

Application Number: 16/03023/FUL

AT Blakelands 1, Yeomans Drive, Blakelands, Milton Keynes, MK14 5AN

Description: Demolition of Existing B8 Storage and Distribution Warehouse, and Erection of a New B8 Storage and Distribution Warehouse with Ancillary B1 Floorspace and Associated Works

Ward: Newport Pagnell South **Parish:** Great Linford Parish Council

Report Author/Case Officer: [REDACTED]

Team Leader: [REDACTED]

Purpose

The purpose of this briefing note is to present a further update covering the Decision Notice that was issued for planning application 16/03023/FUL (a replacement warehouse) at 1 Yeomans Drive, Blakelands where 13 planning conditions had not been included.

Summary

Planning application – missing conditions

Planning permission was granted for the development with 13 planning conditions missing from the decision notice, which is an administrative error. A full internal audit is currently taking place to independently investigate why this happened.

Section 102 Order

At the December Development Control Committee (DCC), on the advice provided by officers, members resolved to issue a Section 102 Order under the Town and Country Planning Act 1990, in respect of the site which is subject to planning permission under reference 16/03023/FUL and was granted planning permission in January 2018. Due to the missing conditions from the original decision notice, Council officers sought Counsel advice on our options to rectify the situation and ensure the effect of the missing conditions on the amenities of the neighbours was minimised.

The effect of the Section 102 Order allowed the Local Planning Authority to impose a condition for the continuance of works, to alleviate the impact on the amenity of the area. The law relating to section 102 Orders is set out later in this report. As the developer has the benefit of extant planning permission, which is the subject of conditions and a Section 106 agreement, the condition imposed by way of the

Section 102 Order will sit alongside the conditions on the extant permission – but will *not* form part of the extant permission.

The Section 102 Order has been made including the following condition, as resolved by DCC:

“All external lighting within the site shall be turned off outside of the hours of 07:00 to 21:00 Monday – Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

Reason: to protect the amenity of the adjacent residential properties from adverse light pollution”

On Friday 14th December 2018, a copy of the Order was served on the owner, occupier and mortgagee of the site, as those parties with an interest in the land that would be affected by the Order. The Order was also submitted to the Secretary of State for Confirmation with a 31 day objection period.

During the objection period, one objection was received by the Owner of the site. The Secretary of State has now confirmed that this objection will be heard by an Inspector, by way of a hearing at a time and date yet to be confirmed to the Council. A statement of case must be submitted to the Secretary of State by 26th February 2019. The statement must set out in full the case that the authority intends to put forward at the hearing, including the reasons for making the Order, including any documents which the Council intends to refer to as evidence.

As an update on the applicant's position, they have sought an expert financial opinion on the Section 102 Order. We have received a letter stating that in their view, the level of compensation they would be seeking, should the Secretary of State decide to confirm the Section 102 Order made by the Council, would be in the region of £2.5 – £5.5M. Whilst officers have assessed the cost of compensation being in the region of £50 -150K, as a result of the applicant's likely claim, officers will be seeking further specialist advice.

The Audit Report

Following an investigation, the audit report will be published as part of the Audit Committee papers for the Audit Committee 5th March.

Background

Planning Application

A planning application (16/03023/FUL) was received in November 2016 for the demolition of the existing warehouse and its replacement with a larger warehouse and ancillary works, including provision of a new access. On 11 May 2017 Development Control Committee (DCC) Members considered all issues raised at the meeting. Members debated the material planning considerations and on planning balance resolved to grant planning permission for the development subject to conditions. The Decision Notice was issued in January 2018.

Conditions missing

Unfortunately the Decision Notice issued contained only 10 of the 23 conditions imposed at the Development Control Committee. The conditions that are missing relate to the mitigation of noise, protection of landscaping, traffic management, site contamination and biodiversity enhancement.

Advised Next Steps

Members were advised at Development Control Committee on 10th January 2019, that the cost of compensation as a result of a revocation order or imposing all of the missing conditions by way of a further s102 Order is likely to be substantial. This is discussed below.

