

# Record of decision taken under delegated powers by a council officer



Title:	<b>Planning Application on land south of Dunsfold Road and east of High Loxley Road, Dunsfold (ref: WA/2019/0796) - Virtual Committee Meeting held on Monday 29 June 2020</b>
Key Decision:	No
Decision taken under delegation by virtue of:	<p>Monitoring Officer authority to</p> <ul style="list-style-type: none"> <li>- ensure lawfulness and fairness of decision making and to consider that any proposal, decision or omission would give rise to unlawfulness.</li> <li>- And to provide advice on the scope of powers and authority to take committee decisions under delegated authority which must comply with any legal requirements</li> </ul>

## Summary

Following the decision by the Planning and Regulatory Committee to refuse the planning application on land south of Dunsfold Road and east of High Loxley Road, Dunsfold (ref: WA/2019/0796) at the virtual meeting on 29 June 2020, the Monitoring Officer has received in excess of 100 complaints alleging that there were procedural irregularities that invalidated the result. As a consequence, Counsel was instructed to view the recording of the meeting and, first, to consider whether there were in fact any such irregularities and, secondly, what should be done to rectify them.

Whilst Counsel accepted that some technical glitches were understandable given that this was the first meeting that the Council had held remotely, she noted that some of the debate may be missing from the recording and so may not have been heard by the participants; that it wasn't clear that all members of the committee were in attendance [as a matter of law] for the whole of the debate; and that one member was unable to be heard for the duration of the meeting and had to use the private chat function to register his votes . Members must be in attendance for the whole of the item in order to vote pursuant to the Surrey Code of Best Practice in Planning Procedures. Members will not be deemed to be in attendance in order to vote unless they can both hear other committee members and be heard by them pursuant to the Local Authorities' and Police Crime Panels ( Coronavirus) (Flexibility of (Local authority and police and Crime Panel Meetings) (England and Wales) Regulations 2020 . **Counsel advises that there is a significant likelihood that the irregularities arising from the technical difficulties at the meeting would render**

**the resolution to refuse invalid and any notice of refusal invalid.** In addition, there were a number of other issues raised in the complaints that could combine to further undermine the County's position on any legal challenge.

Counsel advises that the appropriate and fairest course of action would be to take the Application back to Committee for it to be redetermined afresh with members of the public and the applicant able to make or remake their statements and with full provision for debate by members. She further advises that so long as the redetermination is undertaken properly and lawfully, any legal errors in the earlier resolution should not then be open to judicial review. Counsel reminds the authority that Committee members would need to consider the matter afresh and with an open mind.

### **Decision made**

#### Decision made:

It was AGREED that:

1. The resolution to refuse application reference WA/2019/0796 is invalid and any notice of refusal would therefore be unlawful.
2. A decision notice for the refusal of application reference WA/2019/0796 shall not be issued and the application will be referred back to Committee for determination afresh.
3. There will be full entitlement for public speakers, the applicant and the local Member to make or remake their statements orally with full provision for debate by members.

#### Reasons for Decision:

On the basis of advice received from Counsel, there is a significant likelihood that the irregularities arising from the technical difficulties at the meeting on 29 June 2020 render the resolution to refuse invalid and would render any notice of refusal unlawful. The most appropriate and fairest course of action is to take this back to committee.

Decision taken by:	Paul Evans, Director of Law and Governance and Monitoring Officer. Caroline Smith, Planning Group Manager
Decision taken on:	30th July 2020
To be implemented on:	30th July 2020

### **Alternative options considered**

None

**Summary of any financial implications**

The above course of action is proposed to ensure lawful decision making and will avoid the cost of any successful challenge.

**Declarations of conflicts of interest**

None

**Consultation/Process Followed**

Councillor Tim Hall, Chairman of the Planning and Regulatory Committee  
Paul Evans, Director of Law and Governance and Monitoring Officer  
Caroline Smith – Planning Group manager  
Nancy El-Shatoury – Principal Solicitor  
Helen Forbes – Senior Lawyer

Consultation required with the Chairman of the Planning and Regulatory Committee.  
Meeting held between Caroline Smith, Paul Evans and Tim Hall on 24 July 2020.  
Tim Hall as Chairman of the Committee endorsed the recommended approach.

**Background Documents**

Exempt:

Advice from Counsel

Yes