

Webheath Planning Appeal

The Planning Decision

At a meeting of the Planning Committee on 22 May 2013, an application for outline planning permission (Ref:2012/207/OUT) Land at Pumphouse Lane, Redditch, Worcestershire was refused contrary to officer recommendation, for the following reason:

The proposed development is considered to be **unsustainable** due to the resultant **additional traffic on the local road network**, the **lack of suitable infrastructure** to support the development and the **lack of contribution towards the wider highway network infrastructure**. As such, it would cause harm to the safety and amenity of the residents of the Webheath area and the town of Redditch as a whole, contrary to Policies CS6 and CS7 of the Borough of Redditch Local Plan No.3.

The Appeal

Following that decision, the Applicant lodged an appeal with the Planning Inspectorate (PINS) and requested that it be dealt with by Public Inquiry, which PINS accepted.

Inquiry dates have been set for 6 days in January 2014 (16-17 and 21-24) in the Council Chamber at Redditch Town Hall.

As the planning officer had recommended approval and was therefore unable defend the LPA's position at the Public Inquiry, a Planning Consultant was engaged to defend the Appeal on behalf of the Council. The Council's representatives have been working with the County Council in relation to the element of the refusal reason that relates to the lack of a contribution towards the provision of wider highway infrastructure.

The Webheath Action Group (WAG) has also applied to be a party to the Appeal and this has been granted by PINS.

As part of the preparations for the Public Inquiry, all sides are required to prepare (Rule 6) statements explaining their case and how they will defend it at the Inquiry. As part of this process, Counsel for the LPA (and the County Council), John Hobson QC, met with Council and County Council representatives on 4 December 2013.

At the outset of this conference meeting, the Council's planning consultant made it clear that in her opinion, of the three strands of the refusal reason as stated above, **two** have no technical evidence from any source (including the County Council in respect of the local road network) to support them and are therefore **undefensible**. Moreover, the consultant was explicit in her unwillingness to defend these reasons at the Inquiry. A discussion ensued regarding the (lack of) evidence to support these refusal reasons and the potential for a substantial costs award against the Council which culminated in Counsel advising that the LPA withdraw the 'local' elements of the refusal reason. Counsel agreed to prepare a further Opinion that very day, an extract of which is set out below.

- “4. Contrary to what the [Rule6] Statement asserts I understand that the Council has no such evidence available, and none that it can produce at the forthcoming inquiry. The Council's position in relation to these matters is therefore entirely unsustainable.
5. In these circumstances it is my strong advice that these reasons, and this paragraph, are now withdrawn. The Council should write to the Planning Inspectorate and to the Appellants indicating that the grounds are withdrawn and that the Council will be offering no evidence in respect of them.
6. Failure to produce cogent evidence in support of a reason for refusal is the most common basis on which costs are awarded. If the Council's position is not clarified and the reasons withdrawn, I consider that, in the circumstances of this case, an award of costs against the Council would be unavoidable.”

In light of the above, the Council's case would rest entirely on the County highway reason. At the time of the decision, the County Council advocated refusal if the wider highway network contribution was not agreed. The County Council is willing to defend their position but appear now to have softened their position and are prepared to reach an agreement with the Appellant on an acceptable sum of money to be received. It is possible that agreement might still be reached; if that is the case then clearly the County Council will have no further involvement with the Appeal.

Should this occur, the Council is entirely exposed with no case to put forward, with the consequent reputational and financial risks that this would entail.

Financial impacts

Should the Council continue in spite of this advice from the Planning Consultant and Counsel, then it is likely that the Planning Inspector would find that the Council had acted unreasonably and would most likely make an award of costs against the Council. This would mean that as well as meeting its own costs of defending the Appeal, the Council would also have to pay the costs incurred by the Appellant in fighting the Appeal. Essentially, the Council would foot the bill for the Appellant's planning agent, barrister, expert witnesses and compilation of supporting evidence by technical specialists for the Appellant. A conservative estimate of the costs of a full Public Inquiry in this matter would be in the region of £100,000.00.

On the basis of this advice the Chief Executive and the Head of Legal, Equalities and Democratic Services, under Article 14.3 of the Council's Constitution are of the view that, in order to protect the Council's interests, the LPA should no longer seek to defend the "local" elements of the refusal reason at Appeal.

By no longer seeking to defend part of the refusal reason and notifying the other parties in a timely manner, the costs liability faced by the Council could reduce significantly, because the Appellants would be put to less expense preparing its case and so would the Council, and the Inquiry would last a significantly shorter period of time, thus minimising costs in relation to attendance of experts and barristers.

On this basis the s151 Officer recommends that the Council does not continue the appeal and looks to mitigate the financial impact in the shortest time possible.

Urgency

The proofs of evidence for the Public Inquiry are due with PINS on Friday 20 December 2013, and therefore time is of the essence. The Appellant will be preparing their case now, with costs accruing on a daily basis so it is essential that a decision is taken as quickly as possible and the sooner the Council communicates its decision to the other parties the lesser the financial liability involved will be.

Council Decision

The recommendation is that an urgent decision will be taken by the Council not to defend the element of the refusal reason relating to additional traffic on the local road network and the lack of suitable infrastructure to support the development.