Also advised was that even in the event of successful revocation of the planning permission, this would only include removing permission for those works to be completed. A revocation order would not require demolition of the works that have been carried out in accordance with the extant planning permission.

The Council has made an offer to plant some trees in the gardens of adjacent residential properties most affected, to mitigate the visual impact of the development.

Outstanding Missing Conditions and Costs of Imposing a Section 102 order

Total estimated cost to the Council in the region of £460,000 to £815,000.

Below is a list of the missing conditions, from the extant permission, their significance, and cost of reinstatement:

- Prior to any demolition or alteration of the warehouse taking place, the applicant shall ensure the production of a record of the warehouse to a scheme and level agreed in writing by the Local Planning Authority. The record will comprise a report with plans, elevations and sections of the building drawn to the standards set by Historic England (2016). This will be accompanied by a written description of the building and its development, together with a photographic record of the interior and exterior. Two copies of the building recording report will be deposited with Milton Keynes Historic Environment Record prior to any demolition or alteration of the warehouse taking place, and within three months of the recording survey being completed. The final report and details of the project will also be added to the Archaeology Data Service OASIS website. Prior to the demolition of any part of the warehouse, the building record shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that affected heritage assets are adequately recorded pursuant to paragraph 141 of the National Planning Policy Framework.

- **Condition (8):** Prior to construction of any part of the development above ground floor slab level, details of external lighting including security lighting shall be submitted to and approved in writing by the local planning authority. The plans shall show lighting proposed in accordance with BS5489 standards and detail how the presence of bats in the area has been taken into account. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development does not detract from residential amenity and the appearance of the locality and in the interests of ecology and crime prevention in accordance with Policies D1, and D2A, and NE3 of the Milton Keynes Local Plan 2001-2011 and CS19 of the Core Strategy.

Significance of condition: Significant, particularly to the amenity of nearby residents.

Costs of Reinstatement of Condition: The condition could limit the use of lighting, and cost of lighting itself including installation.. Estimated costs to the Council could be in the region of £50,000 to £150,000.

Recommendation: We are currently seeking to reinstate the condition through the Section 102 process.

- **Condition (9):** A landscaping scheme, which shall include provision for the planting of trees and shrubs, shall be submitted to and approved by the Local Planning Authority before first use of the development. The scheme shall show the numbers, types and sizes of trees and shrubs to be planted and their location in relation to proposed roads, footpaths and drains. All planting in accordance with the scheme shall be carried out in accordance with the approved details within the first planting season following completion of development. Any trees or shrubs removed, dying, severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species as approved.

Reason: To protect the appearance and character of the area and to minimise the effect of development on the area.

Significance of condition: Limited in terms of visual amenity, as much of the landscaping within the site will not be visible externally.

The Council has offered to cover the cost of planting some trees in the gardens of those residents most affected, to mitigate the visual impact of the development.

Costs of Reinstatement of Condition: This would include the cost of landscape architects, the landscaping itself. It would then be the responsibility of the property owner to maintain the trees thereafter. No guarantee that such landscaping would be retained in perpetuity although this

would be in the residents control.. Estimated cost to the Council of imposing the condition is £50,000.

Recommendation: To not impose the condition, but for the Council to plant trees and landscaping features within the gardens of those residential properties most affected by the development. In reality, this may provide more benefit to the residents than the condition may have actually achieved.

- **Condition (10):** Prior to the commencement of any development above slab level a Biodiversity Enhancement Scheme detailing specifications and locations of biodiversity enhancements and ongoing management prescriptions shall be submitted to the Local Planning Authority for approval. Once approved the scheme shall be implemented prior to the occupation of the building hereby permitted.

Reason: To ensure long term biodiversity enhancement of the site.

Significance of condition: Limited. Although this represents an unfortunate missed opportunity for the site to have greater amount of biodiversity than the site had in its original condition, the requirements are not fundamental to the scheme. Harm would not be caused by its omission.

