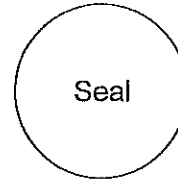


Judicial Review Claim Form

In the High Court of Justice
Planning Court in the Administrative Court

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.



| | |
|------------------------------------|--|
| <i>For Court use only</i> | |
| Administrative Court Reference No. | |
| Date filed | |

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

| |
|-------------------------------|
| name Jelson Limited |
|-------------------------------|

| |
|---|
| address Loughborough Road Leicester LE4 5PR |
|---|

| | |
|---------------------------------------|----------------|
| Telephone no. 0116 266 1541 | Fax no. |
|---------------------------------------|----------------|

| |
|--|
| E-mail address robthorley@jelson.co.uk |
|--|

Claimant's or claimant's solicitors' address to which documents should be sent.

| |
|--|
| name Shakespeare Martineau LLP |
|--|

| |
|---|
| address 1 Meridian South Meridian Business Park Leicester LE19 1WY |
|---|

| | |
|---------------------------------------|---------------------------------|
| Telephone no. 0116 289 2200 | Fax no. 0116 289 3733 |
|---------------------------------------|---------------------------------|

| |
|--|
| E-mail address sarah.hollis@shma.co.uk |
|--|

Claimant's Counsel's details

| |
|--|
| name Christopher Lockhart Mummery QC |
|--|

| |
|---|
| address Landmark Chambers 180 Fleet Street London EC4A 2HG |
|---|

| | |
|-------------------------------------|-------------------------------|
| Telephone no. 02074301221 | Fax no. 02074216060 |
|-------------------------------------|-------------------------------|

| |
|---|
| E-mail address mummery@landmarkchambers.co.uk |
|---|

1st Defendant

| |
|---------------------------------------|
| name Melton Borough Council |
|---------------------------------------|

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

| |
|------------------------------|
| name Verina Wenham |
|------------------------------|

| |
|---|
| address The Council Offices, Parkside, Station Approach, Burton Street, Leicester LE13 1GH |
|---|

| | |
|--------------------------------------|----------------|
| Telephone no. 01684 502502 | Fax no. |
|--------------------------------------|----------------|

| |
|---|
| E-mail address v.wenham@melton.gov.uk |
|---|

2nd Defendant

| |
|-------------|
| name |
|-------------|

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

| |
|-------------|
| name |
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| |
|----------------|
| address |
|----------------|

| | |
|----------------------|----------------|
| Telephone no. | Fax no. |
|----------------------|----------------|

| |
|-----------------------|
| E-mail address |
|-----------------------|

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

| | |
|--|-----------------------|
| name Asfordby Parish Council | name |
| address Parish Hall 24 Main Street, Asfordby, Melton Mowbray, Leicestershire LE14 3SA | address |
| Telephone no. 01664 812177 | Telephone no. |
| Fax no. | Fax no. |
| E-mail address clerk@asfordbypc.org.uk | E-mail address |

SECTION 3 Details of the decision to be judicially reviewed

Decision:
(1) Decision of the Rural, Economic and Environmental Affairs Committee of Melton Borough Council to recommend the Asfordby Neighbourhood Plan proceed to referendum.
(2) The subsequent referendum held on 28 September 2017.

Date of decision:
12.7.17 and 28.9.17

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

| | |
|---------------------------------------|---|
| name Melton Borough Council | address Parkside, Station Approach, Burton Street, Leicester LE13 1GH |
|---------------------------------------|---|

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)?

Yes No

Are you making any other applications? If Yes, complete Section 8.

Yes No

Is the claimant in receipt of a Community Legal Service Fund (CLSF) certificate?

Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463PC and file this with your application.

Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below.

Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in that region in the box below). If No, give reasons in the box below.

Yes No

Does the claim include any issues arising from the Human Rights Act 1998? Yes No
If Yes, state the articles which you contend have been breached in the box below.

