

My name is Nancy El-Shatoury. As Principal Planning Solicitor regularly advising members of this committee I have been asked to summarise the legal position in relation to the item before members

Counsel was instructed to advise following the planning committee meeting of 29 June 2020.

As members will recall this was the first remote P and R meeting

Members resolved to go against officer recommendation and refuse the Application by a majority of 6 votes to 5.

Many individual complaints were received subsequently alleging procedural irregularities that the complainants asserted invalidated the result

The applicant's lawyers wrote to the effect that the committee resolution was unlawful and that it should be referred back to Committee for redetermination. The applicant was considering its options which included:

A judicial review of the decision

An appeal against refusal on the basis that the decision was unlawful and not based on any objective analysis

Formal complaints regarding conduct of Committee and conduct of certain individual members

Counsel met officers and was asked to view the recording of the meeting, to consider if there were any such irregularities and if so what should be done to rectify them

While noting the reluctance of the courts to scrutinise planning committee meeting deliberations in a forensic manner, the understandable difficulties of holding the first remote planning committee in the County, and technical glitches – Counsel was concerned that certain members voted who may not have been present throughout the consideration of the item in breach of the County's code of Best Practice in Planning Procedures, and as required by the 2020 Regulations governing remote committees, because it appeared at times that they could not hear and be heard. Those votes clearly made a difference to the outcome given the close vote.

Counsel concluded therefore that there was a significant likelihood that a Court would on these issues alone declare the resolution as invalid and unlawful. However she also highlighted other matters that might also be of concern to a court i.e that a local member is limited to speaking for 3 minutes and cannot subsequently participate in the committee, that parts of the debate may have been missed by Members, some Members appeared to have other members of the household with them and communicating with them, appearing on screen raising the perception of unfairness, and the use of the "chat" log potentially allowing private chat between participants.

As no decision notice had been issued Counsel confirmed that the resolution had no effect. She furthermore stressed that a local authority may have a duty to reconsider

its decision if flaws in decision making are brought to its attention before a decision notice is issued.

Counsel advised that a local authority may therefore revoke a resolution to grant or refuse and may then redetermine an application before issuing its decision

On any redetermination, Counsel stressed that members of the public and the applicant should be able to make or remake their statements orally and there should be full provision for debate by members.

Technical problems should be resolved so that everyone could hear and be heard throughout, no others should be present with councillors(although if there is a need for assistance for example because of disability this should be raised with the Chair in advance), and the chat function should be used appropriately.

This should ensure that any remote access to the meeting is conducted in a fully fair manner.

The County's Director of Legal Services and Monitoring Officer advised on the strength of Counsel's advice that the application should be determined afresh by the Planning and Regulatory Committee.

Given that it is likely that the many of the same Members will be voting today as voted previously, the issue of Predetermination needs to be touched upon given the expectation that the application will be considered afresh entirely fairly.

I would like therefore to remind members of some points in relation to predetermination as well as lobbying

As part of the legal training Members received before sitting on this committee, they have all had training in bias, predisposition and predetermination

As a condition of sitting on this Committee, Members signed up to Surrey's Code of Best Practice in Planning Procedures which makes clear that they should keep an open mind when considering applications in accordance with relevant planning considerations. Members have their own copy of the Code.

Whatever their views, councillors will approach their decision-making with an open mind in the sense that they must have regard to all material considerations and be prepared to change their views if persuaded by the evidence before them, representations and debate.

Members who previously have done something that might directly or indirectly indicate what view they took, would or might take in relation to a matter and the matter was relevant to the decision, but who came to the Committee prepared to hear all relevant considerations will not be perceived to have a closed mind when voting on the application. It is important that the minds of members be open to any new argument at all times up to the moment of decision

Turning now to lobbying, where Members are encouraged to vote in a particular way by objectors or supporters the Members' Code of Conduct stresses the need to be

impartial and be seen to be impartial when carrying out public duties. Members understand that they must not favour any person, company, group or locality.

Finally we are reminded by our Code of Best Practice that when members are minded to go against officer recommendation “ the Chair must summarise or cause to be summarised the salient points of the debate and ensure the text of the proposition is clearly understood before putting the matter to the vote”. The Chair will therefore summarise before the vote should such a situation arise.

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