

Review of Outcome of Judicial Review

The following document is RSRP's review of the JR held 10-11 July 2018 with Judgement handed-down on 2 August 2018. It should be noted that, in accordance with procedure, the Claimant (David Cairns, Chair of RSRP), exercised his right to lodge a pre-sealing appeal request. This was considered prior to the hand-down of the judgement and the outcome reflected the Judge's consideration (and rejection) of this specific appeal.

As a result there was a need to understand the legal options and assess the requirements of these before making any statements. Considerations include further actions and the grounds this could be based on, the likelihood of success and the costs involved. There are also considerations of what other options can be pursued that do not relate to the planning authority functions.

In summary the Judicial Review was requested on April 26, six weeks after the publication of the Decision Notice. The JR was applied for against the Planning Authority function of Hertfordshire County Council (who became the Defendant) and subsequently the Joint Applicants – HCC (Education Department) and Secretary of State for Education (through the DfE agency Education and Skills Funding Agency) were Interested Parties. It was the Government's Interested Party that applied for the expedited 'rolled up' hearing, which was granted by the Court.

The Court Sessions took place over 2 days, dealing first with late admissions to evidence, then an amended wording (requested by Judge) before starting on the main business of the Hearing. There were two parts to the Hearing – the application to have a JR and the JR itself. In practice the Judge did not announce permission to have a JR had been granted during the Sessions, but took all evidence and arguments. The end product was an Order – summarising the outcome and other matters – and a Judgement which is a 31 page document.

In brief the Application was granted on all Grounds (and therefore it was a full JR); the Judge found that on one ground the Claim was correct as there had been a failing on the part of the Council Planning Authority. The other two grounds were dismissed. More details are provided in the accompanying documents, however the salient points were that on the Ground that was upheld the Council were found not have undertaken assessment work based on the nature of the Planning application that should have been done (and that should have been done ahead of the application being accepted) but went on to decide that it was unlikely that the outcome would have been different the Judge would not quash the Planning Application. The other two grounds were dismissed on the basis that the Judge viewed the two matters to be within the remit of 'planning judgement' and particularly that the Courts put weight on not interfering with Planning Officer judgement unless there was a clear point of law that had been breached – in essence the Judge accepted the Planning Officer's right to choose from the evidence before him that which he considered relevant expert opinion. As a result neither argument in the other Grounds was tested by the Court for its accuracy – or the doubt that it may have cast on the accuracy that the Officer chose. This would generally fall under the consideration of irrationality, which is known and has been accepted by the courts as a valid argument but is a high bar to clear.

The Process allows the directly named parties to review the draft decision and raise any points before the decision is sealed and handed-down. In this instance two parties challenged aspects – one on reducing the time available for any Appeal (from standard 21 days to 7 days) and the other challenging the exercise of the Judge's discretion in not awarding relief for an identified failing. The timing of this type of challenge means it is handled as an Application to Appeal within the JR time

frame. The Judge refused the Application (challenging her decision) but granted the request for the greatly reduced Appeal time.

The third document produced by the Court was the Application for Leave to Appeal, which included the Judge's decision and a brief description and reasons. The formal Appeal process requires an Application to the court of Appeal, and as a result of the Court Order this would need to be lodged with the Court by Thursday 9 August and would, in effect, form a separate legal case.

The documents now produced on the website are as follows:

- Press Releases originally released on 8th and 10th August (posted below)
- A more detailed analysis of the Court Judgement (in the document library on website)

These should be read in conjunction with previous announcement made after release of judgement on 2 August (published previously). As the press release notices explain, as at the 8th August no decision had been made relative to an Appeal. By 10th August sufficient information had been gathered, legal opinion sought and it was decided to make an Application to Appeal. As a result there are some elements of the case that we are unable to discuss and our initial analysis is presented in a manner to reflect this. It is our understanding that the Application will go before the Court authorities for review, and if successful an Appeal Court will then be allocated. Any such date will be determined by a number of factors including availability of the requisite number of Judges.

120818