

Mrs D. Charlton
22 Wentworth Street
Ilkeston Junction
Ilkeston
Derbyshire
DE7 5TF

Please ask for: John Buckby
Our reference: BUC01/RAY/011/00024
Your reference:

**BY RECORDED DELIVERY
AND BY EMAIL – dicharlton@lineone.net**

19 June 2009

Dear Madam

Mr Richard Hayden and Rayden Engineering Limited
www.councilanddeveloper.net and www.notraydenengineering.co.uk

As you are aware, we act for Mr Richard Hayden (“Mr Hayden”) and Rayden Engineering Limited (“the Company”). They instruct us concerning websites maintained by you and used to publish highly defamatory, damaging and insulting allegations against both Mr Hayden and the Company.

This letter is written as a letter of claim, in conformity with the Pre-Action Protocol for Defamation.

Background

Since a date in March last year you have operated a website called “The Council and the Developer” at the web address www.councilanddeveloper.net. This has comprised a home page which itself makes defamatory references to our clients, with links inviting and enabling visitors to go to a succession of webpages, almost all of which have been devoted to further libellous attacks on our clients.

Until recently, you employed two other domain names in your campaign: www.rayden-engineering.co.uk and www.rayden-egineering.org.uk. In an effort to maximise the injury to our clients, you arranged the domain names so as to automatically redirect to the libellous www.councilanddeveloper.net. Many will have visited those addresses, after searching for the Company’s name in Internet search engines and in the belief that they were visiting our clients’ own websites. To counter this, our clients challenged your use of those domain names to the Nominet Dispute Resolution Service, seeking their transfer to the Company. The complaint succeeded on appeal to the Nominet Appeal Panel, which

on 29 April 2009 found that your registrations were Abusive Registrations, and ordered that the domain names be transferred to the Company.

However, it seems that you are now intent not merely on persisting in your malicious campaign, but to actually increase the injury to our clients. On 1 May 2009, two days after the Appeal Panel ruling, you registered a new domain name, *notraydenengineering.co.uk*, and launched *www.notraydenengineering.co.uk*. Beneath its own introduction at the head of the home page, this site replicates the home page and linked webpages of the *www.councilanddeveloper.net* website. On a webpage linked from the heading "*What Rayden Engineering Does Not Want You to Know*" in the introduction to the new website's home page, you write: "*This www.notraydenengineering.co.uk web site promises to be a far bigger and better replacement and will incorporate many updated features absent from the old sites.*"

The allegations

"Stealing" the land

1. A recurring allegation on both websites is that our clients dishonestly and criminally misappropriated the triangle of land that lies between the Company's premises and the rear of the houses (including your own) in Wentworth Street, Ilkeston. This features on: the webpage linked from the *councilanddeveloper.net* home page heading "*NEW! The Legal Threats and Defence of Justification*"; the webpage linked from the websites' home page heading "*1: Once Upon a Time ...*"; the webpage linked from the websites' home page heading "*6: The Floodplain Development*"; the webpage linked from the websites' home page heading "*THE FLOOD PROOF FLOOD PLAIN*".

There is no truth in this allegation. No doubt you would prefer that our clients had not acquired the land, or the use of it, when Erewash Borough Council finally decided to clear it in September 2006. But you have no justification for the seriously damaging allegation that our clients acquired possession of this land either dishonestly or criminally.

Destroying a wildlife and legally protected bat habitat of mature vegetation and a copse of trees

2. You make the allegation that, in taking possession of the land, our clients destroyed a site of mature vegetation. You allege that the site had included a copse of mature trees, and had until then been a valuable home for a variety of wildlife. You allege that, in taking possession of the land, our clients illegally destroyed the habitat of a species of bat protected in law. These allegations appear on the webpage linked from the home page heading "*2. What Happened*"

Next ...", and on the film clip linked from the heading "*Rayden Engineering definition of taking 'a responsible role in the community'*".

