

 Executive 4th February 2009		Agenda Item No.
Title	Legal Challenge to Warwick District Local Plan	
For further information about this report please contact	Gary Stephens	
Service Area	Planning	
Wards of the District directly affected	Kenilworth Park Hill	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number	Executive – 23 rd July 2007. Minute no. 270	
Background Papers	Warwick District Local Plan	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <u>must</u> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	14/01/09	Bill Hunt
Chief Executive	15/01/09	Chris Elliott
CMT	15/01/09	
Section 151 Officer	14/01/09	Mary Hawkins
Legal	14/01/09	Peter Oliver
Finance	14/01/09	Marcus Miskinis
Portfolio Holder(s)	19/01/09	Councillor John Hammon
Consultation Undertaken		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 This report summarises the outcome of the legal challenge against the Council's adoption of the Warwick District Local Plan. The challenge was made in respect of the designation of land north of Kenilworth within the Green Belt and was successful in the High Court in December. The report also notes the Chief Executive's subsequent use of his emergency powers in consultation with Group Leaders to not take action against the decision, and to make an offer of settlement of costs to the claimants.

2. RECOMMENDATION

- 2.1 That the Council notes the decision of the High Court in respect of the Legal Challenge against the Warwick District Local Plan and the subsequent use by the Chief Executive of his emergency powers under G17 of the Constitution, in consultation with Group Leaders, not to take any further action, and to make an offer of settlement of costs to the claimants.

3. REASONS FOR THE RECOMMENDATION

- 3.1 A legal challenge was made to the Council's adoption of the Warwick District Local Plan by Mr and Mrs Hague, the owners of a piece of land immediately to the north of Kenilworth bounded by Highland Road and Woodland Road. The land is known locally as the "Crackley Triangle". It is farmland which previously had not been designated within the Green Belt until the Council's adoption of the Local Plan in September 2007, in accordance with the Local Plan Inspectors Report. Mr and Mrs Hague objected to this designation and their challenge was heard in the High Court on Monday 15th December.
- 3.2 Following the submission of evidence by both parties, the Judge accepted Mr and Mrs Hague case and quashed the decision to include the land within the Green Belt. The Judge took the view that the Local Plan Inspector's decision to include the land within the Green Belt was without proper basis.
- 3.3 The Local Plan Inspector had concluded that there was no logical reason for the land not being designated Green Belt and that the original decision made by an Inspector in 1982 to exclude the land from the Green Belt was illogical and based upon the former Kenilworth UDC boundary which separated the Green Belt designated from the Kenilworth urban area. The Judge noted, however, that there was no clear evidence to support this conclusion as it had not been demonstrated to the Local Plan Inspector or himself what the basis was on which the land had been excluded from the Green Belt in 1982.
- 3.4 Moreover, the judge noted that given the existence of development on either side of the "triangle", he held that it was possible the original designation in 1982 was logical and based on a proper assessment of the land at that time. The fact that the Local Plan Inspector in 2007 disagreed with the view taken by the Inspector in 1982 was not itself sufficient to demonstrate "exceptional circumstances" that necessitated a revision to the Green Belt boundary.
- 3.5 The judge granted an opportunity for the Council to appeal his decision. This appeal had to be made in the courts by the 16th January 2009 and required Counsel to be instructed prior to the Christmas break. This necessitated the use of the Chief

Executive's emergency powers under G17 of the Constitution, in consultation with the Group Leaders.

- 3.6 Notwithstanding the disappointment with the decision, it was not considered appropriate to pursue this matter through the Courts and appeal the decision. The land has limited access and therefore the failure to designate the land as Green Belt was not considered likely to result in any greater opportunity for potential development. The land had never previously been protected as Green Belt (until the adoption of the Local Plan in 2007) and therefore the legal challenge has merely resulted in the land being reverted to its previous status. The cost of pursuing this matter and the likelihood of success are also factors which weighed in the balance.
- 3.7 The High Court also ordered the Council to pay the costs of Mr and Mrs Hague in challenging the Council's decision. This is the normal practice where 'costs follow the event' – i.e. the successful party in court proceedings can normally expect to have his reasonable and proper costs paid by the losing party. They have now submitted their claim for costs in the total sum of £52,404.49. Our agents, Sharpe Pritchard, considered this claim excessive, and, having reviewed the claim, advised making an immediate offer of settlement of £33,525. This is inclusive of VAT as in this case the Council will not be able to reclaim the VAT. This offer has now been made to the claimants following the use of the Chief Executive's emergency powers, in consultation with Group Leaders.
- 3.8 Please note that the Local Plan remains adopted, however, the Council will need to formally amend the Plan to reflect the judge's decision. A report will therefore be prepared for the next available Executive, once the court order has been received by the Council.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 Officers considered the option of appealing against the decision of the High Court. However, for the reasons set out in paragraph 3.6 above this was not pursued.

5. BUDGETARY FRAMEWORK

- 5.1 There are no budgetary framework implications from this recommendation. However, the offer of settlement if accepted by the claimants will cost the Council £33,525 which can be met from the Planning Reserve and so the net effect on the Council Tax and Annual Revenue Budget is zero.

6. POLICY FRAMEWORK

- 6.1 There are no policy framework implications from this recommendation.