

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE –22 JUNE 2011

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

6. PROPOSED MIXED USE REDEVELOPMENT (Ref: 3/10/0386/FP) AT CINTEL SITE, WARE FOR ASDA FOOD STORE (2601 SQM NET), 13 DWELLINGS AND RETAINED CHILDRENS NURSERY

WARD AFFECTED: Ware – St Marys

Purpose/Summary of Report:

- To update the Committee in relation to the received Pre-Action Protocol of notice to apply for judicial review in relation to the above matter and following the receipt of legal advice.

RECOMMENDATION FOR DECISION: that

(A)	The Council proceeds to release the formal planning application decision relating to the proposals once all outstanding legal agreement matters have been resolved.
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1.0 Background

- 1.1 Members will recall the resolution of the committee in December 2010 to approve the Asda food store application at the Cintel site in Ware subject to recommended S106 obligations and planning conditions. This followed deferral of the matter from the 20 October meeting of the committee.
- 1.2 Officers are now close to finalising the S106 agreement. At the 25th May 2011 committee the Director advised Members of a notice of intended proceedings of Judicial Review of the decision. This notice has been submitted by representatives of landowners at Swains Mill. The Director advised that Counsel's advice was being sought. That advice has now been received and considered.
- 1.3 Asda have made public their own Counsel advice on the matter. This argues there has been no error in law by the Committee, that

the criticisms made by the claimants are to do with the Member's *judgement* and that this does not form grounds for judicial review.

1.4 The Claimants say their view is supported by the firm opinion of Counsel; they have been requested to share this opinion but have declined to do so.

2.0 Claimants' Notice

2.1 The claimants object that there has been procedural impropriety to grant planning permission and that a decision, once released, should be quashed in the High Court. A copy of their letter of 17th May 2011 is attached at Essential Reference Paper B.

2.2 They invite the Council to take the planning application back to the committee for reconsideration and to address the points they raise.

3.0 Counsel View

3.1 Counsel on behalf of the Council has considered the matter in some significant detail. Each of the claims, and the reasons given by the Council for reaching the position that it has, have been examined. The overall conclusion is that the prospects of successfully resisting the challenge are reasonably sufficient for the Council.

3.2 If the landowner continues with the action then the next step will be for the court to determine whether the challenge should be considered. There is the ability for the Council to further review its legal case at this stage.

4.0 Conclusions

4.1 At this stage no judicial review challenge has been made, only a notice of intention. The legal challenge will only be possible following the grant of planning permission.

4.2 Having received the claimant's points of a possible legal challenge and had them assessed by Counsel Officers are of the view that it is not necessary or appropriate to modify the position the Council has reached and the officers should proceed with the work required to enable the decision to be released.

4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within Essential Reference Paper 'A'.

Background Papers

Planning application 3/10/0386/FP.

Letter 17th May 2011 from Cripps Harries Hall.

Richard Phillips QC Advice – 23rd May 2011.

Contact Member: Councillor M Alexander – Community Safety and Environment.

Contact Officer: Kevin Steptoe, Head of Planning and Building Control, Extn: 1407.

Report Author: Tim Hagyard, Development Control Team Manager, Extn: 1559.

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives	<p>Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i></p> <p>Shaping now, shaping the future <i>Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.</i></p> <p>Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>
Consultation:	None
Legal:	As set out in the report
Financial:	Challenges of this nature do carry a risk of significant financial impact. This is difficult to quantify at this stage because of the unpredictability of the process.
Human Resource:	None identified
Risk Management:	Approval of the Asda application is not risk free given the claimants stated intentions. However legal advice is that the ability to resist a challenge of Judicial Review is reasonably sufficient for the Council.