INDEPENDENT REVIEW OF ADMINISTRATIVE LAW

Response to Call for Evidence from Aireborough Neighbourhood Development Forum

"1. Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?

The Aireborough Neighbourhood Development Forum (ANDF), a designated body for Neighbourhood Planning, made a successful application for statutory review under section 113 of the Planning and Compulsory Purchase Act 2004 (a form of judicial review)of the adoption by Leeds City Council (LCC) of a Site Allocations Plan on 20 August 2019: [2020] EWHC 1461 (Admin).

There was a preliminary hearing on capacity: [2020] EWHC 45 (Admin)

Our claim revolved around the exceptional circumstances used for deletion of Green Belt sites in our Neighbourhood Planning area. A number of aspects of our claim were upheld by Mrs Justice Lieven in a judgement handed down on 8 June 2020. The ramifications of the errors of fact and law found in the judgement meant that not only did the deleted Green Belt sites in Aireborough have to be restored to the Green Belt but the same had to apply to all the Green Belt sites deleted in the Leeds Site Allocation Plan (SAP), and the SAP remitted to the Secretary of State.

These proceedings were undertaken by the Forum as a last resort given Leeds City Council's persistent refusal to properly engage with local communities' submissions in respect of the local plan process.

All the negative effects of the proceedings could have been avoided had Leeds City Council, together with the Planning Inspectorate, given more consideration to the evidence we and other community representatives presented throughout the SAP process; starting with the Issues and Options stage in 2013 and ending with Main Modifications in early 2019. Our evidence, submissions and representation were, if not ignored, given very little credence by either LCC or the Planning Inspectorate. The NPPF makes it clear that planning should be done by engaging local communities and give them a platform to 'shape their surroundings'; it also says that local authorities should support Neighbourhood Planning Groups. The Planning Inspectorate should ensure that this has happened; it must have been obvious during the SAP hearings that this was not the case especially when a number of community groups were making such a case.

Thus, the only way left to us was to commence legal proceedings, following the issuing of the Inspector's Report in June 2019 which did not address any of our evidenced concerns. The decision to make a claim was not taken lightly, it was a nuclear option. However, the consequences of not doing so were very serious for the sustainability and future of our area. We had no other recourse to justice in proving the SAP was not sound, even though the costs, personal liability incurred, and risk of not succeeding were large and forbidding.

Before the decision to make a claim we weighed up a number of aspects: whether we had a claim, the likely costs, and our ability to fund raise. We also explored any negative implications for Leeds as a whole and discussed with our MP the suitability of a Ministerial Call-In, as an alternative **route.**

The outcome was that local people felt so strongly that an injustice had been done that we knew we had backing and considered it was possible to muster resources.

It was an exceptionally difficult decision for us to take. However, the fact that such an avenue was open to us, has meant the rule of law has been upheld, and just as importantly, been seen to be upheld – thus it should not be made any more difficult to bring a claim. In fact, the danger that a claim could be made as a last resort might have led to LCC and the Planning Inspectorate taking our evidence and representations more seriously and respectfully than they did during the SAP adoption process. That would have led to more effective decision making. If this option should be removed, then it would lead to ineffective and unsustainable planning, and undermine trust in the rule of law.

The proceedings have had serious consequences for effective planning in Leeds and a detrimental effect on the timeliness of the Local Plan. This could have been avoided if LCC and the Planning Inspectorate had acted lawfully in the first place. Their actions have had a detrimental effect on the certainty, confidence and trust that a Local Plan is supposed to engender with local communities and Developers. Conversely, the proceedings have restored local confidence in the rule of law and enhanced the Forum's legal understanding of planning law and legal proceedings; something that must be an arrow in the quiver of democratic accountability and equality.

2. In light of the IRAL's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to question (1)?

For lay people it would be useful to have a practical guide explaining the process in lay terms, with practical case studies and details of lay claimants who have been through the process and who would be willing to give the benefits of their experience to others considering similar action. ANDF has been approached by a number of groups from around England to talk through our experiences.

Section 2 – Codification and Clarity

3. Is there a case for statutory intervention in the judicial review process? If so, would statute add certainty and clarity to judicial reviews? To what other ends could statute be used?

Our claim was under section 113 PCPA 2004; we do not have a view as to whether this had any material effect on the proceedings.

4. Is it clear what decisions/powers are subject to Judicial Review and which are not? Should certain decision not be subject to judicial review? If so, which?

It was difficult for many people in the Forum to understand that it was the process for the determination of the Leeds Site Allocation Plan that was subject to judicial review, rather than the details of the sustainability assessment that accompanied it. There is a role for clear public education on legal matters in an accessible format. However, if some public decisions were not potentially subject to judicial review, that would surely allow unlawful behaviour by public authorities and the subsequent undermining of trust and democratic accountability.

5. Is the process of i) making a Judicial Review claim, ii) responding to a Judicial Review claim and/or iii) appealing a Judicial Review decision to the Court of Appeal/ Supreme Court clear?

Not for the lay person. The Forum took steps to understand the judicial review process before our decision was taken – but there were still many unanticipated [by us] twists and turns in our case, a number of which increased costs. Since we won our case we have been approached on a number of occasions by other communities to tell them about the process, so that they can make their own decisions. Some of these are going ahead with a claim, but others decided against doing so.

Section 3 – Process and Procedure

6. Do you think the current Judicial Review procedure strikes the right balance between enabling time for a claimant to lodge a claim, and ensuring effective government and good administration without too many delays?

