

### ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

#### VICUS WAY CAR PARK

#### ADVICE

1. I am asked to confirm briefly in writing the advice I gave to the Council at a telephone conference earlier today.
2. The Council as landowner submitted to the Council as local planning authority a planning application for a multi-storey car park at the above site. The application is very controversial. It came before the Development Control Panel on 17 December 2018.
3. The first motion tabled was for refusal of the application. Of the 8 members present, 4 voted in favour of the resolution, 3 against, and 1 abstained. The motion to refuse was therefore carried.
4. Unfortunately, one of the members (the Chairman) who voted in favour of the resolution did so in error—he intended to vote in favour of the grant of permission. As the room was being cleared, he immediately told the Monitoring Officer that he had voted in error. Since the Chairman has a casting vote, it is apparent that the resolution was erroneous.
5. Under the Town and Country Planning (Development Management Procedure) Order 2015, the decision on a planning application is made when notice of the decision (whether refusal or grant) is issued by the authority: Articles 34-37. No notice of refusal has been issued.
6. There is the highest judicial authority that, in the absence of a notice of decision, a local planning authority can change its mind—indeed, that it may have a duty to do so where (as here) the initial decision is clearly flawed: R (Burkett) v Hammersmith and Fulham LBC [2002] 1 WLR 1593 at para 39, applied in King's Cross Railway Lands Group v Camden LBC [2007] EWHC 1515 (Admin), para 14.

## APPENDIX B

7. Accordingly, in the present case the Council has the lawful ability to change its mind, and is almost certainly under a duty to do so in view of the erroneous voting.
8. The Council is quite clear that it wishes to resolve this matter in a fully open and transparent manner, and with notice to all those (ie including objectors) who have an interest in the application.
9. I therefore advised that the application be brought back to the Panel as soon as appropriate. The correct period of notice of the sitting of the Panel should be given to all interested parties. There need be no attempt to secure that the members who sat on the last Panel should sit on the new Panel. The Panel should be constituted of those members who are naturally available on the due date (and thus may include some of the previous members).
10. The agenda papers must explain why the planning application is being re-considered. The first resolution will be to the effect for members to consider whether or not they wish to rescind the previous resolution in view of the error. The normal Council procedures relating to the ability of those who wish to address the Panel, should be followed. If the first resolution is rescinded, the Panel will then proceed to vote on the application in the normal way.

Christopher Lockhart-Mummery QC

Landmark Chambers

20 December 2018.