

## **SOUTHERN PLANNING COMMITTEE**

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**Date of meeting:** 15 July 2009  
**Report of:** Head of Planning and Policy  
**Title:** Bryancliffe, Wilmslow Park South, Wilmslow – Judicial Review of decision to grant planning permission

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### **1.0 Purpose of Report**

- 1.1 To notify members of the result of the Judicial Review proceedings brought against the decision of Macclesfield Borough Council to grant planning permission for the development at Bryancliffe, Wilmslow Park South, Wilmslow. The judicial review application was successful and therefore the Planning Permission that had been granted was quashed by the Court.

### **2.0 Decision Required**

- 2.1 To note
- (1) the decision of the High Court
  - (2) that changes will be required in the processing of applications and content of reports as a result of the areas of challenge that were successful
  - (3) that not all of the grounds of challenge were successful and the areas of unsuccessful challenge will be taken as a minimum level for processing and determining applications for Cheshire East.

### **3.0 Financial Implications for Transition Costs**

- 3.1 The Council will be required to meet its own costs of defending this action, and will also be required to meet the Claimants costs, at least in part.

### **4.0 Legal Implications**

- 4.1 The decision of the High Court quashes the Planning Permission that was granted on 15<sup>th</sup> February 2008. The application therefore currently stands undetermined. At the time of writing this report the original applicants have gone into administration and Administrators are in control of the site. It is not clear what their intention is with regard to the

undetermined application at the time of writing, but if the application is not withdrawn it will need to be re-determined by the Council.

## **5.0 Risk Assessment**

- 5.1 Failure to amend procedures and practices in the processing of planning applications for the future will leave the Council open to further legal challenge by Judicial Review and investigations by the Local Government Ombudsman.

## **6.0 Background and Issues**

- 6.1 Macclesfield Borough Council granted planning permission in February 2008 following completion of a section 106 agreement, for the demolition of the existing house and erection of 3 apartments with under croft parking on the site.

- 6.2 The Claimant lives over Fulmards Close from the site and objected to the proposed development, and challenged the legality of that decision to grant permission. In this regard he put forward a number of grounds of challenge, these were:-

- i. that the Committee Report did not deal with the European Community Habitats Directive on protected species in regard to the bat roost that had been identified on the site;
- ii. that that there was a failure by the Council to consider alternatives to the form of development suggested in the planning application;
- iii. that the proposed swap of units to ensure that there was no increase in the number of houses in accordance with the Restrictive Housing Policy between the Bryanclyffe site and another site within the Wilmslow area was irrelevant and contrary to government guidance;
- iv. that the Committee Report failed to say whether there was compliance with the policies in the Development Plan or not;
- v. that there was a failure of the Council to take account of applicable policies;
- vi. that there was no authority to issue the planning permission as the Decision notice did not include a condition requiring a method statement for planting on the slope on the site or landscape implementation conditions as required by the Committee minutes, and;
- vii. that there was a failure in the Decision Notice to adequately summarise the relevant policies for the decision taken.

- 6.3 Each of these grounds of challenge was disputed by the Council, and a hearing into the matter took place on the 21<sup>st</sup> and 22<sup>nd</sup> May 2009, in front of a High Court Judge sitting in Manchester.

- 6.4 The judge determined that the Judicial Review application should succeed and quashed the planning permission, on the basis that he agreed with grounds i, iv and v listed above. In relation to the other grounds of challenge these all failed either because the allegation was unfounded or because there was no requirement for the Council to undertake what was suggested as being required.

## **7.0 The Issues**

- 7.1 Clearly the Council have to ensure that such a challenge is not able to be made against any future decisions, and have to amend any existing procedures to ensure that this is the case.
- 7.2 With regard to the ground of challenge relating to European Protected Species, it is accepted that the report contained no discussion on the specific requirements of the European Directive, however it is not considered that Macclesfield Borough Council was unique in this approach amongst Local Planning Authorities. This case may well affect the approach of a number of authorities to protected species under this European Legislation.
- 7.3 The other two successful grounds of challenge are considered to be fairly harsh, as both issues were discussed in general in the Committee report, however the Judge took the view that they should have been specifically mentioned and dealt with.
- 7.4 With reference to the successful grounds of challenge, a fuller consultation response detailing the legislation and requirements from Nature Conservation, and amendments to the requirements for Officers reports, both Committee and delegated, should ensure that all reports cover the information that in this case was found to be lacking. The Development Management Team will need to formulate quickly the practical way that this is to be done, and ensure that all Officers are aware of these requirements.
- 7.4 In relation to applications that come to Committee for determination, members should expect more information relating to European Protected Species (in this area mainly bats and Great Crested Newts) and more specific detail on the compliance or otherwise with Development Plans.
- 7.5 The unsuccessful grounds of challenge also need to be reviewed to ensure that in the formation of the Development Management Team for Cheshire East that the procedures or practices that were in place for this application at Macclesfield Borough Council are the minimum that Cheshire East have implemented. This is of particular relevance in the alleged failure of the Decision Notice to have all required information, but the acceptance of the Judge that the decision notice was sufficient.
- 7.6 A similar report has been considered by the Strategic Planning Board in their role as monitors of planning decisions, and Northern Planning Committee will also receive this report as they cover the area within which the site is located. While the decision does not directly affect the

Southern Planning Committee, the decision will alter the way that Cheshire East as a whole deal with applications, and as such it is considered important for members of both Planning Committee's to be aware of the result and the impact of such.

## **8.0 Reasons for Recommendation**

- 8.1 To ensure that members of the Southern Planning Committee are aware of the decision of the High Court, and are aware that changes in the content of Officer's reports will need to be implemented to ensure that the situation does not arise again. It is equally important to note the areas of challenge that were not upheld, and to ensure that as Cheshire East these points, where relevant, are maintained as a minimum.

### ***For further information:***

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