In fact, as you are aware, there was no copse of mature trees, nor was this land a significant wildlife habitat. Nor was this a bat habitat, protected by law or otherwise. Apart from the area covered with fly-tipped refuse by local residents, the vegetation covering the site consisted of grass, brambles and briars and a single mature apple tree. Our clients were not involved in the initial clearance of the refuse from the site, which was carried out by the contractor appointed and instructed by Erewash Borough Council, beginning on 7 September 2006. The single mature apple tree was destroyed in this initial clearing process. But this occurred over the weekend of 9 and 10 September 2006, days when according to your own account, you and some other Wentworth Street residents chose to carry out your own clearance work on the land. It was not the work of our clients and Mr Hayden was saddened to find that the tree had been crudely hacked down when he arrived at the Company premises on the morning of Monday, 11 September 2006.

Dishonestly blaming McAlpine

3. The websites further allege that our clients have sought to conceal their responsibility for damage that you (falsely) claim they did on the site, by dishonestly claiming that Alfred McAlpine plc (the contractor constructing the Ilkeston bypass at the time) had been responsible for damage that our clients had allegedly carried out themselves. This allegation appears on the webpage linked from the home page heading "*2. What Happened Next ...*", and on the film clip linked from the heading "*Rayden Engineering definition of taking 'a responsible role in the community'*".

But in truth, you are well aware that our clients did not make any such dishonest allegation against McAlpine, or indeed anyone else.

You purport to base your allegation on an exchange between you and Councillor Frank Phillips in November 2006 at a time when, following the initial clearing of the site as referred to above, our clients were having the site cleared and levelled for storage use. You wrote to Cllr Phillips alleging that heavy plant owned and controlled by McAlpine's bypass works had, on behalf of our client and at their request, gone onto the site and "destroyed" all the "established trees and vegetation" on the site. That was untrue, of course, because there were no "established trees" on the cleared area of the site. You have said that Councillor Phillips replied to you that "*From talking to Rayden Engineering this morning, it appears that McAlpine have helped to clear the land to the rear of your properties as they may want to store some heavy plant there*".

From this vague response you pretend to substantiate the allegation that our clients had told Cllr Phillips that it was McAlpine who had gone onto the land and that it was McAlpine personnel who had wrought the (alleged) damage, and that our clients were lying in this attempt to avoid responsibility, because they knew that McAlpine had not been involved. But not only do you know that the “established trees and vegetation” were fictions. You will no doubt also know that Cllr Phillips had subsequently made absolutely clear that our clients had in fact made no suggestion to him that McAlpine had been in any way involved in clearance on the site, nor in any way suggested that the clearance was not being carried out by their contractors for them. In short, it appears that you are simply lying when you claim that our clients tried to blame McAlpine for damage our clients had allegedly done. You know the damage to “established trees and vegetation” did not happen, that our clients did not do it and that our clients did not try to blame McAlpine or anyone else for it.

Knowingly creating a flood risk and flooding 15 homes

4. A further theme of your websites is the allegation that our clients developed the land in question in such a way as to increase the flood risk to neighbouring properties, that they did so knowingly and that they thereby caused and were responsible for the flooding of 15 neighbouring homes, £300,000-worth of flood damage and 34 people becoming displaced and homeless for months or living without basic amenities. These allegations feature on: the webpage linked from the councilanddeveloper.net home page heading “*NEW! The Legal Threats and Defence of Justification*”; the webpage linked from the websites’ home pages heading “*4: The pantomime Begins ...*”; the webpage linked from the websites’ home page heading “*6: The Floodplain Development*”; the webpage linked from the websites’ home page heading “*THE FLOOD PROOF FLOOD PLAIN*”; and on the film clip linked from the heading “*Rayden Engineering definition of taking ‘a responsible role in the community’*”.

It is simply not the case that the levelling and surfacing of the land in question increased the risk of flooding for your house or any others in Wentworth Street or was the cause of the flooding that occurred in June 2007. Nor is there any basis for your allegation that our clients knowingly exposed Wentworth Street residents to that risk and damage. In fact, you are aware that the flooding experienced by you and your neighbours did not, as you claim, emanate from the land at the rear of your house. Just as with flooding in previous years, the water rose from the Erewash River, climbing up and along Wentworth Street and into the front of the properties on that street and only onto the land at the rear through the side of the house at the bottom of Wentworth Street, number 34. Nor is there any sound

reason to suppose that the levelling and surfacing of the land in question behind your house contributed to the water's rise along that course.

