

**DATE OF PUBLICATION: 24 MARCH 2016**  
**DEADLINE FOR CALL-IN: MIDNIGHT 4 APRIL 2016**

## **CABINET**

### **Meeting - 22 March 2016**

Present Mr Bagge, Mr Naylor, Mr Egleton, Mrs Sullivan and Mr Kelly

#### **59. DECLARATIONS OF INTEREST**

Councillor Bagge declared a personal interest being a member and Chairman of Stoke Poges Parish Council which had challenged the Secretary State's decision.

Councillor Egleton was advised that although he was the County Council member for Stoke Poges and a member of the District Council's Planning Committee which had agreed to challenge the Secretary of State's decision this did not create a disclosable interest under the code of conduct

#### **60. PIONEER HOUSE, HOLLYBUSH HILL, STOKE POGES**

The Planning Committee on 9 March 2015 agreed to seek permission to challenge the Secretary of State's 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 following re-determination of the previous Secretary of State's decision of 17 September 2014.

Following this decision the Cabinet considered a report seeking approval to use the Council's General Reserves to meet the expenditure which would be incurred in challenging the Secretary of State's redetermination decision to grant approval as set out in a letter dated 18 February a copy of which was attached as an Appendix. The deadline for issuing court proceedings was 31 March – hence the need for an urgent decision

The report, after explaining the background and the grounds on which the Council could challenge the Secretary of State's decision went on to set out the following options :

- Do not support a challenge under section 288 of the Town and County Planning Act 1990
- Support a challenge under section 288 of the Town and County Planning Act 1990 as recommended by the Planning Committee

In connection with the second option, the Cabinet's attention was drawn to the advice received from Counsel, circulated as a confidential appendix, on the soundness of the Secretary of State's decision,. The Cabinet was particularly asked to note the conclusion in Counsel's advice that, in respect of both external and internal noise, the Decision Letter from

the Secretary of State discloses arguable errors in law and therefore it is open to the Council to challenge pursuant to Section 288.

The Cabinet also noted the following points:

1. The first stage in a challenge was to seek leave to appeal. If successful a High Court hearing would be held to decide whether the decision of the Secretary of State should be quashed.
2. The costs for a leave to appeal were in the region of £10k
3. If leave to appeal were granted and the challenge proceeds to a full hearing the Council's costs were likely to be in the region of £20-£30K. The costs would escalate significantly if the challenge were unsuccessful as the Council could be faced with meeting the legal costs incurred by the Secretary of State.
4. As the costs had not been budgeted for or contained within existing budgets for planning appeals they would need to be met from the Council's General Reserves
5. The reputational and financial risks to the Council regardless of which option is pursued.
6. The Council has the power under Section 222 of the Local Government Act 1972 to take legal proceedings where it considers this is expedient for the promotion of the interests of the inhabitants of the District.

During the discussion that ensued members highlighted the important principle that was at stake in terms of the Council's role to protect the amenities of residents. In accordance with this role the Planning Committee had refused prior approval for a state funded school and following an appeal process the Inspector's recommendation was also to refuse approval on noise grounds. However the Secretary of State chose to disregard the recommendation, a decision which was quashed following a challenge by the Council and Stoke Poges Parish Council. Whilst the redetermination decision of the Secretary of State to grant approval accepted the Inspector's findings in relation to noise it failed properly to deal with the Inspector's findings on the harm to local residents from internal and external noise.

Mindful of the need to ensure the decision was legally sound and having regard to Counsel's advice that the Secretary of State's re determination decision discloses arguable errors of law, the Cabinet agreed that it was expedient to support a challenge to the Secretary of State's decision and accordingly

**RESOLVED** that approval be given to use the Council's General Reserves Council to challenge the Secretary of State's decision to grant prior approval for permitted development for a state funded school at Pioneer House, Hollybush Hill, Stoke Poges under Section 288 of the Town and Country Planning Act 1990.

**61. EXCLUSION OF PUBLIC**

"That under Section 100(A)(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A to the Act."

**62. PIONEER HOUSE, HOLLYBUSH HILL, STOKE POGES**

The Cabinet had regard to Counsel's advice whilst discussing the issues under paragraph 61 above.

The meeting terminated at 6.14 pm