
SUBJECT:	Pioneer House, Hollybush Hill, Stoke Poges
REPORT OF:	Head of Legal and Democratic Services
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WARD/S AFFECTED	Stoke Poges

1. Purpose of Report

- 1.1 This report is brought to Cabinet as a matter of urgency following the decision of Planning Committee on 9 March that the Council should challenge the Secretary of State's decision of 18 February to grant prior approval for a state-funded school at Pioneer House. That decision was subject to Cabinet approving the funding for the necessary legal action.
- 1.2 The deadline for issuing court proceedings is 31 March 2016 which is before the next scheduled meeting of the Cabinet. As the statutory 28 days notice of this decision has not been given, the Chairman of Overview and Scrutiny Committee has been informed in accordance with Regulation 10 of the Executive Procedure Regulations 2012.

FOR DECISION

Whether to approve the use of the Council's General Reserves to meet the expenditure which will be incurred in challenging the Secretary of State's Decision dated 18 February 2016 to grant prior approval for permitted development for a state funded school under Part 3 Class K of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 at Pioneer House, Hollybush Hill, Stoke Poges under section 288 of the Town and Country Planning Act 1990.

2. Reasons for Recommendations

This is a matter for Cabinet to consider having regard to Planning Committee's decision that it was expedient in the interests of the inhabitants of the area to challenge the Secretary of State's redetermination decision subject to approval to funding by the Cabinet, the legal advice from the Council's barrister and the financial and other implications set out in paragraph 7 of this report.

3. Content of Report

- 3.1 The Planning Committee refused prior approval for permitted development for a state funded school at Pioneer House in January 2014. The Secretary of State for Education appealed that decision and the appeal was called in for determination by the Secretary of State for Communities and Local Government in April 2014. An Inspector was appointed to conduct a hearing into the appeal which took place over 2 days in July 2014. The Inspector's recommendation was to refuse approval on noise grounds.

However, the Secretary of State decided not follow his Inspector's recommendation and granted prior approval on 17 September 2014.

- 3.2 This Council and Stoke Poges Parish Council issued proceedings in October 2014 under section 288 of the 1990 Act challenging the Secretary of State's decision on the grounds, amongst other matters, that he failed to properly address the evidence on noise impacts for local residents set out in the Inspectors Report. The Secretary of State bowed to judgement before a Court Hearing took place and the decision was quashed by Order of the Court in March 2015 and remitted to him for re-determination.
- 3.3 The redetermination decision was issued on 18 February and a copy is appended to this report. This accepts the Inspector's findings that there will be increased noise levels as a result of the school use of Pioneer House but again finds that they are insufficient to outweigh the benefits of using the site as a school. This has proved a controversial issue locally and there is considerable concern and frustration at the Secretary of State's continued failure to follow the recommendations of the appointed Inspector.
- 3.4 The Head of Legal and Democratic Services has sought advice from a leading planning barrister on whether there are grounds to challenge the Secretary of State's decision under section 288 of the Town and Country Planning Act 1990. Section 288 provides that any person aggrieved by a decision may question its validity on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. Following a recent change to court rules permission is required from the High Court before a challenge can be brought. An application for permission must be made within six weeks from the date of the decision i.e. by 31 March.
- 3.5 The barrister's advice is attached as a confidential appendix. In summary he considers the Secretary of State's findings and approach to the impact of internal and external noise on local residents are legally flawed and therefore there are arguable grounds on which to challenge the decision. If Cabinet wish to discuss the legal advice in further detail it will be necessary to move into private session and exclude the public and press, so as not to prejudice the conduct of the Council's case in the potential legal proceedings.
- 3.6 Cabinet are nevertheless reminded that the outcomes of legal action are by no means certain. Even if the Council were successful in obtaining leave to challenge the decision there would be a hearing, probably lasting a day, to decide whether the decision should again be quashed and remitted back to the Secretary of State for redetermination. If the decision is quashed at first instance, there is the possibility of further appeals by the Secretary of State. In terms of timescales if an application for permission to challenge is issued by 31 March a decision is likely to take 3 to 6 months. The timescale for redetermination would normally be 3 to 9 months, although the current redetermination has taken 11 months.
- 3.7 The Council has power under section 222 of the Local Government Act 1972 to take legal proceedings where it considers this is expedient for the promotion or protection of the interests of the inhabitants of their area. Cabinet will note that Planning Committee, having considered the barrister's advice, decided that it was expedient to

take proceedings in this case. The financial considerations of taking this action are covered in paragraph 7 below.

