

## ITEM 6

### LAND REAR OF 8 ST JOHNS ROAD, GREAT WAKERING DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF TWO BUILDINGS TO PROVIDE 4 NO. 1-BED FLATS WITH ASSOCIATED PARKING AND AMENITY SPACE

#### Extract of Counsel Advice: Mr Jonathan Clay of Cornerstone Barristers

The following paragraphs are extracts taken from Counsel's advice sought following the Development Committee meeting held on 19 November 2020.

In order to protect the Council's legal position, part of the advice remains legally privileged but the questions raised by Committee Members are addressed below by Mr Clay:-

*"(1) The prospect (or not) of successfully defending such an application at appeal. Would this differ if Members could produce to officers new material regarding parking issues in the area?"*

*Unless some strong justification and plausible explanation is given for taking a different approach to the Inspector in the appeal can be found, it seems to me that the applicant would (all other matters being equal) certainly succeed on appeal and would be awarded costs of the appeal against the Council.*

*Whilst the comments in response to consultation and the issues of congestion and access for refuse collection and emergency vehicles may be theoretically capable of providing such justification, unless they are, and can be, demonstrated to be unacceptable, by reference to robust evidence, including evidence that the levels of congestion and danger were beyond normally acceptable levels, the Inspector would be bound to follow the previous decision of his colleague and allow the appeal, if this is the only reason for refusal. Failure to provide sound justification for not following the previous decision is unreasonable and unlawful and would almost certainly result in costs being awarded against the Council.*

*(2) Whether officers can/should put forward a defence to an appeal?*

*Refusal of planning permission on grounds of shortfall of parking would be practically indefensible unless there was new and robust evidence that was not before the Inspector in the previous decision. The application should be remitted to the Committee to be reconsidered in the light of this advice.*

*(3) Whether a refusal on previously examined grounds is likely to be considered unreasonable behaviour?*

*As stated above, refusal on the basis of reasons relating to parking which are virtually indistinguishable from the previous decision (indeed are less likely to cause problems) is unreasonable behaviour, and would be the likely subject of a costs award, on an appeal to the Secretary of State.*

*(4) Counsel is requested to include a general advice on the approach Members should take to policy and previous decisions of the Inspectorate as a material consideration.*

*Members should consider each application before them on its own merits, but where a previous decision by an Inspector has been made on a very similar or identical issue relating to the same question and the same site, that decision should be treated as obviously material and should be followed unless there is robust justification for taking a different view; in particular, some material change in circumstances, or new evidence which was not made available or did not exist at the time of the previous decision. Failure to do so is unreasonable behaviour.*

#### *Conclusions*

*In my view, a decision to refuse planning permission on grounds of the shortfall in parking is not defensible unless new and or materially different circumstances have become evident since the previous decision.*

*There is nothing in the Committee report or in my instructions to indicate that such change in circumstances has occurred, nor are there any reasons apparent to me why the previous appeal decision on the issue of parking can be distinguished and should not be followed.*

*In the absence of such reasons, the refusal of permission by the Council would be unreasonable and cannot be defended on appeal. Costs of the appeal would be likely to be awarded against the Council."*