Costs of Reinstatement of Condition: This would involve the fees from ecology consultants to implementation of any biodiversity enhancement scheme, and their maintenance. Estimated cost to the Council of imposing the condition is £10,000.

Recommendation: To not impose the condition.

- **Condition (11):** Prior to any development taking place, the developer shall carry out an assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of the site.

The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and approved by the Local Planning Authority before construction works commence.

Reason: To ensure that the site is fit for its proposed purposes and any potential risks to human health, property, and the natural and historical environment, are appropriately investigated and minimised.

Significance of condition: Significant, in terms of public health matters. However an Environmental Review and Ground Investigation Report was recently submitted to the Council, and Environmental Health Officers have agreed it is acceptable. The applicant would be obliged to comply with the report under Environmental Health legislation, and regulated by the Council and the Environment Agency.

Costs of Reinstatement of Condition: This would involve the assessment of ground conditions, the subsequent report and any remediation required. However, as mentioned above this can be adequately dealt with under separate legislation. Although difficult to judge without survey information, the estimated cost to the Council of imposing conditions (11, 12, and 13) is £300,000 to £500,000.

Recommendation: Given the above, it is recommended not to impose the condition.

- **Condition (12):** Any land contamination remedial works shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report prior to first occupation of the development.

Reason: To ensure that the site is fit for its proposed purpose and any potential risks to human health, property, and the natural and historical environment, are appropriately investigated and minimised.

Significance of condition: Significant, in terms of public health matters. However an Environmental Review and Ground Investigation Report was recently submitted to the Council, and Environmental Health Officers have agreed it is acceptable. The applicant would be obliged to comply with the report under Environmental Health legislation, and regulated by the Council and the Environment Agency.

Costs of Reinstatement of Condition: This would involve the assessment of ground conditions, the subsequent report and any remediation required. However, as mentioned above this can be adequately dealt with under separate legislation. Although difficult to judge without survey information, the estimated cost to the Council of imposing conditions (11, 12, and 13) is £300,000 to £500,000.

Recommendation: Given the above, it is recommended not to impose the condition.

- **Condition (13):** Should any unforeseen contamination be encountered the Local Planning Authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out to the written satisfaction of the Local Planning Authority.

Reason: To ensure that the site is fit for its proposed purpose and any potential risks to human health, property, and the natural and historical environment, are appropriately investigated and minimised.

Significance of condition: Significant, in terms of public health matters. However an Environmental Review and Ground Investigation Report was recently submitted to the Council, and Environmental Health Officers have agreed it is acceptable. The applicant would be obliged to comply with the report under Environmental Health legislation, and regulated by the Council and the Environment Agency.

Costs of Reinstatement of Condition: This would involve the assessment of ground conditions, the subsequent report and any remediation required. However, as mentioned above this can be adequately dealt with under separate legislation. Although difficult to judge without survey information, the estimated cost to the Council of imposing conditions (11, 12, and 13) is £300,000 to £500,000.

Recommendation: Given the above, it is recommended not to impose the condition.

- **Condition (14):** All existing trees, woodlands and hedges to be retained are to be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction - Recommendations' All protective measures especially the fencing and ground protection must be put in place first, prior to any other work commencing on site (this includes vegetation clearance, ground-works, vehicle movements, machinery / materials delivery etc.) The fencing shall be of the same specification as that depicted in figure 2, page 20 and ground protection as specified in 6.2.3.1 - 6.2.3.5 pages 21/22 in BS 5837: 2012.

Signs informing of the purpose of the fencing and warning of the penalties against destruction or damage to the trees and their root zones shall be installed at minimum intervals of 10 metres and a minimum of two signs per separate stretch of fencing.

Once erected the local authority tree officer shall be notified so the fencing can be inspected and approved.

The Root Protection Area (RPA) within the protective fencing must be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, water-logging, changes in level, building materials and all other operations, personnel, structures, tools, storage and materials, for the duration of the construction phase.

