

Response to Questions on Notice from Cllr Andrews to the Leader of Council

In regard to the Livestock Market Appeal decision:

In his decision letter awarding costs against the Council, the Inspector states that the Council misapplied the sequential test, and "had no excuse for its incorrect interpretation and application". Bearing in mind that the officers' report actually recommended this incorrect interpretation, could you please explain:

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Q1. How this incorrect advice came to be given?

Reply to Q1

The case officer believed the recommendations in the report to Members of the Planning Committee were correct at the time they were made having due regard to the relevant representations, advice, guidance and a range of material considerations.

The interpretation and application of retail planning policy is undoubtedly one of the most complex and complicated areas in planning.

The District Council employed experienced Planning Officers and took advice from an expert Retail Planning Consultant to draft the reports to the Planning Committee meeting on 29 March 2012.

Matters relating to retail planning policy were set out in fifty paragraphs in the report on the Livestock Market application.

The Case Officer had due regard to relevant advice from consultees, Forward Planning and the retail consultant and made the recommendations for refusal in the report in good faith.

The Case Officer considered the approach set out in the report to be the correct interpretation of national retail planning policy at the time of drafting in March 2012.

This analysis was contested by the appellants on appeal and was clearly an area of disagreement which was not conceded until cross examination at the Inquiry by an expert Planning QC.

Whilst Mr Wildsmith, the Planning Inspector did find that the Council misapplied the sequential test and made a partial award of costs against the Council he did make the following significant observation in his Costs Decision dated 29 October 2012:

"20. I do not consider that the Council acted unreasonably in declining to grant a conditional approval, in view of its strong opposition to the proposal on several grounds as detailed above and in my appeal decision."

- Q2. Whether the advice came from officers or consultants and if so, whether the officers' or consultants' report reflected a balanced impartial view or was designed to reflect the wishes of the Council's ruling group?

Reply to Q2

The reports to the Planning Committee meeting on 29 March 2012 on the major retail planning applications at the Livestock Market site and Wentworth Street Car Park, Malton were the responsibility of the Case Officer.

The reports were drafted having due regard to relevant representations and advice including those from the Forward Planning Team, the Retail Consultants and legal advice.

Members of the ruling political group on Ryedale District Council did not influence the recommendations in the officer report.

- Q3. If the report was so designed, could you explain whether the officers were pressurised to give inappropriate advice, and how this was done? Was it through meetings of the ruling group, confidential meetings of the Resources "Working Party", or simply through personal contact either direct, or through the Chief Executive?

Reply to Q3

The report was not designed to reflect the wishes of the District Council's ruling political group.

- Q4. Bearing in mind that the report was written by the officers of another authority who were recommended as experts in retail matters, can you please explain how they came to be influenced to make an incorrect recommendation for which the Inspector says there was no excuse?

Reply to Q4

The Case Officer was not influenced to make an incorrect recommendation and did not believe they were making an incorrect recommendation at the time the report was drafted in March 2012.

- Q5. Would you please name the officers, consultants and/or Members who bear responsibility and indicate if any action is being taken against them in respect of this?

Reply to Q5

The Case Officer had responsibility for drafting the reports for the Planning Committee meeting on 29 March 2012.

The names of the Case Officer and the retail consultants involved in drafting the Committee report are a matter of public record and were:

1. The Case Officer was Emma Lancaster

2. The Retail Consultants were Roger Tym and Partners

Members of Ryedale District Council were not party to the recommendations in the officer report.

No action is being taken.

Q6. The Inspector's finding that there is no excuse for the incorrect advice which was given to Committee suggests that the professional judgement of officers and consultants may have been influenced by political considerations. Will any steps now be taken to ensure that officers and consultants are, in future, allowed to give their own independent professional advice to Members without political interference? If so, could Members please know what these steps are?

Reply to Q6

The professional judgement of officers and consultants were not influenced by political considerations and are guided by professional Codes of Conduct.

The Planning Inspector did not find that officers and consultants acting for the Council were the subject of political influence.

