

REPORT FOR DECISION

MEETING: PLANNING CONTROL COMMITTEE
DATE: 20 OCTOBER 2009
SUBJECT: PLANNING APPEALS
REPORT FROM: TOM MITCHELL, CHIEF PLANNING OFFICER
CONTACT OFFICER: DAVE MARNO, DEVELOPMENT MANAGER

TYPE OF DECISION: COUNCIL

FREEDOM OF INFORMATION/STATUS: This paper is within the public domain

SUMMARY: The report lists:

- 2 cases of Judicial Review
- Recent Planning application appeals lodged.
- Recent Planning application appeal decisions
- Recent Enforcement Appeal decision.

OPTIONS & RECOMMENDED OPTION The Committee is recommended to the note the report and appendices.

IMPLICATIONS:

Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? N/A
Financial Implications and Risk Considerations:	Director of Finance and E-Government to advise regarding risk management N/A
Statement by Director of Finance and E-Government:	N/A
Equality/Diversity implications:	N/A
Considered by Monitoring Officer:	N/A

Are there any legal implications? No

Staffing/ICT/Property: N/A

Wards Affected: All

Scrutiny Interest: N/A

TRACKING/PROCESS

EXECUTIVE DIRECTOR:

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council

Judicial Review Cases

The judicial review of decisions and appeals is a rare occurrence not least because it can involve complex legal issues and associated costs. Essentially it is possible to seek redress through the courts to remedy what is seen as a breach of natural justice and is a facility provided by Planning legislation whereby decisions can be challenged in a court of law, this is in addition to the standard appeals process.

This month I have 2 cases to report.

Planning Appeal Decision:

The Council refused permission for an office development at Mountheath Industrial Estate, Prestwich, primarily because of concerns about the highway problems associated with the junction of Bury New Road and George Street. The applicant appealed and the Planning Inspector concluded that the development should be allowed to proceed under certain conditions. However in issuing the decision the Inspectorate failed to include the conditions as part of the decision letter. These conditions related to the provision of adequate car parking but also the demolition of redundant buildings in order to ensure that traffic generation for the approved development could not exceed the existing traffic generation from the site.

These conditions were considered to be crucial to the granting of permission and the Inspectorate was requested to amend the decision letter. Whilst an obvious remedy it was concluded that this was not legally possible and the Council's only recourse was to seek a Judicial Review of their decision or accept the unconditional approval. The Council therefore proceeded to challenge the decision. This action was not contested and the appeal decision has now been quashed and the Council's cost in pursuing the matter have been awarded against the Planning Inspectorate.

The appeal will now be re-run and whilst the same conclusion is expected the decision notice should include the required conditions.

Planning Application Decision:

Britannia Hotels Judicial Review of Planning Application 50274 part 54km Water Pipeline from Woodgate Hill Reservoir to Prescott Reservoir.

On 26 November 2008, planning permission was granted by the Planning Control Committee for the development of part of a 54km long main bi-directional water main. The water main would commence in Bury and run through seven other local authority areas.

Within Bury, a site next to Blackford Bridge is owned by Britannia Hotels and was granted planning permission for 144 flats in 1978. They considered that they had commenced the development by the creation of part of a car park. As the pipeline was to run through their site, United Utilities were required to serve notice upon Britannia Hotels to tell them that a planning application had been submitted. Britannia Hotels claimed, following the grant of planning permission that they had not received notice of the application by United Utilities. A Judicial Review was lodged against the Council and United Utilities for non service of notice by the applicant.

The case went to High Court on 21 September 2009. It was argued that the Council should not have 'entertained' the application as United Utilities had not complied with the provisions of the Planning Act 1990, which required them to serve notice. Supporting documentation confirmed that United Utilities had served notice on Britannia Hotels and others. There was no reason to suspect that notice had not been served as other interested and affected parties did contact the Council during the planning process to discuss the proposals.

Disclosed evidence presented by the Council and United Utilities made the case that there was no reason to suspect that procedures had not been followed correctly and that the process had been fair and transparent.

Furthermore, documentation presented by United Utilities confirmed that Britannia Hotels had been invited to discuss the proposals directly with United Utilities *during* the period when the Council were considering the proposals. The documentation included a number of attempts made by United Utilities to make contact, references to meetings where Britannia Hotels head solicitor and chief surveyor were present.

The Judge held in his summing up that the judicial review to quash the permission should be dismissed. He said that Britannia Hotels had demonstrated "*a stream of dilatory actions*" in their failure by highly qualified and presumably capable staff to properly respond to United Utilities when invited. Moreover he said "*it is inconceivable to understand why their staff never once thought to pick up the telephone and speak to the Council to outline their concerns before the scheme was formally determined. Britannia Hotels had every opportunity to make observations when they knew of the proposals and as such whether they received the notice or not, they had not been prejudiced by the proposals due to their own failure*". A double award of costs were granted to the Council and United Utilities for having to present their case in court and for the time involved. The award of costs granted to the Council amounted to £8000. This has now been paid to the Council.

List of Background Papers:- None

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