

(Am) Dr

S: 18.

Claim No: CO/3881/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
BIRMINGHAM DISTRICT REGISTRY

BETWEEN:

JELSON LIMITED

Claimant

-and-

MELTON BOROUGH COUNCIL

Defendant

-and-

(1) ASFORDBY PARISH COUNCIL

(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Interested Parties



ORDER

UPON READING the Grounds of Claim as set out in the Claimant's Skeleton Argument and the Statement of Reasons set out in the Schedule attached to this Order

BY CONSENT IT IS ORDERED THAT:

The claim is allowed; and

1. The decision of the Defendant made on 12th July 2017 to refer the Neighbourhood Plan to referendum is quashed.
2. The referendum held on 28th September 2017 pursuant to the decision in 1, above is also quashed.
3. The Defendant shall pay the Claimants costs of and incidental to this claim on the standard basis up to and including the submission of this order to the Court in the sum of £31,779.00.

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Dated 1st February

2018

Schedule - Statement of Reasons

1. Claim CO/3881/2017 is a claim for judicial review of the decision of the Defendant, Melton Borough Council to (1) refer the Asfordby Parish Neighbourhood Plan ("Neighbourhood Plan") to referendum, which decision was made on **12 July 2017** and publicised on **14 July 2017** and (2) proceed with the referendum into the making of the Neighbourhood Plan which was held on **28 September 2017**. The claim was brought pursuant to the provisions of section 61N(2) and (3) of the Town and Country Planning Act 1990 (as amended).
2. Although the Defendant did not make the Neighbourhood Plan after the referendum, the consequence of holding the referendum, and the Neighbourhood Plan being passed at that referendum, was that it then became part of the statutory Development Plan for the area of Asfordby by virtue of section 38(3A) of the Planning and Compulsory Purchase Act 2004.
3. The Defendant and the Second Interested Party (the Secretary of State for Communities and Local Government) have consented to this claim being allowed on the ground set out in paragraph 4 below. In addition, the Defendant has consented to this claim being allowed on the ground set out in paragraph 5 below. The First Interested Party (Asfordby Parish Council) have chosen not to participate in the proceedings, the subject of the claim and have neither filed an Acknowledgement of Service or a Defence to this claim.
4. An Examiner was appointed to report on the Neighbourhood Plan. He issued a report to the Defendant ("the First Report") purely for fact checking. The submission of the First Report for fact checking could not lawfully have been an opportunity to re-open key issues relating to the Neighbourhood Plan, receive and address new evidence, options and submissions that would change the Examiners conclusions and recommendations. This however is what was allowed to happen and was legally unfair to the Claimant who was given no opportunity to make representations on the new matters that were raised with the Examiner. The First Report concluded that the basic conclusions had not been met in respect of the

Neighbourhood Plan and that it should not proceed to a referendum. However following receipt of the subsequent submission, evidence and opinions the Examiner issued a Second Report changing the recommendation in the First Report.

- 5 Even had the Examiner been legally entitled to alter his First Report, then the Examiner's decision to change his mind about the viability and deliverability of the Claimant's development site known as the Holwell site, was irrational and not based on sound evidence, given that no further evidence as to the specific viability and deliverability of that site was advanced to him. He acted irrationally and without proper reasoning in repeatedly accepting the bare assertions of the Defendant in relation to the above matters, as opposed to requiring evidence upon them and reaching his own conclusions. Specifically, he acted irrationally in stating on 21 April 2017 that "there does not appear to be any evidence of land contamination" at the Holwell site, and failing to conclude on the point in his Second Report, when he was told by the Defendant on 28 April 2017, that the cost of remediation was a "key concern", and when he was informed that the site "...comprises substantial areas of derelict and contaminated industrial land...".

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