



Judicial Review Update (June 2018)

In late April 2018 an application was made for permission to hold a Judicial Review into HCC's decision to grant planning permission for the Katherine Warington School on land off the Lower Luton Road in Batford. The application was made by David Cairns, Chairman of Right School Right Place (RSRP).

What is a Judicial Review?

A Judicial Review (JR) process typically has two steps – an Application, which is followed by a Hearing. At the application the Judge will listen to outline reasons why a hearing should be granted and if satisfied there is a case to answer grants a Hearing for a later date. The parties involved then have a period to prepare detailed cases. In this case however one of the parties involved has made a further application to the Court for an “expedited” Hearing – this has resulted in an earlier date and what is known as a ‘rolled-up’ Hearing – in which the Application and the Hearing (if granted) follows immediately.

Who is involved?

A JR will generally involve two parties – the Claimant who has made the application and a Defendant – the body that the claim is against. In this case the Defendant is Hertfordshire County Council, but only in their capacity as a Planning Authority. Two other parties have registered as Interested Parties – Hertfordshire County Council again as a co-applicant and the Department for Education through its subsidiary Education and Skills Funding Agency (ESFA) as the other co-applicant. Both HCC factions are entitled to put matters to the Court as are the ESFA; it is the ESFA that requested the expedited hearing. The separate interests of HCC mean that they employ two different sets of legal teams, operating behind what they define as an ‘ethical wall’.

When does the case come to Court?

The Application has been scheduled for **Tuesday 10th July 2018**; if granted the Hearing will continue that day and into Wednesday 11th July 2018. No specific date is given for the outcome of a Hearing, however the Courts generally would expect to pass a judgement before the end of the ‘Term’, which is 31st July 2018. (The Courts do not resume for routine business until 1st October).

Why was this case urgent?

The ESFA applied to Court for an expedited Hearing on the grounds that the matter needed urgent resolution and could not wait for the ‘normal’ period to elapse. Their argument was that there is an urgent need for the school and that, crucially, they needed to start work by the end of July 2018 in order to be on target for a 2019/20 intake, with the main buildings occupied from January 2020. The Court accepted that argument when it drew up its timetable.

The case for urgency is open to question. When submitting the applicants identified a clear timetable for a five month build of a Sports Hall: March – August 2018, to be ready for 180 entrants in early September 2018. They now require over twice the time and won't guarantee occupation until January 2020. There are still only 180 pupils planned in first year – the radical difference in

timetables casts doubt on whether the original timetable could have been met; the step change in timing throws doubt on argument for urgency. The bigger question is not which version should you believe but should you trust either of them. The 'sister' project in Croxley Green began build works in April with the same contractor – Kier; they have already indicated their target occupancy – September 2019 – is likely to be pushed back a few weeks.

How is the case affected by the recent developments?

The main effects have been two fold – with the addition of interested parties the duration of the hearing has increased, and the granting of an expedited rolled-up hearing means that all preparation has to be made in advance. Therefore the costs, which are mainly for legal representation, have both significantly increased and need to be met much quicker than originally thought.

The need to concentrate and fund the main case against the Planning Authority (HCC) was a consideration for not challenging the expedition request. However correct a further challenge would have simply eaten up funds. RSRP are also well aware that after many years of HCC ignoring residents, there is much to be said for not delaying any review. We are also aware that greater certainty will be provided for all interested parties if the matter can be resolved sooner and particularly before the new school transfer season begins in early Autumn.

We are acutely aware that the biggest effect is on the cost of the case. In the course of preparing the application we declared the amount spent prior to submitting the JR application – this already included in excess of £40,000 of legal fees, for the most part in advice and challenges to HCC since the 2013 announcement. We set out to raise the balance to see through what we believe to be a well-founded case, one which could have been resolved on many occasions since the announcement, had HCC wished to engage – it did not, its Local Councillors did not and it does not appear to have any concerns about heaping financial pressure on its residents when they legitimately question its actions.

Funding Appeal

An extra day in Court is estimated to cost £10-20,000. To help meet this anticipated cost, an appeal has been launched on crowdjustice.com – a service designed for this type of case. The funds raised go directly to the legal representatives and will be used for the case. RSRP continues to operate its other fundraising methods and will continue to pursue holding the Council to account for its many failings. However the immediate need is make sure that Hertfordshire County Council do not get away with their decision to irrevocably destroy Green Belt by simply bludgeoning their way through. The JR is only means by which the grant of planning can be challenged and it has an extremely limited timetable.

We are pleased that in the short time it has been running 60 people have already contributed to the crowdjustice.com appeal. Our thanks go to those who are helping us this way. We are asking you to act now and make sure this Council is held to account on this decision and either support us through the crowdjustice.com appeal or through our other established fundraising routes (see below). The link is provided below. We will continue to post information about the case and how it is progressing through this site and our other media.

<https://www.crowdjustice.com/case/save-batford-farm-fields/>