SECTION 5 Detailed statement of grounds

set out below attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim Yes No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below

SECTION 7 Details of remedy (including any interim remedy) being sought

1. An order quashing the decision of Melton Borough Council.
2. An order quashing the referendum held on 28 September 2017.
3. An order that the Defendant do pay the costs of and incidental to this claim.

SECTION 8 Other applications

I wish to make an application for:-

SECTION 9 Statement of facts relied on

See attached document entitled Statement of Facts and Grounds.

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Sarah Hollis

Name of claimant's solicitor's firm Shakespeare Martineau LLP

Signed S. L. Hollis
Claimant ('s solicitor)

Position or office held Associate Solicitor
(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or CLSF certificate <i>(if legally represented)</i> | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Not applicable.

Signed

S.L.Hills

Claimant ('s Solicitor) 22 October 2017

JELSON LIMITED

v.

MELTON BOROUGH COUNCIL

Amended STATEMENT OF FACTS AND GROUNDS

Introduction

1. This is an application by Jelson Limited (“Jelson”) for the permission of the Court to bring proceedings for judicial review against the Respondent, Melton Borough Council (“the Council”). The application seeks to quash (1) the Council’s decision to refer the Asfordby Parish Neighbourhood Plan (“NP”) to referendum made on 12 July 2017, and publicised on 14 July 2017, and (2) the referendum held of 28 September 2017. The application is brought pursuant to the provisions of section 61N(2) of the Town and Country Planning Act 1990.

Significant planning case

2. The area covered by the NP covers three villages, Asfordby, Asfordby Valley and Asfordby Hill. The area comprises 1,066 hectares, with a population in 2011 of 3,286, with 1,454 households. The NP contains proposals for residential and other development. It is contended that the claim conforms with paragraph 3.2 of PD54E, since (a) the development comprised within it would have significant economic impact at a local level, (b) it raises important points of law (including the ability for the report of an Examiner to be changed, linked to a process of evidence gathering in a closed process) and (c) may generate significant public interest.

Documentation

3. The claim is supported by a claim bundle, to which references will be made by document number/page.

The suggested essential reading is documents 2, 3, 4, 5, 7, 8, 9, 11, 14, 19, 22 and 23.

Time for essential reading: approx. 2 hours.

Factual and chronological background

Preliminary

4. Jelson are Leicestershire housebuilders, with a long history of successful delivery of housing. They own two sites in the area of the NP, both comprising parts of a former agricultural field. The first site is known as land west of Station Lane, the second being referred to as land off Hoby Road. The Station Lane site was allocated for residential development in the NP, planning permission has been granted and preliminary site works are being undertaken. The land off Hoby Road forms the basis for the bringing of this claim. It is not allocated in the NP. On 1-3 August 2017 a planning inquiry was held into the appeal by Jelson against the refusal of the Council to permit residential development. The outcome of that inquiry is awaited.
5. In **January 2013** the Asfordby Neighbourhood Area was designated. During **February 2015** there was the first round of consultation on the pre-submission draft of the NP. In **February 2016** there was the second round of consultation on this document.
6. By letter dated **4 April 2016** Bilfinger GVA (later GVA), acting on behalf of Jelson, submitted representations to the above draft: **document 1**. The letter referred to the NP

policy to deliver at least 148 dwellings over the plan period to 2031. One of the significant sites for the delivery of housing, proposed to be allocated, is known as Holwell Business Park (“the Holwell site”). The representation raised concerns relating to the contamination of this site, and the viability of its development. The representation also proposed the allocation of the land off Hoby Road, noting that there were no question marks over its deliverability.

7. In **August 2016** the submission version of the NP was published: **document 2**. Representations on behalf of Jelson were made on **7 December 2016**: **document 3**. These representations essentially repeated the points made in the previous representation and included the following:

“In the light of the above, we have significant doubts about the suitability and deliverability of the Holwell site for residential development. Even if delivery could be achieved the Plan would need to incorporate significantly more safeguards to prevent the delivery solely of an isolated and unsustainable housing estate. Accordingly, the strategy in the Neighbourhood Plan should not rely on this site in order to meet the housing needs for Asfordby”.

