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The Rt Hon Robert Goodwill MP
Minister of State at the Department for
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House of Commons
LONDON
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Our Ref: DJB/JN/SFR

7 March 2019

By hand and via e-mail:

Robert.goodwill.mp@parliament.uk

Dear Robert

DBID

I have been given a copy of a letter that you wrote to Hero Sumner regarding the DBID that is proposed for the Yorkshire Coast.

It is disappointing that you responded to the appeal submitted by The Yorkshire Levy Payers Association (YLPA) before seeking clarification of the facts. Indeed, your letter implies that Scarborough Borough Council (SBC) is at fault.

Any DBID is subject to the Business Improvement Districts (England) Regulation 2004. This sets out quite clearly the responsibilities of the local authority and in simple terms these are to hold the ballot on receipt of a valid business proposal and, if the ballot is successful, to collect and enforce the levy charges.

The DBID task group, supported by the Mosaic Group, is a private sector led enterprise and SBC is connected to it only as outlined in the paragraph above. They and they alone decide which businesses will be subject to the levy, the amount of the levy and the level of business rates at which the levy will be charged. As part of the ballot process we provide a list of all businesses which fit their criteria. It is their responsibility to provide marketing material to the businesses and the responsibility of SBC to send out ballot papers to those businesses and to conduct the ballot in line with electoral law.

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The DBID task group decided that car parks fit their criteria. They decided that all hereditaments with a rateable value of £12000 and above would be subject to the levy. SBC has 33 car parks subject to the levy and was given 33 votes to cast in the ballot. One eligible hereditament attracts one vote. Following consultation with the Directors and Cabinet colleagues, I cast all the votes in favour of the ballot. At this time, I was aware of the concerns of some Whitby businesses but not the full extent of them as these only came to light when the result of the secret ballot was known.

The businesses joined forces and formed the YLPA. SBC was accused of many misdeeds, including undermining the businesses in Whitby by voting in favour of the DBID. Public meetings have been held by YLPA and Councillors Turner and Nock were expected to attend to answer questions. Mostly these questions were accusations of corruption and indifference to the needs of business and indeed of being the founders of this particular DBID. YLPA then submitted their appeal to the Secretary Of State.

In the light of this I wrote to Clive Rowe-Evans on 12 February 2019 requesting that the DBID task group put a hold on any further development until such time as the Secretary of State has responded to the appeal and the queries therein dealt with. I also said that SBC would not be in a position to approve any operating agreement until the appeal had been dealt with and would not be in a position to appoint a representative to the Board either. I closed that correspondence saying that SBC was increasingly concerned that a number of businesses are very unhappy with the way the DBID was communicated.

Clive Rowe-Evans made a statement on Yorkshire Coast Radio to the effect that if the appeal failed, as he expected, he would proceed with implementing it as he was entitled to do. Hubris of that magnitude found little favour anywhere in Scarborough.

On 26 February 2019 a meeting was scheduled with a representative from Mosaic who apologised at the last minute and we had to convene a telephone conference. As a result of this I wrote to Mosaic emphasising our concern about the lack of engagement with businesses and the difficult position SBC is in as we are losing the support of the business community. I asked them to clarify the consultation process, the methods and frequency of correspondence with the businesses, how they decided which businesses would be subject to the levy and which would not and finally how they intended to address those issues.

As at cob yesterday no response has been received from either of the letters mentioned above.

Most recently the motion was put to Full Council on March 1st that "*Full Council resolves that in recognition of legitimate criticism of the ballot process underpinning the Yorkshire Coast DBID, to set aside all involvement with this and other DBIDS for a period of 5 years.*" You can easily see from this the depth of feeling of elected members.

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The Council does not have the legal authority to do this. The legal term is *ultra vires*. We cannot commit a future administration to not do something which may be of benefit to the community. I am not referring solely to the current DBID but to any other that might emerge in the next 5 years. Note that a Council administration is 4 years long and a DBID is 5. So we could have attempted to prevent the next administration from acting in the interests of the community and the administration after that for 25% of its tenure.

It could also prevent any organisation setting up an association of businesses to contribute to a central fund for the good of either tourism, businesses or the community at large.

Notwithstanding the above, businesses in the East Riding of Yorkshire Council area have agreed to proceed. If SBC had attempted to block it completely last Friday I can assure you that those businesses south of the border would have gone to the Secretary of State saying that we had not only acted *ultra vires* but were guilty of gross malfeasance in public office because we had prevented them from doing something which they see as a benefit. The Secretary of State, or more likely the Ombudsman would have had a brief conversation with the Chief Executive Officer telling him to undo the decision. We would then have had no negotiating capacity with either Mosaic or the DBID task group.

Note that much of what I have said in connection with the motion to Council is based on possibility and not certainty. I and my Cabinet colleagues did not think it worth taking the risk that any of the events described could take place. Cllr Nock therefore proposed the amendment that the motion read, *"Full Council resolves that in recognition of legitimate criticism of the ballot process underpinning the Yorkshire Coast DBID, to set aside all involvement with it until such time as the Secretary of State has determined the appeal. We will then consider our position along with the business community and will have the opportunity to take considered advice"*.

That amendment was successful.

If the motion as originally written had been passed, notwithstanding any other consequences of that, the Leader's correspondence with Clive Rowe-Evans and Mo Aswat would have been worthless had the Secretary of State intervened as I have described. The Council would have had no position from which to negotiate.

As it is, we have asked some searching questions of Mosaic and set out our stall to the DBID group.

On Tuesday evening Cllr Nock attended Whitby Town Council, (who are unanimously opposed to this DBID) to present an update following Full Council, to explain the legal position and to emphasise our support for our business community. We do not support what appears to be a proposal that has been ill conceived and poorly communicated. We have no appetite to enforce a levy that is so deeply unpopular and so alienate a thriving business community for a generation or more.

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As it is now I feel that the Council is on the front foot as we have asked questions that the businesses may not have asked and are in a stronger position to dig even deeper should that be necessary.

I hope that the appeal is upheld and that the task group will meet me and my Cabinet to negotiate a way forward from this sorry mess.

Kind regards

Yours sincerely

Cllr Derek J Bastiman
Leader of the Council

cc Members of Cabinet, Scarborough Borough Council

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