

Report Title:	<b>To consider a recommendation to rescind the resolution of the Maidenhead Development Management Panel made on 17<sup>th</sup> December 2018 on Planning Application 18/02105/FUL land to the south of Stafferton Way and East of Vicus Way</b>
Contains Confidential or Exempt Information?	NO - Part I
Member reporting:	Not applicable.
Meeting and Date:	Maidenhead Development Management Panel – 16 <sup>th</sup> January 2019
Responsible Officer(s):	Jenifer Jackson, Head of Planning
Wards affected:	None

## REPORT SUMMARY

- Planning application 18/02105/FUL was reported to the Maidenhead Development Management Panel on 17<sup>th</sup> December 2018, the Panel resolved to refuse permission. Subsequent to the Panel meeting Cllr Derek Wilson made a public statement, on 21<sup>st</sup> December 2018 that he had voted in error. The Monitoring Officer took advice from Christopher Lockhart-Mummery QC and his written Advice was made available to the Local Planning Authority on 21<sup>st</sup> December 2018. The Local Planning Authority has taken its own advice from Counsel which informs this report and the recommendation therein. This is explained in further detail below following the recommendation.
- In summary, whilst the Panel had resolved to refuse planning permission the decision is not made until the Local Planning Authority issues a formal decision notice. This has not been done and, as such, a decision has not been made on the application.
- This report to the Panel, whilst related to the planning application, is not a report on the planning application or the merits of that application. This report flows from the legal advice provided to the local planning authority (LPA) by Counsel and attached to this report as Appendix A.

## 1. DETAILS OF RECOMMENDATION(S)

### RECOMMENDATION:

**It is recommended by the Head of Planning that the Panel:**

- |    |                                                                                                                                                                                  |
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| 1. | <b>Rescinds the resolution made by the Panel on 17<sup>th</sup> December 2018 to refuse planning permission in order that the application may be re-considered by the Panel.</b> |
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**Table 1: Options arising from this report**

Option	Comments
To rescind the resolution made by the Panel on 17 <sup>th</sup> December 2018 to refuse planning permission in order that the application may be reconsidered by the Panel.  <b>Recommended option</b>	The Panel is advised that the LPA cannot lawfully issue a decision notice refusing planning permission in accordance with the Panel's resolution to refuse. Further, the Council as the LPA has a duty to refer the application back to the Panel for reconsideration and determination.
To decide NOT to rescind the resolution made by the Panel on 17 <sup>th</sup> December 2018 and to refuse planning permission on application 18/02105 for the reasons set out in the agreed minutes of that meeting.	This would be contrary to the legal advice received from Counsel for the LPA, see Appendix A.

## **2. EXPLANATION OF THE RECOMMENDATION TO PANEL**

- 2.1 Following the meeting of the Maidenhead Development Management Panel on 17<sup>th</sup> December 2018, Cllr Derek Wilson Chair of the Panel indicated that he had voted erroneously. The Monitoring Officer sought advice from Leading Counsel and made this available to the Local Planning Authority to support a position that the matter should now be reconsidered in the light of the error made by Cllr Derek Wilson. The Local Planning Authority has taken its own legal advice and the Panel is advised that it is now necessary to consider whether or not the original resolution should stand or be rescinded.
- 2.2 For completeness, the background to the current situation is that during debate, a motion was proposed by Cllr Stretton to refuse the application against officer recommendation to approve it. She gave reasons for refusal. After some further debate this motion was seconded by Cllr Hunt. The Chairman, Cllr Derek Wilson, asked for a named vote for the decision on this motion. The named vote was taken from Members in alphabetical order. Cllr. Wilson's name was the last name to be called out and he voted 'for' the motion to refuse. The result was read out by the Panel Clerk, of the eight members who were present, four voted in favour, three against and one abstained. Cllr Wilson asked the Clerk for clarification of the vote. The Panel Clerk read out the result of the named vote again. The Chair stated that the application had been refused and continued with the business on the agenda.
- 2.3 After the meeting had closed Cllr Wilson made the Monitoring Officer aware that he had made a mistake and had intended to vote against the motion when it came time for him to call out his decision. Having brought the error to the Monitoring Officer's attention, the following day she sought the advice of Mr. Christopher Lockhart-Mummery QC on the legal position on the status of a

decision where one Member makes it clear that he made a mistake when voting on an issue.

- 2.4 On 21<sup>st</sup> December 2018, the Monitoring Officer provided the Local Planning Authority (LPA) with the written advice obtained from Leading Counsel, which is included in the agenda papers as Appendix B.
- 2.5 In the circumstances, the written Advice from Leading Counsel dated 20<sup>th</sup> December 2018 must be considered as advice to the Applicant to determine whether a refusal of the Application would be lawful where a member of a Panel states that a mistake was made. That advice does not bind the Panel sitting as the LPA. Properly, the Head of Planning was not involved in the decision to instruct Leading Counsel and was not present when Leading Counsel provided advice in consultation by telephone on 20<sup>th</sup> December 2018.
- 2.6 As this is an application by an 'interested planning authority' under Regulation 3 of the Town and Country Planning General Regulations 1992 (as amended) it is appropriate for the LPA to seek independent advice from Counsel to determine how best to proceed. Counsel's advice to the LPA and therefore Members of the Panel, is appended to the report.
- 2.7 The Panel is advised that the LPA cannot lawfully issue a decision notice refusing planning permission in accordance with the Panel's resolution to refuse. Further, the Council as the LPA has a duty to refer the application back to the Panel for reconsideration and determination. The advice from Counsel to the LPA is that the first necessary step is to formally rescind the resolution the Panel achieved on 17<sup>th</sup> December 2018 thus allowing the Panel to reconsider the application. The merits of the planning application have no bearing on this recommendation to rescind the resolution.
- 2.8 The decision notice had not been issued at the time that the advice from Leading Counsel was provided to the LPA, or subsequently. The decision on the application is not formally made until the formal decision notice is issued. It is usual practice where a panel resolution overturns an officer recommendation for the Clerk to circulate the draft minutes of the meeting to assist the planning officer in preparing the decision notice for checking and subsequently being issued.
- 2.8 Having formally agreed the Minutes of that meeting as the first item on the agenda, it is recommended that the Panel debates and votes on the recommendation to rescind the resolution to refuse planning permission for the reasons recorded in those minutes. This is because it would not be lawful to issue a decision notice refusing planning permission given that Cllr Wilson's erroneous vote was decisive and therefore directly influenced the resolution.
- 2.9 In the event that the Panel decides to rescind the resolution made on 17<sup>th</sup> December 2018, there follows on the Agenda a separate report on the planning application 18/02105/FUL which must be considered, voted upon and determined in accordance with the procedures set out in the Council Constitution and as required by law. Should the Panel resolve not to rescind the earlier resolution to refuse planning permission it will not need to consider the second report from the Head of Planning.

2.10 Letters notifying those who have made representations to the LPA on the application have been sent out providing advance notice of the Panel meeting and providing the information for registering to speak at the Panel in respect of the application. In accordance with Counsel's advice, the public speaking rights set out in the Constitution apply only to the Panel's consideration of the second report relating to the determination of the Application. The Agenda will be published on the website in the usual way at least five clear working days in advance of the Panel meeting as required.

### **3. BACKGROUND PAPERS**

- 3.1 Counsel's Advice on instruction by the Local Planning Authority on the reconsideration of the application by the Panel (Appendix A).
- 3.2 The Advice of Christopher Lockhart-Mummery QC dated 20<sup>th</sup> December 2018 (Appendix B).