The First Report

8. **Document 4** was made available to Jelson for the first time on **2 August 2017**, in the circumstances referred to below. It comprises an email from Trevor Roberts Associates (“TRA”), the consultancy which acted for the Examiner of the NP. The email is dated **28 February 2017** and was sent to a planning officer of the Council. So far as particularly relevant, it states:

“The Examiner had [sic] now concluded his examination of the Asfordby Neighbourhood Plan. Unfortunately, as we suggested was likely to be the case, the Examiner has recommended that the Plan does not proceed to

referendum in its current form as it does not meet the basic conditions as outlined in his report.

I am attaching the final draft of his report for "fact-checking"...this does not afford an opportunity to disagree with the reasoning or conclusions of the Examiner; it is simply for fact-checking...

I appreciate that this is not the outcome you would have hoped for but the Examiner is content with his conclusion and recommendations".
(emphases supplied)

9. Under paragraph 10(1) of Schedule 4B to the 1990 Act (see below) the examiner "...must make a report on the draft plan containing recommendations...". Jelson contend that this act took place on 28 February 2017.

10. The attached report, dated **28 February 2017**, but signed on **25 February 2017**, is stamped "Draft for Fact Checking": **document 5**. The essential points in the First Report are as follows. Paragraph 1.6 states the view of the Examiner that it was not necessary for a hearing to be held. Paragraph 1.8 refers to the lack of express agreement of the relevant landowners in relation to at least two of the housing site allocations (including the Holwell site). Paragraph 1.10 states: "*At the end of this report, I conclude that the APNP does not meet the basic conditions as it stands, and that because it requires major modifications necessitating further public consultation, it should not proceed to referendum in its present form*". Paragraph 4.5.5 states that there are "...*very significant doubts as to whether at least 167, and possibly 187, of the 252 dwellings proposed are likely to be built within the plan period*". Paragraph 4.9.4 refers to the Jelson land off Hobby Road, raises no question over the suitability of the site for housing development, and states that in view of the "*serious doubts*" over the deliverability of other sites, "*this site appears to be worth re-examination alongside the other candidates*". Paragraph 4.10 states, in relation to the Holwell site, that "*there is little evidence to show that the*

proposal is viable or deliverable, and the site cannot at present be considered as making a realistic contribution to meeting the housing requirements of the Plan". The proposal was "aspirational". In section 6, Conclusions on the basic conditions, the Examiner records that "There are very significant doubts as to whether at least 167 of the dwellings proposed by the Plan are likely to be built within the plan period, leaving a significant shortfall. It must therefore be concluded that by not providing sufficient housing land the Plan does not have appropriate regard to national policy and thereby fails to meet the basic conditions". Section 7 contains his Formal recommendation:

"7.1 I have concluded that the APNP does not meet the basic conditions.

7.2 I therefore recommend that the APNP should not proceed to a referendum".

Developments following the First Report

11. By email dated **20 March 2017** the Council's planning officer wrote to TRA attaching significant representations to the First Report. The email states: "We presented this exercise exactly as you framed it, an opportunity to fact check, not an opportunity to alter the result of the examination". This email, and the accompanying representations, are at **document 6**.

12. It is the essence of the Council's case in relation to this challenge (see **document 24** below) that, in accordance with the Examiner's instruction, the process that took place following 28 February was limited to one of fact-checking only. This is plainly not the case. Thus the accompanying representations included a letter from the Pegasus Group (planning consultants on behalf of land interests in the Holwell site) dated 7 March 2017. This included the following: reference to technical studies including on transport,

landscape, ecology and flood risk, the absence of overriding physical constraints to development, the absence of market, cost or delivery factors that would make the development of the site unviable in the next 5 years, discussions with a volume housebuilder, the importance of remediation of the contamination on the site, reference to a “viable and deliverable development opportunity”. Patently, these submissions went far beyond any process of fact-checking of a concluded report.

