

## Lower Hare Farm, Whitestone: Judicial Review

### Report of the County Planning Manager

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Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

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#### 1) **Recommendation**

It is recommended that members note the contents of this report.

#### 2) **Summary**

- 2.1 This report provides the background to a recent claim for judicial review of a decision by the County Council to discharge planning conditions relating to a waste management proposal at Lower Hare Farm, Whitestone; an account of the outcomes of that claim; and steps that have been implemented to limit the risk of similar incidents.
- 2.2 This report also addresses a subsequent claim for judicial review of the County Council's decision to issue a section 73 planning permission for the same site.
- 2.3 The report was requested by Councillor Hodgson in her supplementary question at the meeting of the County Council on 23<sup>rd</sup> May 2024 [minute 291].

#### 3) **Background**

- 3.1 At its meeting on 2<sup>nd</sup> December 2020, members of the Development Management Committee resolved to grant planning permission to Mr Gibbons for a landraising operation at Lower Hare Farm, Whitestone. Following completion of a S106 Agreement, this planning permission (ref: DCC/4101/2018) was subsequently issued on 30<sup>th</sup> June 2021 and included several pre-commencement planning conditions. The planning application required Environmental Impact Assessment [EIA] and was accompanied by an Environmental Statement.
- 3.2 A further planning application was subsequently submitted by GRS Stone Supplies Limited [GRS] under the provisions of S73 of the Town and Country Planning Act 1990 to vary several of the conditions of the planning permission, notably to vary the phasing arrangements and associated infrastructure including the haul road and drainage arrangements. Members resolved on 27<sup>th</sup> July 2022 to grant planning permission and, following completion of a Deed of Variation to the S106 Agreement, the S73 permission (ref: DCC/4293/2022) was issued on 16<sup>th</sup> May 2024.

- 3.3 Prior to the S73 permission being issued, GRS submitted an Article 27 application to discharge Conditions 5 to 11 of the original planning permission (DCC/4101/2018):
- Condition 5: submission of an operational traffic and environmental management plan
  - Condition 6: submission of a scheme for construction of the internal haul road
  - Condition 7: submission of a restoration and aftercare scheme and a landscape and environmental management plan
  - Condition 8: submission of flood risk and surface water drainage information
  - Condition 9: submission of a reptile translocation and mitigation strategy
  - Condition 10: submission of the results of a repeat badger survey and mitigation/compensation measures
  - Condition 11: installation of a datum control point
- 3.4 A decision notice confirming the discharge of these conditions was issued by the County Council under the powers delegated to planning officers on 6<sup>th</sup> March 2024.
- 3.5 Following an application to discharge conditions 5, 7, 8, 9 and 10 of the S73 permission, decision notices confirming the discharge of these conditions were issued under delegated powers on 3<sup>rd</sup> and 7<sup>th</sup> June 2024.

#### **4) The Claim for Judicial Review – Pre-commencement Conditions**

- 4.1 Whitestone Parish Council filed a claim for judicial review on 17<sup>th</sup> April 2024 in respect of the County Council's decision to approve details in discharge of the planning conditions attached to the original planning permission referred to in paragraph 3.3 above. In summary, the claim contended that the Council's decision was unlawful on the following grounds:
1. the decision to grant approval to carry out further development not authorised in the original permission by way of discharge of condition was *ultra vires*;
  2. the decision was irrational as matters have been approved which are inconsistent with the original permission, render it impossible to comply with conditions on the original permission and/or the Council has failed to have regard to the approved plans;
  3. the Council erred in law by asking whether submitted details were 'acceptable' rather than considering whether the submitted details met the requirements of the conditions;
  4. the EIA Regulations were breached as the Council failed to consider whether the environmental information already submitted was adequate; and
  5. the Council failed to give legally adequate reasons to explain its determination that the submitted matters were capable of meeting the requirements of the conditions.
- 4.2 The Council acknowledged the claim on 13<sup>th</sup> May 2024 and agreed to consent to judgement. A draft consent order has been agreed with Whitestone Parish Council in which it is conceded, in relation to Grounds 1 and 3, that the Council

had wrongly exercised its power to discharge the conditions by granting approval of the details. The remaining grounds were wholly or partially contested by the Council. This draft consent order is currently with the court.

4.3 The County Council has agreed to contribute towards some of the Claimant's costs in the sum of £11,774.74.

4.4 In the light of this claim for judicial review, the following steps have been implemented within the Council's Planning team:

- training has been provided to the County Council's planning officers on procedural requirements for the discharging of planning conditions; and
- the relevant officer's report template has been amended to require clearer consideration of the requirements of the EIA Regulations and the need to consider whether the submitted details meet the requirements of the condition.

## **5) The Claim for Judicial Review – the S73 Permission**

5.1 A further claim for judicial review was filed by Whitestone Parish Council on 19<sup>th</sup> June 2024 in respect of the Council's decision to grant planning permission for the S73 application. In summary, the claim contends that the Council's decision was unlawful on the following grounds:

1. the decision was beyond the scope of the power under S73 as it varied the description of development in the original permission and is therefore unlawful;
2. the revised Condition 4 is unlawful as it is not fairly and reasonably related to the permitted development;
3. the decision breaches the EIA Regulations in multiple material respects; and
4. the officer's report gave the Committee materially misleading advice as to the scope and extent of the changes sought by the S73 application.

5.2 This claim has named as interested parties i) the landowners and ii) the S73 applicant, GRS Stone Supplies Limited.

5.3 The County Council and GRS each provided acknowledgement of service and summary grounds of defence against all of the claimant's grounds on 15<sup>th</sup> July 2024, with the claimant providing a response on 22<sup>nd</sup> July 2024. A decision by the High Court on whether to grant permission to proceed on the claim is awaited.

## **6) Strategic Plan**

6.1 The claims for judicial review do not have implications for the Council's Strategic Plan.

## **7) Financial Considerations**

7.1 The Council has agreed a contribution towards the Claimant's legal costs in respect of the first claim, and the Council is also obliged to meet its own legal costs in respect of that claim. The costs of the second claim will be determined by the outcome of the claim.

## **8) Legal Considerations**

8.1 In the event that a claim is successful, the County Council will be required to quash its decision and, if appropriate, reach a new decision.

## **9) Equality Considerations**

9.1 Regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty. Given the nature of the proposal and the measures within the recommended conditions, it is considered that no adverse impacts on persons with protected characteristics would occur.

## **10) Risk Management Considerations**

10.1 This proposal has been managed in accordance with statutory requirements and no risks to the Council in its role of county planning authority are considered likely to arise.

## **11) Reasons for Recommendation/Alternative Options Considered**

11.1 This report provides an update to members on the two claims for judicial review and, as no decision is required of Members, alternative options were not considered.

**Sarah Ratnage**

County Planning Manager

**Electoral Division: Exminster & Haldon**

## **Local Government Act 1972: List of background papers**

Background Paper: Casework Files

Dates: January 2019 & May 2022

File Reference: DCC/4101/2018 & DCC/4293/2022

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