

**REPORT TO:** Council

14 July 2020

**LEAD OFFICER:** Monitoring Officer

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## Monitoring Officer Report.

### Executive Summary

1. In accordance with legislation, if the Council's Monitoring Officer believes that any decision by the Council (acting through any person holding any office or employment under the authority the Executive or as the Council), has given rise to a contravention by the Council of "any enactment or rule of law" it is their duty to prepare a report ("a Monitoring Officer Report") on the matter.
2. The following decisions could be a contravention:
  - a) Planning decision S/3215/19/DC - Fews Lane
  - b) Planning decision S/4541/19/FL - Steeple Morden
  - c) Environmental Information Regulations 2004 – Decision Notice – FER0841426
3. In preparing this report, I must, so far as is practicable, consult with the Head of Paid Service and the Chief Finance Officer. I can confirm that both have been consulted and have endorsed this report. Further, this report was sent to every member of the Council on the 6<sup>th</sup> July 2020.
4. The Council must consider this report within 21 days of it first being sent to members.

### Key Decision

5. No.

### Recommendations

6. That Council note the content of this report as no further actions are required.

### Reasons for Recommendations

7. Under sections 5 and 5A of the Local Government and Housing Act 1989 (the Act), the Monitoring Officer (MO) of a local authority is under a personal duty to report where he/she is of the opinion that the authority or any part of it proposes to act, or has acted, contrary to any "*enactment or rule of law*".
8. Although there is a lack of case law, it is generally accepted that the preparation of a section 5 report (or indeed any statutory officer report) should only happen in exceptional

circumstances, and should be reserved for instances where the seriousness of the issues merit its use. A decision to report should be made in line with public law decision making principles and it must be Wednesbury reasonable (among other things).

9. Whilst there may have been a breach, therefore engaging the relevant provisions of the Act, I was and remain of the opinion that it was not necessary to produce this Monitoring Officer Report. The matters are already in the public domain, and the issues giving rise to the illegalities have already been or are being addressed by the High Court and the ICO respectively. There appears to be no resulting benefit for either the public or the Council, and bringing reports on these matters would arguably not be a reasonable use of the Council's resources, nor would it be in the public interest.
10. Whilst there appears to be no resulting benefit for either the public or the Council, and bringing reports on these matters would arguably not be a reasonable use of the Council's resources, nor would it be in the public interest, I have nonetheless decided to report these matters to Council given the potential for an unnecessary 3<sup>rd</sup> party challenge which would be devoid of purpose.

## **Details**

### **Planning Decision S/3215/19/DC – Location Fews Lane.**

11. In this matter, Fews Lane Consortium (hereafter "FLC") was granted permission to apply for a judicial review of the Council's decision in relation to an application to discharge two planning conditions at a site at Fews lane in the village of Longstanton. The conditions were imposed by a planning inspector on appeal.
12. The Council accepted that, unusually, FLC had a legitimate expectation that it could make comments on the planning application prior to it being determined by the Council despite the Council having no underlying legal duty to consult it.
13. The Planning decision was quashed by consent Order without the need for a hearing and the planning application for the discharge of two conditions is currently being reconsidered.
14. All councillors received an e mail from me on the 18<sup>th</sup> May 2020 informing them that the courts had granted permission to appeal the decision and the council entered into a consent order agreeing to quash the planning decision allowing FLC to submit comments on the application before was redetermined.
15. FLC e mailed the Council on the 15<sup>th</sup> June 2020 stating "a section 5 report on the legal flaws in the Council's decision making process in regards to application S/3215/19/DC will afford an opportunity for the Council and its officers to review the relevant law on the promises of public bodies and the basic principles of public consultation, and as the Deputy Leader recently noted in regards to another unlawful planning consultation, there

is an urgent need for the Council “to review its procedures and consider what steps should be taken to seek to ensure that such issues do not arise again in the future”.

16. Given that this was simply an innocent mistake on the part of the Planning Officer determining the application, no further action is required.

### **Planning Decision S/4541/19/FL - Steeple Morden**

17. The application sought approval to extend the existing home and construct a detached annex in the rear garden.
18. When the permission was granted on the 5<sup>th</sup> May 2020 the Council was contacted by the agent to query the plans. Unfortunately, during the processing of the application, drawings were relabelled by officers incorrectly - with the effect that the location of the detached annex changed. Neighbours were not re-consulted on these changes and had previously made comments on this issue. In addition, the resulting permission that was issued did not incorporate the plans showing the approved elevations or floorplans to the annex.
19. As a result of a review of the application by Planning and Legal officers, the Deputy Leader issued proceedings in the High Court for Judicial Review of the planning application approval. The purpose of the review is to allow the Court to quash the approval and for the Council to decide the application afresh.
20. This matter is currently being considered by the Courts.
21. All councillors received an e mail on the 8<sup>th</sup> June 2020 containing a briefing note from the Joint Director of Planning and Economic Development informing them of the above.
22. It is worth reminding members that officers in our Shared Planning Service process around 6,000 applications each year. However, the Planning team is implementing a review of their processes surrounding validation and decision sign off to seek to avoid a repeat of this unfortunate event and members will be updated separately. Accordingly, no further action is required.

### **Environmental Information Regulations 2004 (EIR) Decision Notice - FER0841426 – Complainant Mr A Taylor**

23. Mr Taylor requested information regarding an outline application for the building of nine dwellings.
24. The Information Commissioner’s Office, by way of decision dated the 24th June 2020, required the Council to reconsider whether it holds an officers report and if it does to disclose it within 35 days of the date of the decision notice. A copy of the Information Commissioner’s Office’s decision is attached to this report.

25. Officers have advised me that this report is available on our website and the link has previously been included in the information given to Mr Taylor and the Information Commissioner's Office. Hard copies of the document have now been provided to Mr Taylor.
26. Mr Taylor e mailed the Council on the 25th June 2020 stating "In the context of the decision of the Information Commissioner which I now attach, for the sake of good order I write to remind you that Section 5A (2) of the Local Government and Housing Act 1989 requires that you, in your capacity as monitoring officer, must now prepare a report to your executive with respect to their failure to comply with the requirements of the Freedom of Information Act. I note that your responsibilities are laid out clearly in the remaining sub paragraphs of section 5A. I am sure you will note that the requirements of the Act are absolute. It follows that an intentional omission to comply is likely to constitute a contempt of court. Since I am an interested party, I now request that you send me a copy of the report you submit to your chief executive."
27. Section 5 and 5A of the Act require the Monitoring Officer to consult as far as possible with the Head of Paid Service and the Chief Finance Officer in the preparation of the report. There is no requirement to provide the Head of Paid Service with a report as part of the process (albeit this has been done) nor does Mr Taylor have a right to receive a copy of the report as an interested party in advance of members.
28. As hard copies of the documents have been provided to Mr Taylor no further action is required.

## **Legal**

29. Under sections 5 and 5A of the Local Government and Housing Act 1989 (LGHA), the Monitoring Officer (MO) of a local authority is under a personal duty to report where he/she is of the opinion that the authority or any part of it proposes to act, or has acted, contrary to any "*enactment or rule of law*".

## **Report Author:**

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