The developer shall submit details of the proposed layout and general arrangements of the site in relation to the trees to be retained. In particular details of storage areas including what substances will be stored and where, locations of car parking, welfare facilities, cement plant, fuel storage and where discharge, filling and mixing of substances will take place. The details should include site levels to enable risks posed to trees to be quantified. The RPA will be amended as the arboriculture officer feels appropriate after taking account of the details submitted.

No fire shall be lit such that it is closer than 20 metres to any tree or that flames would come within 5 metres of any part of any tree. Earthworks, level changes, service runs, foundations and all other works involving excavation should not be located within the root protection areas.

Reason: To ensure that the development maintains and enhances existing and proposed landscaping features.

Significance of condition: Limited. Much of the works have been carried out and the building works operation on site is established.

Costs of Reinstatement of Condition: This would include Arboriculturalist fees, implementation and monitoring of tree protection measures. Potential cost of changing on site operations. Estimated cost to the Council of imposing conditions (14, 15 and 16) is £10,000.

Recommendation: Given how advanced the building works on site are, imposition of the condition is unlikely to achieve much in reality, but would potentially lead to significant cost to the Council. It is recommended not to impose the condition.

- **Condition (15):** A tree protection plan in accordance with BS 5837:2012 shall be submitted. It should include a scale plan accurately marking the position of all the retained trees and hedges, the extent of the root protection areas, the BS 5837: 2012 tree protection fencing along the root protection area margin, any areas to be covered in BS 5837: 2012 ground protection, construction details for the BS 5837: 2012 fencing and ground protection and sufficient detail of hard & soft landscaping works, service and drainage runs and proposed & existing spot levels in sufficient numbers and at appropriate spacing's to enable the impact of the development on the tree root zones to be assessed.

Reason: To ensure that the development maintains and enhances existing and proposed landscaping features.

Significance of condition: Limited. Much of the works have been carried out and the building works operation on site is established.

Costs of Reinstatement of Condition: This would include Arboriculturalist fees, implementation and monitoring of tree protection measures. Potential cost of changing on site operations. Estimated cost to the Council of imposing conditions (14, 15 and 16) is £10,000.

Recommendation: Given how advanced the building works on site are, imposition of the condition is unlikely to achieve much in reality, but would potentially lead to significant cost to the Council. It is recommended not to impose the condition.

- **Condition (16):** Construction details for raised construction, nil-excavation surfaces and foundations shall be submitted for approval, demonstrating that they are both specifically tailored to and are feasible in this site context. Details of the protocol for altering the protective fencing and ensuring the root protection areas remain undamaged during the raised path construction shall also be submitted for approval.

Reason: To ensure that the development maintains and enhances existing and proposed landscaping features.

Significance of condition: Limited. Much of the works have been carried out and the building works operation on site is established.

Costs of Reinstatement of Condition: This would include Arboriculturalist fees, implementation and monitoring of tree protection measures. Potential cost of changing on site operations. Estimated cost to the Council of imposing conditions (14, 15 and 16) is £10,000.

Recommendation: Given how advanced the building works on site are, imposition of the condition is unlikely to achieve much in reality, but would potentially lead to significant cost to the Council. It is recommended not to impose the condition.

- **Condition (17):** Prior to any development above slab level, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority, the Plan shall then be updated, in order to reflect operations on the site.

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

Significance of condition: Significant. In the interests of protecting the amenity of nearby residents.

Noise barrier has been secured by the approved plans condition. The developer will need to carry out the development in accordance with the approved plans. This is enforceable.

A Noise Assessment has since been submitted to the Council and states that the development meets with the requirements of BS 4142:2014, and that 24 hour warehousing is acceptable in this location. The Council cannot however secure the recommended mitigation measures, although the development would be subject to Environmental Health compliance under separate legislation.