13. On **27 March 2017** there was a meeting between two representatives of Jelson (including Robert Thorley who has made a witness statement herein) and two planning officers of the Council. One of the officers suggested that the Council was in receipt of correspondence from the Examiner which cast some doubt as to the progress of the NP. Jelson asked if they could see the correspondence but were told that nothing could be released until after the conclusion of the examination.
14. Following the above meeting, and on the same day, Jelson asked the planning officers by email if they knew when the Examiner’s report into the NP was due to be made public: **document 7**. No answer was received.
15. On **29 March 2017** the Examiner issued his response to the representations referred to in paragraph 11 above: **document 8**. In this response, and despite the assurances given in the email dated 28 February 2017 that the examination was “concluded” – he engages on the further representations received. The Council’s PAP reply letter (**document 24** below) repeatedly asserts that the Examiner “re-opened the examination”. This is not what the Examiner did, and at no stage did he say that he had re-opened the examination. He embarked on private discussions with the Council, excluding objectors, in which substantial new material was supplied. Further, at no stage did he re-examine the Jelson

land off Hoby Road “alongside the other candidates” as he had recommend at paragraph 4.9.4 of the First Report.

16. He refers to the Pegasus Group letter of 7 March 2017 and states: *“If APC wish this letter to be taken into account, in the interests of openness and fairness it must be placed before those who objected to the inclusion of site A27, and their comments sought”*. This did not occur, at least in relation to Jelson. The Summary includes the following:

“The Examiner accepts that the owners of site A27 [the Holwell site] and the majority of site A15 are content for the land to be developed as set out in the APNP.

However, he wishes to be satisfied that these sites are both viable and deliverable in the plan period, taking into account the criticisms set out by objectors.

To that end he wishes to receive the comments of the LPA on the matter.

Once the Examiner has seen these further representations, he may consider it necessary, in the interests of openness and fairness, for limited consultation to take place with the relevant objectors”.

Again, and patently, this exercise was proceeding far beyond any concept of fact-checking.

17. By email dated 13 April 2017 – document 9 – the Council supplied its response to document 8. The document provides substantive representations in relation to the Holwell site. These representations covered, in relation to the Holwell site, such matters as deliverability, viability, contamination, the viability of community facilities, and accessibility to centres. Again, patently, these matters went well beyond any concept of fact-checking. What is happening here is that private discussions are taking place, dealing with a wide variety of substantive planning issues, in which Jelson had an interest, but from which they were excluded.

18. On 21 April 2017 the Examiner issued a response to the above representations: **document 10**. Paragraph 3 of this document stated:

"In the Examiner's opinion, it would not be open, fair or impartial for him to hold closed discussions with the LPA/PC without the knowledge of other interested persons, such as those who have made objections to the policies of the Neighbourhood Plan. With that in mind, the Examiner wishes to stress that the use of the word "correspondence" by the LPA (which might imply some sort of dialogue) actually refers to emails concerning matters of fact which were sent to TRA and forwarded by TRA to the Examiner".

Despite this comment, "closed discussions" were precisely what were taking place.

In relation to the Holwell site, the document records that the Examiner had requested the Council to say in terms whether this site was viable and deliverable within the plan period, but they had not done so. "As he made plain in his response of 29 March, he cannot reasonably accept the site as contributing to the housing allocations of the APNP if it is not viable and deliverable". He refers to representations received and states in paragraph 17:

"On the basis of the foregoing evidence, the Examiner is minded to conclude that the flexibility allowed by the emerging local plan, and the emerging policy in the housing white paper, are sufficient to find that the housing allocation of APNP Policy A27 [the Holwell site] is viable and deliverable within the plan period, unless the LPA has further evidence to the contrary".

Paragraph 30 states:

"The Examiner considers that his questions can reasonably and speedily be answered by written representations. However, if clear written answers are not forthcoming, the Examiner may have no alternative but to hold a hearing, with attendant delay and expense for the LPA/PC".

