

SHREWSBURY TOWN COUNCIL

Meeting of the Extraordinary Finance & General Purposes Committee

Held in Council Chamber, Shirehall

At 6.00pm on Tuesday 11th April 2023

PRESENT

Councillors: A Mosley (Chair), P Moseley, M Davies, J Dean, N Green, K Pardy, A Phillips and D Vasmer

IN ATTENDANCE

Helen Ball (Town Clerk and Heather Phillips (Committee Clerk); two members of the public and one member of the press.

105/22APOLOGIES FOR ABSENCE

RESOLVED:

That apologies be accepted from Councillors R Dartnall and R Wilson.

106/22DECLARATIONS OF INTEREST

Shropshire Councillors	Those twin-hatted members declared a personal interest in any matters relating to the Town Council's relationship with Shropshire Council.
Councillor Phillips	Declared a personal interest in Item 107/22 as ward member.

107/22CONSIDERATION OF JUDICIAL REVIEW OF 21/05743/OUT HENCOTE

Councillor Mosley welcomed all to the meeting including members of public in attendance and listening to the live broadcast. The meeting had been convened to debate whether a judicial review should be raised against Shropshire Council after questions had been raised as to whether all aspects of the law had been followed.

Councillor Phillips had invited Ben Jephcott to the meeting as a campaigner against the further development of the Hencote site off the Ellesmere Road.

Ben Jephcott began by formally submitting a petition signed by 320 residents of Shropshire (98% from the Shrewsbury area) against the proposed development under planning application 21/05743/OUT. He had been campaigning for 8 years against the continued successive developments that in his view were eating away the hillside and leaving a shadow over the lives of those involved. For months there had been an urge to apply for judicial review of the planning process and he made the following four points of support:

- Elected Shropshire Councillors had never voted in favour of this application.
- The question as to who would pay the fees of those care home residents unable to pay had not been decided.
- Section 106 rules for this venture did not meet the statutory tests.
- The report from landscape consultants was not taken into account, for example the report writers were not invited, and no questions were allowed.

He concluded by emphasising that there was a lot of public disquiet about this development and that it had felt like a landslide that could not be stopped.

Councillor Mosley sought clarification as to whether the request was to submit a Judicial Review against Shropshire Council or the Planning Inspectorate. Mr Jephcott advised that it was the nature in which the Planning hearing was in effect curtailed, the fact that the Landscape Consultant had not been invited to attend the hearing and subsequently could not be challenged and the level of planning balance that changed the Planning Officer's view on the application.

Councillor Phillips said that one of the grounds for judicial review was that Shropshire Council had given no reason why the Wheatcroft Principles had not been allowable. He expressed concern that if judicial review was not sought against the planning inspectorate then it would be a signal to any developer that it can make last minute changes to plans without challenge. Even if the chances of success were not high, it was worth going for.

The Town Clerk said that, following the Full Council motion, the Deputy Town Clerk and RFO had approached two solicitors that Council were currently engaged with on other matters, and that neither were willing to proceed.

The Town Clerk subsequently contacted Andrea Pellegram Ltd, a Planning Firm highly respected in the Local Council Sector, and provided links to all documentation including access to the Planning Portal, the Inspector's Decision, Council's Motion, the Appellants letter, which was submitted to Full Council, as well as to the correspondence from Mr Jephcott for them to review.

The Town Clerk reported that in a conference call with Andrea Pellegram Ltd they said that, having read the documentation, it was their considered opinion that the Town Council did not have grounds for a Judicial Review. The decision by the Secretary of State did not look illegal to them and in their view had not misinterpreted planning law. They felt that it was also not irrational – the inspector was entitled to apply the planning balance in the way that she did.

This left procedural unfairness as a route to Judicial Review. The inspector had expressly considered public concerns and had reviewed public comments on the application, and she allowed representations to anyone regardless of whether they had submitted a Rule 6 application to speak. She had been quite clear within her Decision Notice that everyone had their say and that any evidence presented was considered.

As the local authority was not the decision-maker on the appeal, there was no means to hold them to account through a judicial review process that would have an effect on the decision by the inspector.

They pointed out that the National Planning Policy Framework maintained a presumption in favour of a sustainable development and both the Planning Authority and Planning Inspector had a duty to work towards approval. In terms of the s106 agreement, they felt that the Planning Authority would have been required to enter into a lengthy discussion on its content and they would be within their right to not defend the appeal if they believed that on balance it ameliorated their objections.

Their conclusion was that it would be a big waste of public money to try to challenge this and they would not be willing to proceed to formal instruction.