Costs of Reinstatement of Condition: Includes consultant fees for Noise Management Plan, implementation of mitigation measures, and maintenance, and any losses as a result of those measures. Estimated cost to the Council of imposing the condition is £5,000 to £10,000.

Recommendation: The financial cost to the Council would be significant. It is recommended not to impose the condition.

- **Condition (18):** Any vehicles operating on the site shall be fitted with broadband (White noise reversing alarms).

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

Significance of condition: Significant in terms of amenity of nearby residents, particularly at unsociable hours.

Costs of Reinstatement of Condition: Similar assessment to (and being part of) the Noise Management Plan discussed above. Albeit less than the whole cost of all mitigation measures within the Noise Management Plan. The financial cost would be that of fitting all vehicles operating on the site with adequate reversing alarms. The Council would not have control over which vehicles are entering the site and these could be fitted on any and many vehicles. The Council would have no control over which vehicles enter the site and the cost to the Council could be considerable. Estimated cost to the Council of imposing the condition is £5,000.

Recommendation: It is recommended not to impose the condition.

- **Condition (19):** Any plant and/or air handling units which are roof mounted shall be directed away from residential properties or suitably screened, to limit operation noise to 5dB below background levels at the nearest noise sensitive receiver.

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

Significance of condition: Moderate given the distance and interrupted line of sight of plant to residential properties.

Costs of Reinstatement of Condition: The Noise Assessment identifies that the control of noise associated with any fixed external plant can be achieved through the selection and siting of plant and/or through standard noise mitigation techniques. The development would also be subject to Environmental Health compliance under separate legislation.

Estimated cost to the Council of imposing conditions (19 and 20) is £25,000 to £75,000.

Recommendation: It is recommended not to impose the condition.

- **Condition (20):** The proposed noise barrier, as shown on the submitted drawings shall be installed prior to the occupation of the warehouse and shall thereafter be retained.

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

Significance of condition: Significant in terms of protecting the amenity of nearby residents.

Costs of Reinstatement of Condition: The barrier would need to be erected to comply with the approved plans condition, although this does not require it to be provided before occupation of the development, nor retention in perpetuity. This could include maintenance costs of the barrier and an unknown cost of providing it earlier than envisaged by the developer.

Estimated cost to the Council of imposing conditions (19 and 20) is £25,000 to £75,000.

Recommendation: It is recommended not to impose the condition.

- **Condition (21):** Prior to any development above slab level, a Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The site shall therefore be managed in accordance with the approved details.

Reason: To ensure the development provides adequate movement within the site and at the access points.

Significance of condition: Limited. It would be within the interest of the site occupier to provide adequate movement of vehicles within the site. Traffic movements at access points and the public highway are under the jurisdiction of the highway authority or police service.

Costs of Reinstatement of Condition: Includes consultant fees for Traffic Management Plan, implementation costs of mitigation measures, and maintenance, and any losses as a result of those measures. Estimated cost to the Council of imposing the condition is £5,000.

Recommendation: It is recommended not to impose the condition.

Revocation and costs

Revocation by Section 97 of the Town and Country Planning Act 1990

- Cost of land – £13m
- Costs of professional and other fees to date – £1m to £1.6m to date
- Demobilisation (contracts (ground works and steel frame), plant, other materials etc. committed to) – £3m to £7m+
- Developer margin – £2.5m to £4.5m

Total cost to the Council of £11.75m to £21.55m plus legal costs for both parties and further significant costs if it is pre-let. If the developer has pre-let the unit then there will likely be other cost implications, especially if the developer incurs penalties and/or loses the pre-let. The developer would need to confirm and evidence this.

Legislation

Section 97 of Town and Country Planning Act 1990 (the Act) is the relevant section that governs revocation/modification order.