Taunting their victims

5. You adorn your false claims about the flooding of Wentworth Street with further libels about our clients' supposed treatment of their supposed victims (to be found at the webpage linked from the websites' home page heading "*6: The Floodplain Development*"). You accuse them of taunting residents of the flooded properties, on the day their homes flooded with water and sewage, by exposing them to the additional misery of intolerable noise, dust and fumes. You accuse Mr Hayden of showing his delight at the residents' predicament by mocking and taunting them, pointing and laughing at them as he drove down the street in a luxury car. You make the vicious allegation that Mr Hayden even mocked and taunted an 87-year-old man who was weeping as filthy water gushed through his home.

These allegations are extremely distasteful and entirely untrue.

Dishonest denials and fraudulent evidence

6. At the webpage linked from the websites' home page heading "*NEW! FACT OR FICTION? How a river jumped fourteen feet to flood what could not be flooded!*", you accuse our clients of dishonesty in claiming that the Wentworth Street houses had not been flooded by water accumulated on the land at their rear but by water rising from the flooded Erewash. You accuse them of fraudulently submitting photographs to evidence this when, as they knew, those photographs showed different and unconnected flooding that had resulted, you claim, from two collapsed drains.

But the fact is that our clients have perfectly honestly asserted, in response to your lies and as is the fact, that the water rose from the river along and into the front of the houses in Wentworth Street and onto the land at the rear through the side of the property at the bottom of Wentworth Street as set out above. The photographs our clients have relied on to support that contention were honestly put forward as showing, as indeed they did, the flooding in question.

Harassment, intimidation, bullying and deception

7. The websites make allegations in general terms that our clients have subjected their neighbours in Wentworth Street to a campaign of harassment, intimidation, bullying and deception. These baseless smears are to be found on the webpage linked from the councilanddeveloper.net home page heading "*NEW! The Legal Threats and Defence of Justification*" and on the webpage linked from the

notraydenengineering.co.uk home page heading "*Hollow Victory*". Elsewhere you make the following, equally false allegations of such conduct by our clients.

Noise, dust, fumes and smoke

8. You accuse our clients of harassing, intimidating and endangering their neighbours in Wentworth Street by making a practice of working from 5.30am until 10.30pm, including at Bank Holidays, and of carrying out work as close as possible to the neighbouring residential properties, alongside the fenced boundary and just three metres from neighbouring gardens, so as to subject residents to maximum and excessive noise levels, dust, fumes and smoke. These allegations are to be found: on the webpage linked from the websites' home page heading "*3. From Bad To Worse ... With the trees destroyed and a compacted hardcore with no drainage now laid on Flood Zone 3 land by Rayden Engineering – 'The Untouchables' intimidation tactics begin...*"; on the webpage linked from the websites' home page heading "*8: Happy Ever After... In true Pantomime style... a lighthearted finale. Location... Location... Location. WELCOME to Rayden Engineering, Erewash Borough Council and Wentworth Street*"; and on the film clip linked from the heading "*Rayden Engineering definition of taking a responsible role in the community*".

These allegations are, as you know, untrue. Our clients do not make a practice of working the hours you allege. The claim that they deliberately work as close to their residential neighbours as possible is false and absurd. The fence erected along the boundary of the triangular site in question is about 3½ metres from the gardens of the houses in Wentworth Street (and, in fact, 1½ metres further away than the previous fence). But, as you know, no work has been performed on that site, nor has it as yet even been used for storage. And the boundary of our client's utilised premises is at all points (and increasingly along the triangle) more than 3 metres from the back gardens.

Our clients' work on their premises has not generated excessive noise (certainly not the levels of 135 decibels that you dishonestly portray as being commonplace), nor smoke, nor fumes, nor dust. All their operations are carried out in compliance with the strict standards set by the International Organisation for Standards (ISO) for quality (ISO9001) and environment (ISO14001) and as required for accreditation by UKAS.