4. Consultation

Not Applicable

5. Options

- a) Do not seek support a legal challenge - the Council has discretion whether to challenge the decision and is not obliged to do so, even if they have legal advice that the decision is flawed. The test under section 222 is whether it is “expedient” to take legal proceedings and therefore the Council can have regard to the likely costs of legal proceedings and what would be achieved by taking such action. It should also be noted that the Secretary of State for Education and the Educational Trust running the school are required by a planning obligation agreement to adhere to a noise management plan and submit details of an acoustic barrier, to mitigate noise impacts from the school use. The approval is also subject to a condition limiting noise emitted from the site.
- b) Seek leave to challenge the decision under section 288 – the advice from a specialist planning barrister is that the decision does have legal flaw in relation to the impact of internal and external noise from the school use on local residents and therefore there are arguable grounds for a challenge. The financial and other risks of this option are explained in paragraph 7 and would require approval to the use of General Reserves. If the challenge was successful the Secretary of State would be required to re-determine his decision

7. Corporate Implications

Financial

- 7.1 As this decision has already been re-determined once following a successful legal challenge it is likely to be defended by the Secretary of State at the highest level, and may result in appeals to higher court if it is quashed at first instance. If the Council’s application for leave is unsuccessful the costs are likely to be in the region of £10k. If leave is granted and the challenge proceeds to a full hearing the costs will increase to the order of £20k to £30k. If the challenge is unsuccessful at this stage, in addition to its own costs the Council could be faced with meeting equivalent sums in respect of the Secretary of State’s legal costs. If the case proceeds to the higher courts on appeal by the Secretary of State, legal costs would increase significantly.
- 7.2 These costs are unbudgeted and of a scale that cannot be contained within existing budgets for planning appeals. Therefore the costs of a challenge will need to be met from the Council’s General Reserve. If the application for leave is unsuccessful the Head of Legal and Democratic Services would not recommend taking further action and this will limit the Council’s costs exposure. Should permission to challenge be granted then further legal costs of a full hearing will flow, unless the Secretary of State again bows to judgement in advance of a hearing. If the challenge is unsuccessful after a full hearing the Head of Legal and Democratic Services would not recommend that the Council seeks to appeal to the higher courts. This will again limit the Council’s

exposure to legal costs. However, if the challenge is successful there is a risk that the Secretary of State will appeal to the Court of Appeal rather than accept the quash and redetermine his decision. Further legal costs of defending such an appeal would then follow.

Risk Issues

7.3 The Council could face reputational issues from a decision not to support a legal challenge following advice that there are arguable grounds to do so, as well as financial risks and credibility issues with the Department of Communities and Local government if it does mount a further challenge.

Equalities

7.4 In terms of equalities, this is very much a case of balancing the interests of local residents in terms of noise impact from a school which is being imposed under a regime that removes any local authority involvement in considerations of the need and location of the facility. The site had pre-existing consent for B1 use which is a commercial and industrial use capable of being carried out in a residential area.

Sustainability

7.5 There are no direct sustainability implications from a decision whether to challenge this decision.

8. Links to Council Policy Objectives

Objective: Work Towards Safer and Healthier Communities/Engage with parish and Town Councils.

9. Next Steps

If Cabinet supports the funding of a challenge the Head of Legal and Democratic Services will arrange for the necessary legal proceedings to be issued in the High Court by the deadline of 31 March 2016

<p>Background Papers:</p>	<p>Secretary of State’s Decision Letters dated 17 September 2014 and 18 February 2016</p>
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