Section 107 of the Act sets out the law governing a claim of compensation following a revocation order made under s97 of the Act. Under s107 of the Act, a claim for

compensation may be made to the local planning authority, where it is shown that a person with an interest in the land:

- Has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- Has otherwise sustained a loss or damage which is directly attributable to the revocation or modification

Section 107 (2) states that any expenditure incurred in the preparation of plans for the purposes of work, or upon similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work. It is also possible for a person with an interest in the land to make a claim for compensation for the depreciation in the value of the land. The law prescribes the method of calculating for a claim of compensation of this nature

In a claim for the above-mentioned, the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

Interest is also payable under this section.

Where compensation is paid under this section for depreciation in land value, it is potentially recoverable under s.111 of the Act if the land is subsequently developed.

A claim for compensation under this section must be made in writing to the local planning authority within 12 months of the date of the decision. Any disputed compensation is to be referred to the Upper Lands Tribunal for determination.

Section 102 of the Act is the relevant section which allows a local planning authority to issue what is known as a discontinuance order. Such an order may require the discountenance of use, or impose such conditions in the continuance of a use, or require such steps to be taken for the alteration or removal of the buildings or works.

Section 115 of the Act sets out the law governing compensation following an order made under s102 of the Act. A claim for compensation under this section may be made to the local planning authority if it is shown that any person has suffered damage as a consequence of the order:

- By depreciation of the value of an interest to which he is entitled in the land; or
- By being disturbed in his enjoyment of the land

The authority shall pay to that person compensation in respect of that damage.

It should be noted that a claim may be made under this section by any person who carried out any works in compliance with the order, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.

A claim for compensation under this section must also be made within 12 months of a decision. Interest is also payable under this section.

Case Law

Alnwick District Council v Secretary of State for Environment, Transport and Regions and others [2000]

The Council had given planning permission for a superstore, not appreciating the proposed size, which would contravene national planning policy. In the face of the Council's objections, the Secretary of State issued a revocation order, with the payment of compensation falling on the Council in the region of £3-4M. The Inspector indicated that he regarded the issue of compensation as irrelevant as a matter of law. The Secretary of State also adopted that reasoning.

The Council in this case sought to quash the order, with the principal argument being that liability for compensation payable by virtue of the revocation order would put the Council in severe financial difficulties.

it should be noted that case law in respect of whether compensation should be a relevant consideration has changed since this case, which is no longer considered good law. More recent case law from 2012 sets out the position regarding the consideration of compensation, these are discussed below. What can be taken from this case however, is that the compensation that was payable by the Council was in the region of £3-4M.

R (Usk) Valley Conservation Group) v Brecon Beacons National Park Authority [2010]

This case related to a discontinuance order under section 102 of the Town and Country Planning Act 1990. Ouseley J. disagreed with Richards J in Alwick and held in this case that compensation was a relevant consideration and could be had regard to when deciding whether to issue a discontinuance order.

The Health and Safety Executive v Wolverhampton City Council [2012] (Supreme Court Decision)

This case was an appeal, which raised an issue of construction of the planning acts, on which there have been differing views in the Courts, as can be seen above. The issue arose in the context of planning permission granted by the Council for four blocks of student accommodation in proximity to a site used for the storage of liquefied petroleum gas. The question for the purposes of the appeal, was in consideration under section 97 of the Town and Country Planning Act 1990 whether it appears to a local planning authority to be expedient to revoke or modify a permission to develop land, is it always open to that local planning authority to have regard to the compensation that would or might have to be paid under section 107 of that act.

This case cited Alnwick, and the Judge considered that Richards J took too narrow a view of the law and had there been more substantial evidence that the order would leave the authority in serious financial difficulties; it may have resulted in a different decision.

In this case the Judge stated:

“24. ...In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing.

25. Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved, and taking account of any more economic ways of achieving the same objective. Of course, the weight attributable to cost considerations will vary with context...”

Portland Stone Firms Ltd and another v Dorset County Council [2014](Upper Lands Tribunal)

The claimant claimed compensation under s107 of the Town and Country Planning Act 1990 following the issue of a modification order under s97 of that Act by the defendant Council. The claimants claimed £17,165,100 in compensation in respect of loss of profits and loss of royalty income.

