

Bath & North East Somerset Council

MEETING:	DEVELOPMENT CONTROL COMMITTEE
MEETING DATE:	12 MARCH 2014
Report of:	David Trigwell, Divisional Director of Planning and Transport Development
Originator:	Lisa Bartlett, Development Manager
TITLE:	UPDATE – LAND AT FORMER FULLERS EARTH WORKS, FOSSEWAY, COMBE HAY, BATH
WARD:	BATHAVON WEST

AN OPEN PUBLIC ITEM

BACKGROUND PAPERS

- (i) Development Control Committee Report 25 September 2013
- (ii) Planning Inspector's Ruling of 31 January 2013
- (iii) Judicial Review Claim Form dated 6 March 2013 setting out the Claimant's grounds of the Judicial Review to the Planning Inspector's Ruling
- (iv) Mr Justice Lindblom Judgment dated 27 February 2014

1. BACKGROUND

- 1.1. This Committee were advised at its Meeting on 25 September 2013 that Gazelle Properties Limited (Gazelle) had made a claim for Judicial Review of the Ruling made by the Planning Inspector, Mr Brian Cook, where the Inspector found in favour of the Council and Third Parties on the preliminary issues raised by Gazelle at the start of the Public Inquiry which sat at the end of January 2012.
- 1.2. Gazelle's challenge was originally on three grounds, but only one ground remained at the date of the Judicial Review hearing which took place on 18 December 2013 as one of the grounds was refused at the permission stage and the other being withdrawn by Gazelle shortly before the hearing in December last year.
- 1.3 The one remaining challenge and the question for the Court was:

"What was the extent of land consider by the First Secretary of State in August 2003 to be covered by Use Class B2 of the Town and Country Planning (Use

Classes) Order 1987 (as amended) as a fallback position on a proper construction of the 2003 decision letter”

- 1.4 The Council were ‘interested parties’ to these proceedings as the challenge was against the Planning Inspector appointed by the Secretary of State for Communities & Local Government

2. HIGH COURT’S DECISION

- 2.2. Mr Justice Lindblom’s Judgment was handed down in the High Court on Thursday 27 February 2014 and he found against the Inspector’s Ruling on the interpretation of the extent of the land considered by the First Secretary of State (“SOS”) and quashed the Inspector’s Ruling.

- 2.3. Mr Justice Lindblom made it clear in his judgment that it was not his task to decide whether the SOS was right in what he said about the lawful use of the site, but only to discern what he meant. The Judge went on to say in paragraph 8 of his Judgment:

“It is perhaps sensible to say at this stage what the court is not doing in these proceedings. It is not considering the expediency of the Council’s enforcement action, or the planning merits of any proposal – past or present – for the use or development of Gazelle’s site. Nor is it judging the correctness of any findings of fact made by the First Secretary of State in his decision of 1 August 2003, or making any findings of fact of its own. It is not adjudicating on the existence or extent of any lawful use on Gazelle’s land. It is merely deciding the question of construction posed by the claim”

- 2.4. A link to the background papers, including the Judgment of Mr Justice Lindblom can be found at <http://idox.bathnes.gov.uk/WAM/showCaseFile.do?appNumber=11/05218/CONSLT>

3. CLEU APPLICATION

- 3.1 The CLEU application was withdrawn by Gazelle on 7 November 2013. It is understood that this was withdrawn to allow resources to be focused on the Residual Waste Facility proposal.

4. CONCLUSION

- 4.2. The Judge said that the claim for Judicial Review brought by Gazelle could not and has not resolved the extent of the land which has the benefit of Class B2 fallback. He further stated in his Judgment that it is the forthcoming Enforcement Notice Appeal decision that will provide a formal determination of lawful use, where the submissions and evidence submitted by all parties can be tested before a Planning Inspector at a public inquiry. The claim made by Gazelle for judicial review could never have achieved that.