

PLANNING COMMITTEE

29TH SEPTEMBER 2016

REPORT OF HEAD OF REGULATORY SERVICES

15/00902/COU: USE OF LAND AS A TRAVELLERS SITE: GOADBY RD, WALTHAM

1. PURPOSE OF THE REPORT

1.1 The purpose of this update report is to convey the outcome of the Committee's request to investigate the prospects of legal challenge to the above Appeal decision.

2.0 RECOMMENDATION

2.1 That the Committee note that advice received and takes no further action.

3.0 BACKGROUND

3.1 Members will recall that permission was refused for the above development in January 2016 and that there has been Enforcement Action, followed up by two High Court injunctions, in relation to the above site. However the injunctions accommodated the planning appeal process and its instruction was provisional upon an appeal being lost.

3.2 The appeal was has been determined and on 7thn September permission was granted subject to conditions. At the meeting of 8th September the Committee resolved to investigate the prospect of legal challenge of the Inspector's decisions. The grounds for such a challenge were not clearly provided but particular concern was expressed about the Inspector's handling of the issue of the suitability of the site for horses. This arises from members observations of the site, particularly its condition and the number of horses present.

4.0 KEY ISSUES

4.1 Counsel opinion has been sought which addresses the Inspector's decision and concludes:

- The scope for challenge is limited. S288 is strictly time limited to 6 weeks and grounds of challenge must be legal fault (as opposed to disagreement about the conclusions).
- The Inspector addressed the benefits and harms of the development and reached an overall planning conclusion. Along the way, it is clear that the Inspector reached a number of planning judgments, to which he was entitled to reach.
- The Inspector identified harm arising from the development, and went on to balance these against benefits, within the scope of applicable policy as he is required to do.
- He proceeded to consider whether a temporary permission should be granted. He decided against it on the basis that he had little certainty about

the timeframe for the emerging Local Plan and so a temporary period could not be given with any confidence

- The Inspector found it was the applicant's personal circumstances decisive in his planning balance, and therefore made the permission personal to them.
- There is nothing to suggest that the determination which was made met the Court's very high threshold of unreasonableness.
- On the specific issues of horses, it was open to the Inspector to deal with the issue in the manner he did (to advise that feed could be imported to complement grazing and that welfare issues are governed by a separate legal regime). In the normal course of events the welfare of the horses is not a planning matter.

4.2 In conclusion, Counsel's advice is "*I advise that there are not cogent and convincing grounds to challenge the grant of planning permission. **There is not a reasonable prospect of challenging the decision in the High Court***"

5 CONCLUSION

5.1 The advice is unequivocal and it is recommended that no legal challenge is pursued.

Background Documents:

- Committee report 15/00902/COU 7th January 2016
- Minutes of the Committee meeting of 7th January 2016
- Appeal decision 7th September 2016