The Town Clerk concluded that at this stage the three separate firms that had been contacted were unwilling to proceed. The 6-week timeframe for submission of a Judicial Review would expire on 12 April 2023. The Town Clerk had downloaded the application but did not believe she had enough information, nor a solicitor/counsel identified, to defend it.

Councillor Dean accepted the Town Clerk's conclusion but thought that the Town Council should still express its opposition and raised the following points:

- The Town Council should not assume that the planning inspectorate were impervious – there were examples of them contradicting themselves.
- On the matter of the presumption for sustainable development, the site in question was not in the local plan and therefore developing the site was *not* sustainable.
- The development was not in the best interests of Shropshire and Shropshire Council should be held to account.

Councillor Mosley added that the new local plan had not yet been approved but that the area was not sustainable.

Councillor Pardy said that the Town Council had been left in a deplorable situation and that this was one of the worst planning scenarios he had seen. He raised the following points:

- If it was so controversial, why was it not brought to committee? Where was the unitary councillor?
- The discourse around the town was that £1.3 million had been offered to Shropshire Council and that they had promptly forgotten their objections, changed their minds and given permission.
- There had been previous undue pressure put on planning members which had resulted in someone resigning.
- Although the site was private land, planning committees would not be required if any private land could be built upon without question.

Councillor Green agreed that this appeared to be a catalogue of errors. He expressed surprise as to why a major development like this did not go before the Planning Committee but was given to officers to decide. Secondly, the original decision was threadbare. Thirdly, the primary issue was that Shropshire Council's landscape consultants did not do a thorough job on assessing the impact of the development on the landscape. The landscape consultants were also not able to be challenged at the time which was very unusual. Councillor Green concluded that as Chair of Shrewsbury Town Council's Planning Committee he had been very upset; although the position on a judicial review looked thin, he expressed his agreement with Councillor Dean that members must be absolutely clear on the appalling way in which Shropshire Council had handled this situation.

Councillor Mosley remarked that Councillor Green's views were shared by all but that a Judicial Review did not seem likely to succeed nor was there time to get it together.

Councillor Phillips countered by urging members to go for judicial review against the Planning Inspectorate on the grounds of the lack of third-party scrutiny and process, and that this was the least owed to residents.

Councillor Dean supported Councillor Phillips and said that there was still one day left to launch a case for judicial review and get a solicitor on board. The Committee could also make a recommendation to Full Council to launch a protest against Shropshire Council.

Councillor Mosley asked for criteria in which to instruct the Town Clerk and it was agreed that a solicitor and barrister be sought to launch the judicial review.

It was also agreed that Councillor Green write a formal and strongly worded letter of complaint to Shropshire Council regarding the handling of the process. Although Shropshire Council were not able to be forced to review the case, the Town Council would formally put on record its areas of concern that the planning process as overseen by Shropshire Council had failed the people of Shrewsbury. This would be circulated to Group Leaders.

Group Leaders were to be delegated the decision to move to Judicial Review sometime on the afternoon of 12 April 2023 once a further attempt to seek guidance had been taken. The Town Clerk reiterated that the Deputy Town Clerk and RFO had spent the best part of 2 weeks pursuing legal advice on another matter which had involved significant submission of personal identification to get to the position of issuing instruction. Timings were too short to succeed. She said that she would contact the Town Council's solicitors again and ask them to submit the case to their barristers. Planning specialists were very unlikely to be able to give advice tomorrow.

Councillor Mosley confirmed that the balance of responsibility would be with Group Leaders and *not* the Town Clerk.

The Town Clerk asked if the Town Council's procedures in relation to seeking representation at future Planning Appeals should also be reviewed and whether the Planning Committee should take more responsibility for contacting the Planning Inspector in future. Councillor Green thought that the Planning Committee should look at appeals concerning the Shrewsbury area and consider whether to go for Rule 6 representation and therefore be better prepared should this situation happen again.

RESOLVED:

- (i) That the Town Clerk seeks further legal advice over the course of the next 20 hours to determine whether there could be grounds for Judicial Review and informs Group Leaders appropriately on the afternoon of the 12th April;**
- (ii) That Councillor Phillips, Dean & Green prepare a form of words to be the basis of the Statement of Grounds in a Judicial Review Application;**

- (iii) That Councillor Green, with advice from Councillors Phillips and Dean, draft a formal letter of complaint to Shropshire Council expressing concerns from members and local residents.

108/22CLOSING REMARKS

Councillor Mosley concluded the meeting by thanking Councillors, Town Council staff and any members of the public who had attended or had been listening to the proceedings.