As to noise, the Company's premises have been visited on several occasions by Erewash Borough Council (EBC) officers following complaints about excessive noise, almost certainly emanating from you. No grounds for those complaints have ever been found. On one notable occasion an EBC officer asked when shot blasting and pressure testing were carried out, as the complaint had been of

excessive noise from these activities. The surprised officer was told, as was the case, that those operations had been going on, to her complete unconcern, as they spoke. Your websites, including the contrived film clip on your *"Happy Ever After"* webpage captioned *"Warning – clicking this icon can damage your health!!"*, give a completely dishonest and misleading impression of both the levels of noise experienced by Wentworth Street residents from operations on our clients' site and the frequency of those operations.

As for the dust, fumes and smoke that supposedly emanate from our clients' site, these are fictions. The same is true of the deliberately misleading pictures and footage of billowing smoke on the *"From Bad to Worse"* and *"Happy Ever After"* webpages and in the *"Rayden Engineering definition of taking 'a responsible role in the community'"* film clip. You dishonestly misrepresent these as showing smoke generated from our clients' premises. As will have been apparent when filming, the smoke was not emanating from our clients' premises but either from the car scrap yard that lies on the far side of our clients' premises from your house in Wentworth Street, or from land in McAlpine's control on the new road construction site, or from the land to the west of our client's premises, on which the Environment Agency itself was burning overgrown shrubbery from the flood barrier – but in any event not from our clients' premises.

Surveillance

9. Another false allegation made against our clients is that for almost a year they kept their residential neighbours in Wentworth Street under covert, CCTV surveillance, illegally recording their every move on their private property. You augment this with the even more offensive allegation that our clients allowed these illegal recordings, including (supposedly) recordings of young children playing in paddling pools, to be watched by potential paedophiles and criminals and, perhaps, to be transmitted to other unknown persons for other unknown uses. These "surveillance" allegations are to be found on: the webpage linked from the websites' home page heading *"NEW! Derbyshire Constabulary Caution a Torch!"*; the webpage linked from the websites' home page heading *"NEW! FACT OR FICTION? How a river jumped fourteen feet to flood what could not be flooded!"*; and the *"Happy Ever After webpage"*.

These allegations are false, damaging and extremely offensive.

The truth is that our clients had CCTV installed to monitor its property, including the alleyway between the cleared and levelled triangle and the rear of the houses in Wentworth Street, on the advice of the Derbyshire Constabulary Business Crime Prevention Officer. This advice followed a significant amount of malicious damage being caused to our clients' vehicles and equipment, as well as incidents of

employees being injured by missiles (a topic to which we return below). A single camera was installed to monitor the alleyway. It was installed with a blacking-out system, so that its field of observation and recording did not extend beyond the alleyway and into the gardens of the houses in Wentworth Street.

On the evening of 18 February 2008 one of our clients' employees was hit by a projectile. They believed this had been fired by your husband, using a catapult. It was not the first time that projectiles had been fired at our clients' property and personnel from the land at the rear of your house. Nor has it been the last. Our clients have always believed that it has been your husband perpetrating these attacks. They come from the rear of your house. He is the only person they know of who is sufficiently maliciously motivated towards them to carry out these attacks. On the occasion of 18th February 2008, our client's depot foreman actually saw your husband in the alleyway at the time when the shots were fired, holding what appeared to be a catapult in his hand. Following this sighting, it was logical to presume that your husband had fired the shots.

The police were called. After speaking to the depot foreman, the police watched and then took a CD copy of CCTV footage of the alleyway for the relevant period of time. Your husband was subsequently arrested in connection with this incident. It appears that you have subsequently obtained a copy of this footage (our clients had retained none), because you have submitted it to the Information Commissioner in support of a complaint for breach of the Data Protection Act pursued by you against our clients. As you are aware, the footage shows that at the time it was taken the blacking-out system was not working and the camera was recording a view across the back gardens of the houses in Wentworth Street.

Investigation by our clients has established that this failure in the blacking-out system almost certainly began on 8 February 2008 (10 days before the catapulting incident in question) when a new camera was installed. They believe that it was remedied by their security system suppliers on 19 February 2008, the day after the footage was shown to the police, although it may be that this was not done until 5 March 2008, when records show work being done on the system. The camera was again replaced on 2 May 2008. At most the camera was recording an obscured view across the bottom end of the back gardens of Wentworth Street houses for a little under 3 months.

