PRESS RELEASE

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PROPOSED 4TH SECONDARY SCHOOL FOR HARPENDEN AREA – RULING UPDATE

On Thursday 2nd August in Court 18 at the Royal Courts of London before Mrs Justice Lang, a brief Hand Down summarised the recent ruling regarding into the claim against the grant of planning for the proposed 4th secondary school for the Harpenden Planning area. Since then, the full ruling has been made available through the standard court database and document system.

Significantly the first test, permission for a Judicial Review was granted on all Grounds. The Review found the claim in Ground 1 was justified. The claims in Grounds 2 and 3 were dismissed by the Judge.

In finding against Herts County Council (HCC) Planning Department, it confirmed that HCC had failed to act properly in considering the application. The core of this finding relates to assessing environmental issues and particularly overlooking the site archaeology. These topics had attracted significant interest in the consultation process, particularly for the archaeology, with acknowledged wide significance. Despite this, the Judge went on to use discretion to deem that no different outcome would have occurred had the Council's Planning Officers acted correctly, and refused relief. The "relief" that had been requested was that the planning application be quashed, in effect requiring the Council to re-run the application assessment correctly, in this case preceding the formal planning application with the environmental assessment they should have done. In refusing relief the Judge effectively declined the option in her discretion to require a matter to be carried out correctly in the public interest.

The core reason for the dismissal of Grounds 2 and 3, which related to Green Belt and Educational Needs, was a standard reason cited in planning cases. The Judge considered whether the actions of the Planning Officer accorded with legal understanding of planning judgement and cited that the Judge would need to find an error in law to question planning judgement. The tests that the Court considers relate to how evidence was presented and taken into account by Officers. This allows the court to apply considerable latitude in viewing which evidence is used or not by Officers in exercising their 'planning judgement'. Generally, and also in this instance, this leads the judge to consider how a planning Officer uses evidence rather than whether the evidence is correct, or indeed whether an Officer should take particular evidence into account.

Reports in some sources state that an Appeal has been refused, while others say an appeal must be lodged within a set time frame. In practice both statements are true. JR procedure allows for an Appeal within the JR process, prior to the judgement hand-down. In essence this provides an opportunity to address matters within the Judge's remit if there is cause to question the interpretation of law. In this JR the judge's exercise of discretion in not requiring the Council to correct its error was questioned. The Judge reviewed the points raised, which were relevant points of law to that aspect, and refused an Appeal within the framework of the JR process. This does not affect the general right of appeal, which would be to the Court of Appeal as a separate body, and is afforded to all in most cases. In this instance, possibly in the knowledge that an Appeal would be expected after the refusal of permission with the JR process, one of the other parties requested that the time to appeal in the standard manner be reduced. The Judge acceded to this request and reduced the standard 21 day limit for lodging an appeal to 7 days. The possibility of an appeal is currently being considered and while it remains the case that an appeal can be requested, RSRP is not in a position to be specific about the content of the judgement.

However, it can be said that there is considerable disappointment in the apparent carte-blanche given to Planning Officers. Particularly, there is arguably a greater need to demonstrate independence and thoroughness when much of the information they choose to rely on comes from their colleagues in other departments within Herts County Council.

It is also disappointing, though not surprising, that in his statement about the ruling, Cllr David Williams remained silent on the failings found against HCC. Even less surprising is that, despite promises many years ago to communicate with his constituents, his statement has notably not been directed to the very audience – East Harpenden residents - he was elected to represent.

Although the JR conclusion has confirmed arguably very significant failings on the Council's part, it has not provided what many would consider a satisfactory outcome, through either thorough investigation of key issues or by requiring appropriate remedies to correct the Council's errors. As such it reinforces the view that a Call-in by the Secretary of State for Housing Communities and Local Government was the only action likely to have demonstrated a truly independent approach. More information will follow in due course.

Ends