Having concluded in the First Report that the Holwell site was neither viable nor deliverable, the Examiner had subsequently received no evidence to justify the complete

reversal of this conclusion. Neither the emerging local plan, nor the White Paper, is relevant to this issue. The conclusion as to the viability and deliverability of the Holwell site was fundamental to the acceptability of the NP. This changed conclusion had nothing to do with “fact-checking”. Further, Jelson was shut out from the entirety of this process.

19. On **25 April 2017** a meeting took place between representatives of Jelson and Asfordby Parish Council. Jelson stated that it was understood from the Council that the Examiner had raised concerns about the NP in his report. The Parish Council denied this, saying that the Inspector had simply raised a few questions which they were confident that they and the Council had addressed. No mention was made of the First Report having been issued.
20. By email dated **27 April 2017** – **document 11** – Mr Thorley raised his concern with the Council that exchanges with the Examiner had been taking place but not published on the Council’s website. “We are therefore in the dark as to what the issues are that have been discussed and to what degree they might affect representations that we, and indeed other third parties might have made”. No response to this email was ever received.
21. By email dated **28 April 2017** the Council sent to the Examiner its response to the Examiner’s further questions: **document 12**. In relation to the Holwell site, the response included:

“The LPA are reasonably content that site [sic] is viable and deliverable for both the mixed use scheme as promoted by the Neighbourhood Plan and Employment as per the Local Plan...The LPA has been unable to commission consultants to look at deliverability issues here. Key concerns of the LPA relate to the costs of remediation of the site and delivery of the

community infrastructure that is indicated as accompanying the scheme (Community Facility/Shop) on top of policy compliant affordable housing numbers and other contributions..., so whilst we accept that the scheme may be viable, it is also expected some of these contributions may have to be reduced to ensure this viability, and perhaps these potential compromises need to be made explicit in the reasoned justification”.

22. By letter dated 4 May 2017 to the Examiner, written by GVA on behalf of Jelson, reference was made to the exchange of correspondence between the Examiner and the two Councils, correspondence to which other parties had not been privy. It had been assumed that all correspondence of this nature would be made publicly available straight away, so as to avoid any sense that it is a “behind closed doors” process: **document 13**.

23. By email dated 15 May 2017 – **document 14** – to GVA, TRA stated:

“The Examiner is nearing finalisation of his report which includes an Appendix outlining the exchange of information – in the form of written questions and answers – that has taken place between the Examiner and MBC/APC”.

The Appendix was to be circulated shortly.

24. On the same day, TRA wrote an email to, inter alia, GVA, stating:

“The Examiner, Mr Brian Dodd, is close to completing his examination of the Asfordby Neighbourhood Plan. In the interests of fairness, openness, and transparency, Appendix 3 of his report outlines the exchange of information between the Examiner and Melton BC/Asfordby PC which has taken place as part of his examination.

Mr Dodd has asked me to forward a copy of this Appendix 3 to you all as relevant parties in the examination. This is for information purposes and should not raise any new issues. However, if you do have any comments on the issues referred to in the Appendix please could you send them to me

by 5 pm on Wednesday 24 May for forwarding to the Examiner”:
document 14.(emphases supplied)

The Appendix consists of two pages. It does not come close to constituting a summary, in any meaningful way, of the exchanges that had taken place. Equally plainly, it does not constitute consultation, since expressly presented “for information purposes and should not raise any new issues”.

In the Council’s PAP reply letter (**document 24** below) it contends (page 3 first sentence) that “..the Claimant was invited by the Examiner to provide evidence on viability and deliverability and it did so through its agent GVA”. This is not the case. Since the document was supplied for information purposes only, and new issues were not to be raised, there was no such invitation.

