email of 28th March 2024 applies to both applications 19/1798/MOUT and 23/0662/COU? I don't recall seeing confirmation of this, so just want to be sure before we put the new EOT onto the system.

I trust this is of assistance.

Kind regards

[REDACTED]

[REDACTED]

[REDACTED]

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From: James McMurdo [REDACTED]

Sent: Monday, April 22, 2024 6:11 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time. (18003)

Hi [REDACTED]

Hope you had a good start to the week.

Thank you.

On the S106, our client is really keen to get it signed as soon as possible.

However, it and its lawyers are finding it very difficult to liaise with your Council's lawyers.

Please can you see what you could do to help speed things along here?

Many thanks again, Ben.

Have a good evening.

James

James McMurdo MRTPI MRICS

Director

McMurdo Land Planning and Development Ltd

a The Basement Office, 4 Baring Crescent, Exeter, EX1 1TL

e [REDACTED]

m [REDACTED]

t [REDACTED]



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From: [REDACTED]

Sent: Wednesday, April 3, 2024 4:06 PM

To: James McMurdo [REDACTED]

Cc: [REDACTED]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time.

Hi James

Thank you for your email.

Yes, 31st May 2024 is a date that we can agree to for the EOT. Please can you confirm that you agree to this for both applications 19/1798/MOUT and 23/0662/COU?

Also, with regard to both of the aforementioned applications, are you able to provide a further update on the S106 progress from your/your clients perspective?

Kind regards

[Redacted]
[Redacted]
[Redacted]

On behalf of the Cranbrook and Major Projects Team

Planning – Development Management
East Devon District Council

[Redacted]

[Redacted]



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From: James McMurdo [Redacted]

Sent: Thursday, March 28, 2024 12:18 PM

To: [Redacted]

Cc: [Redacted]

Subject: RE: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time.

Hi [Redacted]

Have we agreed an EoT yet? (Sorry if I've missed this).

Shall we agree to 31st May?

Happy Easter

Thanks

James

James McMurdo MRTPI MRICS

Director

McMurdo Land Planning and Development Ltd

a The Basement Office, 4 Baring Crescent, Exeter, EX1 1TL

e [Redacted]

m [Redacted]

t [Redacted]



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From: [REDACTED]

Sent: Thursday, December 21, 2023 11:22 AM

To: James McMurdo [REDACTED]

Cc: [REDACTED]

Subject: Planning applications 19/1798/MOUT and 23/0662/COU - Extension of time.

Hi James

I'm in the process of catching up with some of my applications which require an extension of time. Two such applications are 19/1798/MOUT and 23/0662/COU. To enable time to complete the ongoing legal agreements for these applications, please can you confirm whether you agree to an extension of time to determine both of the aforementioned applications until Friday 1st March 2024?

I look forward to hearing from you regarding this matter.

Kind regards

[REDACTED]
[REDACTED]
[REDACTED]

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