



SHEFFIELD CITY COUNCIL Planning & Highways Committee

Report of: Director of Regeneration & Development Services

Date:

Subject: RECORD OF JUDICIAL REVIEW CASE
OUTCOMES 2013

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Summary:

This report provides a schedule and brief summary of all judicial review case outcomes in 2013 in relation to planning / listed building applications determined by Sheffield City Council.

Reasons for Recommendations

Recommendations:

To Note

Background Papers:

Category of Report: OPEN

DEVELOPMENT SERVICES

REPORT TO PLANNING & HIGHWAYS COMMITTEE 17 DECEMBER 2013

1.0 RECORD OF JUDICIAL REVIEW CASE OUTCOMES 2013

This report provides a schedule and brief summary of all judicial review case outcomes in 2013 in relation to planning / listed building applications determined by Sheffield City Council.

2.0 FORMER JESSOP HOSPITAL SITE – 12/02874/LBC

This application was for the demolition of the Edwardian extension of the former Jessop Hospital for Women and the construction of a five storey plus basement building to provide up to 19,725 sqm of educational floorspace, plus landscaping and servicing.

Listed Building consent was granted on 25 March 2013, following a referral to the Secretary of State. The application was heard at the Planning Committee on 25 February 2013.

SAVE Britain's Heritage & The Victorian Society (the appellants) brought a claim against the Council's decision on the following grounds:

1. The Council failed to consider whether there were substantial public benefits which justified the demolition of the listed building and therefore misinterpreted the National Planning Policy Framework (NPPF) and failed to apply its statutory duty under Section 16 of the Listed Building Act;
2. The Council failed at the February Committee meeting to consider the totality of the material on the application (particularly the documents revealed under a Freedom of Information request);

A Hearing took place in the High Court of Justice on 27 June 2013, at which the Honourable Mr Justice Supperstone (the Judge) refused permission for the appellants to apply for judicial review on both grounds of claim. The judge also noted that the claim had not been brought promptly and that the Interested Party (The University) would suffer prejudice as a result of the claim proceeding. His conclusion on Ground 1 was that the reasons for recommending approval were clearly documented in the report when read as a whole and that it was not misleading. He rejected any error in law and concluded that the ground was not arguable. His conclusion on Ground 2 was that the committee members were clear that they were considering the case in its totality, including any new material, and that it was clear that they could accept or reject the recommendation of their officers.

The appellants appealed against this ruling to the Court of Appeal Civil

Division, but only on Ground 1 above. They did not appeal Ground 2. The Rt. Hon. Lord Justice Floyd considered the appeal and made his judgement on 3 July 2013. He refused permission to appeal. He concluded that the Judge had applied the established principles of Judicial Review and was justified in refusing permission for the reasons he gave. He was not persuaded that it was realistically arguable that the case turns on the proper construction of paragraph 133 of the NPPF and did not consider that the appeal would have a realistic prospect of success.

3.0 29 THORNSETT ROAD – 12/03326/FUL

The application was for a change of use of 29 Thornsett Road, a semi-detached dwelling, to a mental health crisis house, within Use Class C2

Planning Permission was granted following consideration by the City Centre South and East Planning and Highways Committee on 19th December 2012.

A Judicial Review (JR) of the decision was sought by neighbouring residents requesting an order to quash the grant of planning permission and to pay the legal costs of the claimant.

The grounds for the JR were:

1. Unlawful failure to properly apply the Use Classes Order and Development Plan policies – the facility should have been classed as a hotel which is an ‘unacceptable’ use in UDP terms.
2. Failure to take material considerations into account – Need for Environmental Impact Assessment and Traffic Impact Assessment; loss of privacy, impact of smokers, traffic flow, and apprehension of risk.
3. Irrationality – in decisions on traffic safety, risk of crime, and loss of privacy.
4. Procedural Impropriety – lack of consideration of site visit, predetermination, ‘planners’ share financial considerations with Health Care services and there was bias resulting from potential financial gain to the Local Planning Authority.

His Honour Judge Waksman QC considered the claim in June 2013 and refused permission to apply for JR. In doing so he stated that:

1. There was no arguable case for JR and the claim is no more than disagreement with the planning merits.
2. There is nothing in the challenges based on the Use Classes Order and UDP. The Council correctly applied the Use Classes Order and UDP policies.
3. He saw no evidence of procedural impropriety.
4. The development did not require an Environmental Impact assessment or Traffic Impact Assessment.
5. The planning officer’s report did not mislead the Committee, all

necessary matters were fully considered, and its conclusion could not be considered irrational.

6. In addition he considered there was delay in making the claim (only 5 days within the 3 month period).

The Claimants sought an oral review of this decision, which took place on 19th September 2013 at Leeds Admin Court before His Honour Judge Gosnell. The judge ordered that the application to renew the claim be refused, and that the Claimant (residents) pay the Council's costs assessed by him at £2500.

4.0 FORMER HESLEY WOOD TIP – 12/01946/FUL

This application was for a proposed coal recovery and restoration scheme at the former Hesley Wood Tip, Smithywood Road, Chapeltown.

Planning Permission was granted on 18 February 2013, following completion of a legal agreement. The application was heard at the Planning Committee on 8 January 2013.

A Judicial Review (JR) of the decision was sought by local residents, requesting an order to quash the grant of planning permission and to pay the legal costs of the claimant.

The grounds for the JR request were:

- 1 That the information in the planning application with regard to air pollution was inadequate and insufficient steps were taken by the Council to address this before permission was granted, and.
- 2 That the reason given for granting planning permission did not make sense and so the decision notice was defective as no member of the public could adequately understand the reasons for the grant.

The "Pre-application protocol" sets out a code of good practice and the steps that should be taken before making a claim for a JR. This sets out that a "letter before claim" should be sent to the defendant (the Council) to identify the issues and establish if litigation can be avoided.

A robust response was made to the letter before claim.

With reference to Ground 1, the response set out that there was no information that the development would cause exceedance of any air quality objectives. The background levels were from an authoritative source and the information provided was assessed by our Air Quality expert. Conditions were imposed to ensure mitigation measures would be put in place. The overall conclusion that the proposal would not result any breach of the health based objectives was not surprising. The Committee had information about the

material matter and were correctly advised. The Committee was not misled about a material consideration.

Ground 2 suggested that the decision notice was defective as it did not make the reasons for granting permission clear. It was pointed out that the reasons for granting permission expressly refer to the officer report and that it was entirely appropriate for the report to flesh out the summary reasons for granting permission.

Following the receipt of this response The solicitors acting on behalf of local residents confirmed that they would not be proceeding with the claim in judicial review.

5.0 RECOMMENDATIONS

That the report be noted

Maria Duffy
Acting Head of Planning

17 December 2013

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