We found the time limit for bringing the claim of 6 weeks extremely difficult to meet, as there was much work to do. It was fortunate that we had evaluated the potential for that course of action before the 'clock started ticking'. The time difference between Inspector's Report and LCC adoption of the SAP had allowed for that. Thus, our view is that the time for lodging a claim could usefully be two months or eight weeks. We appreciate the need to act quickly for all parties. One of the key issues was actually the printing of the bundle for the claim – some parties refused to accept digital bundles or other formats.

7. Are the rules regarding costs in judicial reviews too lenient on unsuccessful parties or applied too leniently in the Courts?

The issue of costs of the case, and the way they can spiral out of the control of the claimant through actions of the defendant was the most worrying part of bringing our case to court. The defendant, Leeds City Council, invited other parties to join in the claim and that increased our costs beyond anticipated. In addition, the defendant challenged our capacity to bring the claim, which required a preliminary hearing and further costs. We were therefore in the situation where, although our costs liability for the other parties' costs if we lost the case were capped through the Aarhus Convention, our own costs were a constant source of concern and not something we could easily control. Indeed, it appears that actions were taken by other parties to try and price us out of being able to afford our claim. As costs escalated we had to revise our crowd funding target with the local community and explain the legal reason very carefully: it was of benefit to us that so much of our Neighbourhood Plan had been done through engagement with our local community and therefore we had built up a degree of trust. Had we been a belatedly formed 'action group', this may have been more difficult.

We would not see the rules on costs as too lenient on unsuccessful parties. The Aarhus Convention gave us some comfort that our liabilities would not spin out of control, but even with that comfort costs were a constant source of concern.

8. Are the costs of Judicial Review claims proportionate? If not, how would proportionality best be achieved? Should standing be a consideration for the panel? How are unmeritorious claims currently treated? Should they be treated differently?

As above; costs were extremely intimidating for a group such as ourselves. We do not see how changing the rules on standing would change that. In fact, in our case, the challenge which the

defendant made to our capacity to bring the claim only increased cost liability. Restricting standing might only lead to other parties raising questions on capacity or standing to "up the ante" on costs.

9. Are remedies granted as a result of a successful judicial review too inflexible? If so, does this inflexibility have additional undesirable consequences? Would alternative remedies be beneficial?

Specific remedies provided in section 113 PCPA. It appeared to us in the judgement on relief that the Judge had what was needed to balance relief in a fair and equitable way. Although not what we had requested by way of relief, we consider the outcome to be the right decision.

10. What more can be done by the decision maker or the claimant to minimise the need to proceed with judicial review?

We are strongly of the view that the Planning Inspectorate should have ensured a fair and balanced hearing of the soundness of the SAP from all parties. In our experience, community groups are treated as 'also rans' in hearings – we are listened to politely; then ignored. (We have been parties now on several Local Plan hearings.) Our detailed representation to the SAP Main Modifications, which outlined some of the key errors of law and fact with the help of legal advice, had no response in the Inspector's final report. The Planning Inspectorate is there to ensure that the SAP meets its legal requirements – had this job been done better, then the proceedings would not have been necessary. This is not a criticism of the individual Inspectors who dealt with the Leeds SAP, it is a criticism of the approach the Planning Inspectorate seems to take, based on our experience on hearings.

11. Do you have any experience of settlement prior to trial? Do you have experience of settlement 'at the door of court'? If so, how often does this occur? If this happens often, why do you think this is so?

No, this was the only experience any of us have had of a Judicial Review. We do not know how settlement could have taken place because once Leeds City Council had adopted the plan there was no way it could have "undone" that decision (even if it had been willing to engage with us).

12. Do you think that there should be more of a role for Alternative Dispute Resolution (ADR) in Judicial Review proceedings? If so, what type of ADR would be best to be used?

We did not view our claim as adversarial; we simply wanted to be given a fair hearing on our evidence and key points, especially as we are a designated Neighbourhood Forum. We reiterate that the Planning Inspectorate should have done a much better job of ensuring everyone's issues were heard and answered.

The outcome of the relief, which we consider to be fair and balanced, has both delayed the Leeds SAP Review, due to be submitted in December 2021 and affected several sites where planning permission was in the process of being drawn up, or even where build out was underway. These are negative implications for everyone in the City. We did consider that once we had laid out our claim that LCC might see the errors that had been made and not let the case go to a hearing. Instead, they decided to try and make bringing the case difficult, or so it seemed to us. Firstly, they increased our costs through adding other parties, secondly challenged our standing, and lastly refused to renew our Neighbourhood Forum designation which came up for renewal before we made the claim: this

has now been renewed for a further 5 years. Maybe, an initial form of ADR at this point might have been useful, but it also may have delayed a final decision even further, which would have added even more uncertainty for people with an interest in the SAP.

13. Do you have experience of litigation where issues of standing have arisen? If so, do you think the rules of public interest standing are treated too leniently by the courts?"

As mentioned, our capacity to bring the claim was questioned by the defendant. This meant an unnecessary hearing was held, which added further costs to the proceedings. If someone has a well founded claim that a public authority has acted against the law, then it seems hard to see that the public interest would be better served by questions of standing or capacity meaning their claim is knocked out. The public have an interest in proper procedures and the rule of law being served.

[redacted]
Chair ANDF
For and on behalf of Aireborough Neighbourhood Development Forum

[redacted]

12 October 2020