25. By email dated **24 May 2017 – document 16** – GVA submitted comments on Appendix 3. The comments were restricted to housing need, and did not relate to the deliverability of the Holwell site or other sites. Had Jelson or its advisers been aware of the First Report, the nature and extent of the extensive subsequent representations, and the reversal of the Examiner’s conclusions, they would have approached this correspondence in a fundamentally different manner.
26. On **2 June 2017 – document 17** – TRA advised that the Examiner had completed his report, and that it would be sent to the Council for “fact-checking”.
27. By email dated **16 June 2017 – document 18** – GVA submitted further information, relating to a recent housing study covering the area of Melton Borough Council.

28. By email dated **19 June 2017** – **document 19** – TRA responded in relation to the receipt of document 17.
29. By email dated **20 June 2017** the Council supplied Jelson with the final report of the Examiner, dated **5 June 2017: document 20** (the Second Report). The findings and conclusions on the matters which are relevant to this claim were reversed from the First Report.
30. In relation to the Holwell site, the report records (paragraph 4.11.1) that the owners of the site are in favour of its development for mixed uses including housing. Paragraph 4.11.3 states: “*MBC are reasonably content that the site is viable and deliverable for both the mixed use scheme as promoted by the APNP and employment as in the DMLP*”. Paragraph 4.11.4 states that the need for a shop and community facilities may need to be reviewed as the scheme is worked up. Paragraph 4.11.6 refers to the housing White Paper of **February 2017**, it being stated that “...this adds weight to the case for developing site A27”. Paragraph 4.11.7 states: “*On the basis of the foregoing evidence, I conclude that there is a reasonable prospect of the housing allocation of APNP Policy A27 being viable and deliverable within the plan period*”. The report concludes that, subject to certain recommendations, the NP would meet the basic conditions, and that it should proceed to a referendum.
31. On **1 August 2017**, the opening day of the planning inquiry referred to above, Jelson were supplied with a report dated **12 July 2017** to the Rural, Economic and Environmental Affairs Committee of the Council: **document 21**. Paragraphs 3.4 and 3.5 alerted Jelson to the apparent existence of the First Report, and its reversal in the Second Report. The report recommended that the NP should proceed to referendum, The

Referendum Version of the Neighbourhood Plan is dated **June 2017: document 22**. It is understood that this recommendation was accepted, and the decision to proceed to referendum was publicised on the Council's website on **14 July 2017**.

32. On **2 August 2017** the Council provided to Jelson **documents 4, 5, 6, 8, 9, 10 and 12**. This was the first time that Jelson had seen any of this documentation.
33. On **10 August 2017** Jelson's Solicitors, Shakespeare Martineau, sent a pre-action protocol letter (the PAP letter) to the Council: **document 23**.
34. By letter dated 16 August 2017 the Council responded to the PAP letter (the PAP reply): **document 24**.

Relevant law

35. The examination of a Neighbourhood Plan is governed by Schedule 4B to the Town and Country Planning Act 1990. So far as relevant to the claim, paragraph 8(1) provides:

"The Examiner must consider the following –

- (a) whether the draft neighbourhood development plan meets the basic conditions (see sub-paragraph (2))...".*

So far as relevant, paragraph 8(2) provides:

"A draft plan meets the basic conditions if –

- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,*
- (d) the making of the plan contributes to the achievement of sustainable development,*

- (e) *the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)...*

(The provisions of Schedule 4B are presented here, with the reference to neighbourhood development plans as opposed to neighbourhood development orders, pursuant to section 38A(3) of the Planning and Compulsory Purchase Act 2004).

36. Paragraph 9 provides, so far as relevant:

- “(1) The general rule is that the examination of the issues by the examiner is to take the form of a consideration of written representations.*
- (2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing –*
 - (a) in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case, or*
 - (b) in such other cases as may be prescribed”.*

37. Paragraph 10 provides, so far as relevant:

- “(1) The examiner must make a report on the draft plan containing recommendations in accordance with this paragraph (and no other recommendations).*
- (2) The report must recommend either –*
 - (a) that the draft plan is submitted to a referendum, or*
 - (b) that modifications specified in the report are made to the draft plan and that the draft plan as modified is submitted to a referendum, or*
 - (c) that the proposal for the plan is refused.*

