



## YAXHAM PARISH COUNCIL

### MINUTES OF THE JUDICIAL REVIEW WORKING GROUP MEETING OF THE PARISH COUNCIL held remotely over Zoom at 4.00 pm on Friday 18<sup>th</sup> December 2020

**Present:** Cllrs Ian Martin (IM) (Chairman), Maggie Oechsle (MO) (Vice Chairman), Chris Couves (CC), Anthony Cheetham (AC), Bob Gust (BG), Peter Lowings (PL) and Richard Whadcoat (RW).

*(In the absence of the Clerk, the Chairman volunteered to do the minutes)*

#### 1. Chairman's Opening Remarks

The Chairman welcomed everyone to the meeting and explained the Zoom protocol to members of the public.

#### 2. Apologies for Absence – None.

#### 3. Declarations of Interest: No disclosures made

#### 4. 3PL/2018/0021/D Development Site, Land off Elm Close NR19 1RW – Judicial Review

The Chairman reported the email and phone-call discussions with the barrister who had not produced terms as at the Extraordinary Parish Council (EPC) Meeting on the 16<sup>th</sup> December. He had concluded that the Council did not have an argument to mount, and if the Council wished to proceed with the application for Judicial Review then he would not be prepared to mount the case (see attachment). The key issue was that the Outline permission in 2016 had permitted development in principle, and due to Breckland's poor wording of that decision there was no limit on the number or density of dwellings. If the Neighbourhood Plan had been in place at the time then its policies would have been applied, but at reserved matters those policies did not have the same role and, although the application was in conflict with those policies there was deemed to be no actual harm as a result. MO reported her researches since the EPC and that there was a case where Neighbourhood Plan policies were deemed in line with the NPPF to have significant weight. The barrister involved was potentially available to have a Zoom discussion, but would charge for this. IM then said that the PC had, because of the Judicial Review timetable, two options to consider, both respectable and reasonable. The first was to conclude that the weight of opinion was growing that we were unlikely to win, that we had pushed this as far as we practically could, and that it was perfectly reasonable to withdraw at this stage. The second was to decide to proceed with a further barrister's opinion for £1,100+VAT. Each Cllr then offered their comments. In conclusion, the Chairman summarised the feeling of the meeting that with very heavy hearts it was the view of the Councillors present that in the light of the barrister's opinion, the forthcoming Dumpling Green application Appeal decision, and that we may only be arguing about 42 versus 20 or 30 dwellings, then we have taken this as far as we reasonably can and therefore do not pursue Judicial Review in this case. All agreed.

#### 5. Any Other Business – For information

Railway Farm Flood Risk - The Chairman reported an eventually very positive site meeting and that a report from the LLFA will follow. He particularly thanked Cllr Cheetham for all his work on this and with the Participants at the meeting.

Communications from a resident - The Chairman reported that a further email/letter had been received from the resident. He outlined a draft response that he and MO had drafted. All agreed the approach.

There being no other business the meeting was closed at 4.40 pm

Attachment

From **Timothy Leader**

17 Dec  
2020,  
00:51

To ian4yaxham@gmail.com

Dear Ian

A quick note to pick up where we left off.

The key issue is whether the Inspector has construed the relevant policies of the Neighbourhood Plan correctly and then applied them in accordance with s.38(6) PCPA 2004. If he did not, he will have made an error of law, and the decision is liable to be quashed.

Having read the decision carefully, I do not think this decision can be challenged. The Inspector applies the Neighbourhood Plan policies, finds conflict with them, but concludes the failure of the scheme to comply with matters that they are intended to control (principally density) does not cause any harm, so that the reserved matters proposals are acceptable.

He then finds the scheme complies with the relevant policies of the BLP.

Whilst he might be criticised for failing to assess compliance with the plan as a whole (i.e. the BLP and the YNP combined) I think the High Court would probably decide it is clear he thought the scheme does comply with the plan, or that to the extent it does not the absence of harm caused by conflict, coupled with the benefits of the scheme, rendered it acceptable.

I do not deny that there is an argument to be made, However,... a decision will only be quashed for a clear and substantial error of law. In this case I think the Parish Council would thus probably lose, and if it were my money I would not risk it.

I should add the weight to be given to different policies is a matter for the Inspector; the court will not intervene in that judgment, unless it is plainly irrational. I am afraid this decision cannot be characterised in that way.

I'd be happy to discuss this further. I'll be free late afternoon on Thursday, or in the evening.

Kind regards

**Tim**