Of course, as you know from viewing the footage, even if and when the blacking-out system was not working, it did not record "every move" of residents of Wentworth Street in their private property. At most, and for a short time only, it monitored a view across the top of the gardens and vegetation, looking along the alleyway. The Information Commissioner's Office has confirmed to us that the images submitted to it were of relatively poor quality such as to be unlikely to make

any individual identifiable and that, because of the camera angle, it is particularly unlikely to have been possible to view any low object – for example a paddling pool.

In these circumstances, there is no sound basis for your allegation that residents were in any way kept under surveillance for any time at all, and certainly not for anywhere near as long as a year. Nor that at any time have our clients recorded their every move on their properties. As you are well aware, there has never been any basis for the suggestion that there were at any time recorded images of children in paddling pools or, indeed, of any identifiable images of anyone that would be likely to be of any interest to anyone. And, of course, there has never been any basis for the malicious fiction that our clients had allowed paedophiles or criminals or anyone else access to any such recordings.

“Concocted complaints to the police”

10. You accuse our clients of concocting repeated and numerous bogus complaints and allegations to the police that neighbouring residents, including your husband, had committed serious criminal offences. Particularly, you allege that they dishonestly fabricated their complaint to the police that an employee had been shot at and struck by a missile fired from a catapult. These allegations are to be found on the “*Bad to Worse*” webpage and on the webpage linked from the websites’ home page heading “*NEW! Derbyshire Constabulary Caution a Torch!*”.

Sadly, our clients have indeed complained to the police on many occasions of criminal damage and threats to the safety of their employees. They have had good cause and have always acted in good faith in doing so. As already stated in connection with the catapult attack of 18 February 2008, they believe and have always believed that this and other such attacks have been perpetrated by your husband.

“The harassment continues”

11. The webpage linked to the websites’ home page heading “*The harassment continues*” makes the accusation that our clients bullied and harassed disabled pensioners living in Wentworth Street because they had lodged an objection with the Traffic Commissioner to an application for permission to store and operate HGV trailers from our clients’ premises. It suggests that our clients retaliated by parking a van outside their house with the aim of blocking their access to their front door and blocking out light from their home. A picture shows one of our clients’ vans parked outside a house in Wentworth Street. The picture is completely misleading and the allegation is, again, untrue.

12. On the same webpage you make a similar allegation of gangsterish behaviour, accusing our clients of taking revenge on you for not voluntarily surrendering the two "rayden-engineering" domain names (that have now been properly transferred to the Company) by moving large, yellow metal containers to stack them "right outside" your back garden gate. But, as you will know, they were not "right outside" your back gate, but on our clients' premises beyond the cleared and levelled triangle and simply being stored in the normal course of our clients' operations. The cabin closest to your back gate is at least 35 metres away and all cabins are returned for storage at our client's depot at the end of each project for which they are used.

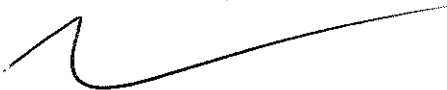
Action required by you

Our clients have reached the point where they cannot allow you either to escalate or continue your libellous campaign. Accordingly, unless you now agree to take down immediately from your two websites all material currently to be found there that makes the allegations identified in this letter and undertake not to publish those or any similar allegations, our clients will issue proceedings in the High Court without further notice to you.

In those proceedings, in addition to seeking an injunction restraining you from further publication, they will each seek damages for libel in respect of all such publications to date and continuing to be made by means of the *www.councilanddeveloper.net* and *www.notraydenengineering.co.uk* websites. Such damages will include aggravated damages and the costs incurred mitigating the damage done by your website publications by making the application and appeal to the Nominet Dispute Resolution Service.

Unless we receive a satisfactory response to this letter from you by **4pm on Friday 3rd July 2009**, giving the agreement and undertakings sought, proceedings for libel will be issued against you in the High Court without further notice. Meanwhile all our clients' rights in this matter are expressly reserved. We would recommend that you take independent legal advice on this matter.

Yours faithfully



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