

Preston Three Tier Forum Planning Application Case Study

Please note that the example given below is fictitious. Any similarity to actual events is purely coincidental

- A planning application is submitted for the erection of a new warehouse building for storage and distribution on the site of an existing mill building. The proposed scheme would necessitate the demolition of the mill.
- The mill is not listed but is considered by some to be of local historic interest.
- The mill is within an existing industrial area where the principle of storage and distribution uses accords with national and local planning policies and guidance.
- Pursuant to its delegation scheme and due to the amount of floorspace proposed, the application has to be determined by the Council's Planning Committee.
- The application is recommended for approval by officers due to its compliance with the relevant planning policies. The mill is not listed and there are no objections to its demolition from officers.
- The application is refused by Planning Committee due to concerns relating to the demolition of the mill and the loss of what they consider to be a building of historic importance. The Committee believes that the building could be retained and incorporated into the new scheme with some smaller units for storage and distribution located within the grounds of the building.
- The applicants appeal against the Council's refusal of the application and request that the appeal is considered at a public inquiry.
- The Council appoints a barrister to provide legal advice in respect of the Council's case. The initial feedback provided is that the Council's case is weak due to the scheme's compliance with national and local planning policies and guidance and given that the mill is not listed.
- As officers recommended that the application be approved, it is not considered appropriate for them to present the Council's case for refusal at the public inquiry. A number of heritage/conservation specialists are therefore approached to represent the Council.
- Following consideration of the case, all of the heritage/conservation specialists advise that they are not prepared to represent the Council at appeal as the case is considered weak.
- The appellants advise that they intend to apply for costs against the Council as they believe that the Council has behaved unreasonably in refusing the application. The appellants confirm that they have appointed a barrister, conservation/heritage specialist, a viability advisor and planning consultant.
- Officers estimate that if an award of costs against the Council is made, the amount is likely to be in excess of £100,000 taking into account the cost of the witnesses engaged by the appellants.
- The Council has no dedicated budget to cover such costs awards.
- Given the advice from the barrister, the absence of an expert to represent the Council and the extent of the costs which could be awarded against the Council, officers report the matter to the next available Planning Committee meeting to outline the options available to the Council.

- The report to Planning Committee on this matter contains legal and professional advice which is considered to constitute exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972. It is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing it. The Committee specifically considers the point and resolved that the press and public be excluded from the meeting during the consideration of the item. The matter is therefore considered privately ('below the line') at the Planning Committee meeting.
- The options presented to Planning Committee are to:
 1. withdraw the reason for refusal;
 2. nominate a member of Planning Committee to represent the Council at the public inquiry; or
 3. engage a consultant who is willing to argue that costs should not be awarded.
- During the Planning Committee meeting, and in response to questions from members, the Planning Committee is advised that the position it has adopted (ie. the refusal of the application) is not supportable, that the chances of defending that position at a public inquiry are low and that the likelihood of having costs awarded against the Council is high.
- Members are also advised that should they vote in favour of option 2, the members who could represent the Council would be limited to those who voted in favour of refusing the application and that ideally it should be a member who is familiar with the area such as a ward councillor.
- Following consideration of and debate about the options available, the Planning Committee votes for option 1.
- The appellants and the Planning Inspectorate are subsequently advised that the reason for refusal has been withdrawn and that the Council will not therefore be presenting any evidence at the forthcoming public inquiry.
- The inquiry must still proceed. Members of the public and local groups are entitled to be heard, whether or not the Council takes an active role. Members of the Council are told that they are entitled to appear in their capacity as ward members or indeed as members of the Planning Committee. They may make representations against the application as long as they make it clear that they are not speaking on behalf of the Council.
- The appellants are still entitled to seek an award of costs against the Council to cover their work and expenditure in connection with the inquiry and the fact that they have to counter the arguments of third parties and also convince the Inspector that the appeal should be allowed, notwithstanding that the Council is no longer contesting it.

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