



## **PLANNING MEMBERS UPDATE**

**ISSUE NUMBER: 10**

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**Report of: Corporate Director of Transformation & Resources**

**Relevant Portfolio Holder: Councillor D Evans**

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**SUBJECT: Judicial Review - Co-op v West Lancashire Borough Council and Aldi**

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Wards affected: Tarleton Ward

### **1.0 PURPOSE OF ARTICLE**

- 1.1 To note the judgment of Mr Justice Holgate upholding the grant of planning permission and awarding costs to the Council.

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### **2.0 BACKGROUND**

- 2.1 To inform Members of the outcome of the judicial review brought on behalf of the Co-operative Group to challenge the granting of Planning Permission (2018/1190/FUL) for the demolition of the Bay Leaf Restaurant and the erection of a food store (Aldi) and office development (GBA Services Ltd) with associated car parking and servicing areas with hard and soft landscaping.

### **3.0 OUTCOME OF THE JUDICIAL REVIEW**

#### **Co-operative Group Ltd – Ground of Challenge**

- 3.1 One ground of challenge was advanced, namely:

"Failure by the Planning Officer in the Officer Report to have correctly interpreted paragraphs 143 and 144 of the NPPF and Policy GN1 (b) of the Local Plan in relation to development within the Green Belt, therefore the errors of law are sufficiently serious that it is highly likely that the outcome for the Co-Op at the Planning Committee would have been substantially different if the members had been correctly advised as to the correct interpretation of NPPF 144 and Policy GN1 (b)."

3.2 The ground was divided into eight sub-grounds, which were that the Officer Report had mislead Members because it:

- (a) failed to give substantial weight to Green Belt harm;
- (b) failed to express the requirement that other considerations must “clearly outweigh” Green Belt harm;
- (c) incorrectly defined “openness” to mean “absence of built development” and, as a result, carried out an incorrect assessment of the harm that would be caused to the openness of the Green Belt;
- (d) wrongly suggested that the use of a large proportion of glazing and the low level of the food store would “limit the impact on openness”;
- (e) wrongly sought to rely on a comparison with a previous planning permission for office development on the site;
- (f) improperly took into consideration the fact that the proposed development would assist in the fulfilment of GBA’s expansion plans, meaning that a key local employer would be retained within the Borough;
- (g) wrongly took into account the opportunity for enhanced native landscaping and associated benefits to biodiversity; and
- (h) failed to treat the low-to-moderate heritage impact resulting from the loss of the Rams Head Public House as “other harm” to be weighed in the balance required by NPPF paragraph 144.

#### **4.0 SUMMARY OF THE JUDGEMENT**

4.1 The Council's case was that the Co-op’s arguments fell well short of demonstrating that the Case Officer had misinterpreted to Members in her Report the policies in the NPPF in any of the ways suggested by the Co-op in its ground(s) of Claim. In the alternative, any such error by the Officer was immaterial and/or highly likely that the outcome for the Co-op at the Planning Committee meeting would have been substantially the same in any event in that the Members would still have granted approval to the Application if any of the "errors" identified in the Claim had not been made by the Officer. Therefore, the quashing of the Planning Permission by the court must be refused in any event pursuant to s.31 of the Senior Courts Act.

4.2 The courts have consistently held that local planning authorities are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision and not the hypercritical approach the court is often urged to adopt by claimants on JR challenges.

4.3 Mr Justice Holgate, the judge determining the judicial review challenge found that none of the sub-grounds of the Claim had any merit and dismissed the challenge.

4.4 Agreement was reached with the Co-op and the Council has been awarded its full costs in defending the Claim amounting to £18,103.30.

## **5.0 SUSTAINABILITY IMPLICATIONS**

5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

## **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

6.1 There are no significant financial or resource implications arising from this report.

## **7.0 RISK ASSESSMENT**

7.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers.

## **8.0 HEALTH AND WELLBEING IMPLICATIONS**

8.1 There are no health and wellbeing implications arising from this report.

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### **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

#### **Date**

#### **Document**

22/01/21

Judgment of Mr Justice Holgate

22/01/21

Court Order

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.