Accordingly, no steps suggested need to be taken.

Q7. Would the leader consider favourably proposals to make all meetings between political groups or working parties which are attended by officers open to the press and the public, so as to minimise the risk of any public perception that officers' recommendations might be subject to political pressure?

Reply to Q7

No.

Meetings of political groups are not under the control of the Council. Open access to meetings of Council Committees and Sub-Committees is safeguarded by law under the Local Government Act 1972 as amended.

Working Parties are not normally open to the press or public. In any case planning applications are not discussed by Members at Working Parties.

Q8. Over the last six years, I have analysed the various officer and consultant reports which have been made in regard to retail matters. I published my views in e-mails and in newspaper articles, but no notice was taken of them. Many of my views have now been vindicated. Why were they ignored?

Reply to Q8

Like every Member you had the opportunity to make representations on the two major retail planning applications in Malton and did so.

Your views were taken into account.

- Q9. The Inspector's statement that there was no excuse for the incorrect interpretation and misapplication of policy suggests that a risk may have been taken with public money and a gamble may have been made on the Council's decision not being challenged. What guarantees can be given that in future the Council will follow due process and will not gamble with taxpayers' money?

Reply to Q9

Your allegations of the Council taking risks with public money and gambling on decisions not being challenged is not an accurate characterisation of the actual position.

All of the Council's planning decisions are taken in the knowledge that they are open to legal challenge.

The assumptions in the question are incorrect and need no reply.

- Q10. Has the deposit on the sale of Wentworth Street Car Park been used? If so, how? Was it used to purchase Harrison House?

Reply to Q10

No.

The deposit on the sale of Wentworth Street Car Park has not been used and is still held by the Council.

- Q11. Bearing in mind how important the livestock market re-development has been proved to be to Malton Town Centre, will you ensure that this matter is dealt with expeditiously by the Council and that no more obstacles are put in its path?

Reply to Q11

The District Council will process any reserved matters applications it receives as expeditiously as possible.

The successful re-development of the Malton Livestock Market site is contingent on a number of matters outside the District Council's control which includes:-

- (i) The Fitzwilliam (Malton) Estate or developer submitting a reserved matters application in relation to the Livestock Market site.**
- (ii) Finding a retail operator willing to operate from the Livestock Market site.**

If the officer made

to CW Agg.

Q & A for Councillor Legard

Q1. The legal costs (including, but not limited to, legal representation, advice and Counsel's opinion) incurred by RDC in relation to Fitzwilliam Estate appeal?

Q1A. £10,325

Q2. The legal costs (including, but not limited to, legal representation, advice and Counsel's opinion) incurred by RDC in connection with the Wentworth Street car park and Livestock market planning applications?

Q2A. £600

Q3. Any other professional costs (including, but not limited to, expert advice and assistance) incurred by RDC in relation to both (1) and (2) above?

Q3A.

£30,229

Q4. The amount of legal costs claimed by (or, if the matter has progressed by then, paid to the Fitzwilliam Estate against/by RDC arising out of or in connection with the Estate's successful Livestock market appeal?

Q4A.

By a letter dated 14 December 2012 Pinsent Masons Solicitors for the Fitzwilliam (Malton) Estate have made a claim for costs amounting to £251,505.00 of which £131,726.94 relate to the legal fees from Pinsent Masons Solicitors, Mr Peter Village QC and Mr James Strachan of Counsel.

Unusually, £41,917.90 of the total costs relates to VAT. This VAT sum is being claimed from the Council because Pinsent Masons have stated that the Fitzwilliam (Malton) Estate is not registered for VAT purposes and cannot, therefore, reclaim VAT.

The Council does not accept the value of this claim and is taking action to challenge it.

Q5. The number of RDC 'officer' hours given over to both the Wentworth Street and Livestock market planning applications as well as the subsequent Fitzwilliam appeal (together with an approximate value thereof)?

Q5A.

In common with the vast majority of Councils RDC does not maintain a timesheet based recording for its services therefore this information is not available. The introduction of a timesheet recording system would carry a significant cost.

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