The planning permission, which was the subject of the modification order, was a permission dated 14 August 1951 granted over 323 hectares on Portland. The planning permission was subject only to two conditions and in consequence had the effect of permitting the claimants to work and win stone from the quarries with little restriction.

The modification order became effective on 18 February 2009. Its effect was to impose six conditions on the 1951 permission. This was as a result of a change in legislation in accordance with the Conservation (Natural Habitats etc) Regulations 1994; as a result Dorset County Council became obliged to review the 1951 permission.

The additional conditions restricted or prevented quarrying in the coastal strip or any part thereof.

The crucial question at the Upper Tribunal was whether and to what extent the claimants have “sustained loss or damage which is directly attributable to the...modification.”

Other options

Judicial reviews (JR) are required to be submitted within six weeks of a planning decision. This period had passed before officers were aware of the error.

Initial advice from Counsel gave the option of an out of time JR. While a Local Planning Authority is unable to bring a JR against itself, this can be done by a third party. (a third party can be a Councillor) Whilst this is supported by case law, the only case we are aware of dates back to 1997. Permission would need to be sought from the Administrative High Court to bring a claim for JR and also permission to bring an out of time JR. Permission would need to be granted for both before a case is heard in the High Court. A Judge considering the papers seeking permission for the aforementioned could dismiss the claim.

If permission was successful, the Council would seek to quash the permission, to enable the correct decision notice to be issued. In the case of *Bassetlaw* the Court decided that a planning permission might be declared void to enable a local planning authority to avoid paying compensation when planning permission is improperly and invalidly granted. Of course, each case will be assessed on its own merits. In general terms, a claim may succeed where the decision was invalid and a quashing order would not give rise to manifest unfairness.

Officers are of the view that the chances of success are likely to be low, but it should not be ruled out at this stage. Further Counsel opinion is being sought.

Overall Conclusion

It is Officers view that a revocation by section 97 of the Town and Country Planning Act 1990 or a further section 102 Order by to impose the missing conditions, by Section 102 of the Town and Country Planning Act 1990, will be a highly significant impact on the public purse with a risk of putting the Council in financial difficulties as compensation is inevitable. The planning decision made to grant permission, whilst not a popular one, was lawful. Officers recommended approval having considered the planning merits, and DCC agreed and approved the development. Withdrawal of this lawful decision will have consequences. The error made was the issuing of the decision without a number of the conditions and following the assessment of each of these, we have progressed the Section 102 order on one of them..Therefore, officers advice is not to pursue a revocation order or further Section 102 orders.

Following Counsel opinion, it was the view of officers that imposing a condition to limit the lighting on the site would attract minimal compensation; which has been estimated above as £50,000 - £150,000. Of course an expert financial opinion would be required to fully assess the impact of the condition that has been imposed on the s102 Order. The applicant, having sought their expert financial opinion has estimated compensation at £2.5M - £5.5M.

There is a clear difference in numbers between the Council's estimated figures and the applicant's expert opinion figures. Whilst we can only estimate at this stage; the financial risk to the Council could be significant. This is in respect of the Section 102 Order alone, the Council's estimated cost of revocation, is considerably higher.

Case law is clear that the cost of compensation is a material consideration in such cases. As above, the Supreme Court Judge stated in - *The Health and Safety Executive v Wolverhampton City Council* [2012] that a local authority "must" have regard to the cost to the public of its actions;.

“24. ...In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing.

25. Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved, and taking account of any more economic ways of achieving the same objective. Of course, the weight attributable to cost considerations will vary with context...”

The Council has to consider the precedent of any decision made. It could be a costly risk to the Council where others would expect the imposition of conditions by way of a S102 Order, or revocation of the Council's decisions on planning applications, following the grant of planning permissions.

Enforcement Update

The Council's Senior Planning Enforcement Officer and the developer's Project Manager meet regularly to ensure that the development is being built in accordance with the approved plans.

To date there has been no deviations from the approved scheme. The monitoring continues.