- ...
- (4) *The report may not recommend that a plan (with or without modifications) is submitted to a referendum if the examiner considers that the plan does not –*
 - (a) *meet the basic conditions specified in paragraph 8(2)....”*

38. Paragraph 12 provides, so far as relevant:

“(1) *This paragraph applies if an examiner has made a report under paragraph 10.*

(2) *The local planning authority must –*

- (a) *consider each of the recommendations made by the report (and the reasons for them), and*
- (b) *decide what action to take in response to each recommendation.*

...

(4) *If the authority are satisfied –*

- (a) *that the draft plan meets the basic conditions mentioned in paragraph 8(2)...., or*
- (b) *that the draft plan would meet those conditions...if modifications were made to the draft plan (whether or not recommended by the examiner),*

a referendum in accordance with paragraph 14...must be held on the making by the authority of a neighbourhood development plan”.

39. Section 61N of the 1990 Act provides:

“(1) *A court may entertain proceedings for questioning a decision to act under section 61E(4) or (8) only if –*

- (a) *the proceedings are brought by a claim for judicial review and*

- (b) *the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.*
- (2) *A court may entertain proceedings for questioning a decision under paragraph 12 of schedule 4B (consideration by local planning authority of recommendations made by examiner etc.)...only if—*
- (a) *the proceedings are brought by a claim for judicial review, and*
- (b) *the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.*
- (3) *A court may entertain proceedings for questioning anything relating to a referendum under paragraph 14 or 15 of Schedule 4B only if—*
- (a) *the proceedings are brought by a claim for judicial review, and*
- (b) *the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the result of the referendum is declared”.*

This application for judicial review is brought by virtue of sub-section (2) above.

GROUNDS OF CHALLENGE

Ground 1 – it was outside the powers of Schedule 4B to the Town and Country Planning Act 1990 to “make a report” (Schedule 4B paragraph 10(1)) following a “concluded” examination with a recommendation to reject the plan, whether or not presented in draft for fact-checking purposes only, and then to issue a further report accepting the plan and recommending that it proceed to referendum.

Ground 2 – fact checking of the First Report could not lawfully have been an opportunity to re-open key issues and to present, receive and assess new evidence, opinions and submissions, that would change conclusions and the Examiner’s recommendation.

Ground 3 – given the nature and extent of the issues raised by objectors at the outset, the Examiner could not reasonably have concluded at the stage of commencing the Examination, that the criteria for a hearing were not met.

Ground 4 – the Examiner could not reasonably have concluded, following the issue of his First Report and the exchanges that followed with the Councils, that the criteria for a hearing were not met in then proceeding to produce a Second Report (based on new evidence) that was fundamentally different.

Ground 5 – the process was legally unfair to the Claimant who was given no opportunity to make representations in light of the now disclosed material, namely the First Report which concluded that the basic conditions had not been met and it should not proceed to a referendum, and the subsequent submissions of evidence and opinion that changed the recommendation.

Ground 6 – 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 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.

Ground 7 – the Examiner acted irrationally and without proper reasoning in repeatedly accepting the bare assertions of the Council in relation to the above matters, as opposed to requiring evidence upon them and reaching his own conclusions.

Ground 8 – the Examiner 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 Council on 28 April 2017 that the cost of remediation was a “key concern”, and when he himself stated in 15 May 2017 that the site “comprises substantial areas of derelict and contaminated industrial land”.

Conclusion

40. For the reasons set out above, the Claimant seeks permission to bring this claim for judicial review, and an order for its costs to be paid by the Respondent.

C. LOCKHART-MUMMERY QC

Landmark Chambers
180 Fleet Street
London EC4A 2HG
22nd August 2017

IN THE MATTER OF:

JELSON LIMITED

v.

MELTON BOROUGH COUNCIL

STATEMENT OF FACTS AND GROUNDS

Shakespeare Martineau Solicitors