

Next Steps following the Judicial Review – Planning Application 21/02654/FUL

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Purpose of the Report

1. To inform members of Area West Committee of a planning decision requiring redetermination following a judicial review and seek instructions in respect of that redetermination.

Public Interest

2. The Council's decision to grant planning permission for the erection of self-contained buildings to store and facilitate construction of carnival floats on land at Longforward Lane, Ilminster (the Carnival Club application) was quashed by the High Court and needs to be redetermined. It is anticipated that a significant proportion of Committee members will declare an interest in the application and may, having considered the High Court decision, decide not to take part in considering the application. Members of Area West Committee are therefore being asking if the application should be re-determined by Area West Committee or referred to Regulation Committee.

Note: this item is not the redetermination of the Carnival Club application, which will be the subject of a separate report to a different meeting.

Recommendations

3. Members instructions on whether to:
 - a) refer the application to Regulation Committee or,
 - b) redetermine the application at Area West Committeeare requested.

Background

4. As members are aware, CPRE (Somerset) challenged the Area West Committee decision to grant permission for the erection of self-contained buildings to store and facilitate the construction of carnival floats on land at Longforward Lane, Ilminster (the Carnival Club application) by way of judicial review on the grounds of apparent bias because (i) one of the members who took part and voted was an elected member of Ilminster Town Council (the Applicant); and (ii) one of the



members who took part and voted had a longstanding association with both the Chard Carnival Committee and the Eclipse carnival club and was personally pictured in the application documents among a group of individuals appearing to support the application. When the matter came before the Court, it was determined that neither member should have taken part or voted. The decision to grant permission was quashed and referred back to the Council for redetermination.

5. It should be noted that the Judge did not criticise either of the members concerned and stated that this outcome did not reflect adversely on the integrity or professionalism of either councillor as both had declared their interests openly and neither had attempted to hide their associations.

Relevant Considerations

6. The Carnival Club application falls within Area West Committee's remit under the Council's Scheme of Delegation. Area West Committee has sixteen members and requires four to be quorate (able to take a decision). At the meeting on 19 January 2022, of the fifteen members present, two declared a personal interest and did not speak or vote, five declared a personal interest, and one declared a personal and prejudicial interest and left the room. It is considered unlikely that the three members who previously declared an interest and did not take part in the determination of this application will now change their minds and participate. In addition, members who declared an interest and took part (other than those who were the subject of the judicial review) may revise their decisions following the judicial review decision and decide to take no further part. It is also possible that members who did not have an interest in January 2022 now have an interest, particularly following the local government elections in May 2022. It is of course a matter for each member to decide for themselves whether or not they have an interest in a particular matter, seeking advice as appropriate, but it seems likely that a significant proportion of the members of Area West Committee may decide they are unable to take part in any reconsideration of this planning application.
7. In the light of the above and the previous challenge to the original Area West Committee decision, members may wish to consider how and where the Carnival Club application is reconsidered. The purpose of this report is to ask the members of Area West Committee to consider whether the Carnival Club application should be re-considered by Area West Committee or be referred by Area West Committee to Regulation Committee.
8. In considering this question, the relevant provisions of the Constitution should be borne in mind.
9. The purpose of the Constitution, as set out in article 1.03 is to:
 - *enable the Council to provide clear leadership to the community in partnership with the public, businesses and other organisations;*

- *support the active involvement of the public in the process of local authority decision-making;*
 - *help councillors represent their constituents more effectively;*
 - *enable decisions to be taken efficiently and effectively;*
 - *create a powerful and effective means of holding decision-makers to public account;*
 - *ensure that no one will review or scrutinise a decision in which they were directly involved;*
 - *ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and to*
 - *provide a means of improving the delivery of services to the community.*
10. Article 1.04 provides that where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option which it thinks is closest to the purposes set out in article 1.03.
11. Article 8.03 provides for Regulation Committee to determine applications for planning permission referred from the area committees in accordance with the approved guidelines set out in part 3 of the Constitution. Section 7 of the Constitution deals with Committee Terms of Reference (TOR), with the Regulation Committee TOR set out at paragraph 6, which provides that Regulation Committee shall:
- *Determine applications for planning permission referred from the Area Committees in accordance with the approved guidelines set out in this document and the Planning Reimagined Reports to Council in February 2021.*
12. The Scheme of Delegation providing for the reference of planning applications to the Regulation Committee for determination is set out in the Constitution and provides that referral is “only necessary” in five specific instances (A – E) but this would not prevent other referrals from area committees. It should also be noted that if members decide that the Carnival Club application should be considered by Area West Committee, the Scheme of Delegation allows for referral to Regulation Committee if the officer recommendation is not accepted.

Financial Implications

13. There are no financial implications attached to this report

Council Plan Implications

14. There are no Council Plan implications attached to this report



Carbon Emissions and Climate Change Implications

15. There are no carbon emissions and climate change implications attached to this report

Equality and Diversity Implications

16. There are no equality and diversity implications attached to this report

Background Papers

- South Somerset District Council Constitution
 - CPRE (Somerset), R (On the Application Of) v South Somerset District Council [2022] EWHC 2817 (Admin) (08 November 2022)
 - Area West Committee (informal) minutes – 19 January 2022
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