

This matter is being dealt with by  
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Our ref: .10.900598.101.SH.  
Your ref: CO/3881/2017

19 February 2018

Dear Sirs

**Jelson Limited v. Melton Borough Council and  
Asfordby Parish Council/Secretary of State for Communities  
and Local Government/CO/3881/2017**

We write further to the Order of the High Court dated 5 February 2018. The Order quashed the Council's decision to refer the Asfordby Neighbourhood Plan to referendum, and the subsequent referendum.

The purpose of this letter is to address the steps that can now lawfully be taken by the Council and the Parish Council.

You will recall that the First Report of the Examiner recommended that the Plan did not comply with the Basic Conditions, and should not be referred to referendum. There then followed an unlawful process, engaged in by the Council and the Examiner, as a result of which further evidence and submissions were received, leading to the Second Report with the recommendation reversed. As a result of this unlawful process, the decision to refer to referendum, and the referendum, were quashed.

The process of examination is governed by Schedule 4B to the Town and Country Planning Act 1990. The legal position now is that, having concluded the Examination, the Examiner "must make a report" on the draft Plan: paragraph 10(1). It will, of course, not be open to the Examiner lawfully to reach any other recommendations than that specified in the First Report. That being the case, any report could only recommend in accordance with paragraph 10(2)(c), "that the proposal for the [Plan] is refused". That in turn would inevitably lead to the Council having to "refuse the proposal" under paragraph 12(10). (Any other recommendation by the Examiner would inevitably be tainted by bias and pre-determination, and would lead to further legal challenge).

In these circumstances, it seems clear that the only practical and lawful course which could be undertaken would be for the Parish Council, as qualifying body, to withdraw the Plan under paragraph 2(1). It would be open to the Parish Council, if it wished, to submit a further proposal under paragraph 1(1).

The course suggested in the email dated 16 February 2018 from Mr Worley to Mr Thorley of Jelson—"we are progressing towards making arrangements for re-Examination"—is, for the above reasons, not possible. The examination was "concluded", with the implications set out above.

In the light of the above, we look forward to hearing from you as to how matters will proceed from this point on. We are sending a copy of this letter to the Parish Council.

Yours faithfully



**Shakespeare Martineau**

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cc Asfordby Parish Council