

Summary of advice from the Parish Council's Counsel Scott Stemp on the possibility of challenging the Berkeley Homes / Howard of Effingham appeal decision

Overall:

"It is a very disappointing result from an Inquiry which I felt went very well for us and from the immense amount of hard work put in to the Inquiry by all. ... I am of the view that there isn't a realistic basis on which EPC could challenge the Secretary of State's decision."

Summary:

The weightings given by the Inspector and the SoS to some of the central issues, including the neighbourhood plan, green belt, housing need/supply, education and heritage in relation to the Conservation Area, are unusual but not irrational. (To be 'irrational' they would have to be so unreasonable that no decision maker, based on the same findings of fact, could possibly have reached the same weightings and consequent conclusions).

The SoS is entitled to rely on evidence given at the Inquiry concerning matters such as education and need even though we disputed that evidence.

Ultimately all matters of 'weight' are matters of planning judgement and if not 'irrational' the High Court and Court of Appeal are reluctant to interfere on such judgement.

The appeal decision appears to be driven by economic considerations, and this is a common theme among recent decisions of the SoS. It is not wrong in principle to account for economic considerations in a planning decision since economic considerations are one (of three) elements of 'sustainable development' which planning policy seeks to promote (the other two being social and environmental).

A loss in the High Court would cost a considerable amount of money. It would involve paying our own costs, those of the SoS and possibly the developer's costs if they were represented.

Even if EPC succeeded in challenging the decision at the High Court, it is possible there would be an appeal to the Court of Appeal involving very significant further costs.

Even if we won at further appeal and quashed the decision (not a realistic prospect) the end result would be another Inquiry, following which the SoS is free to reach the same conclusions but reasoned in a different way.

Summary prepared by Cllr Liz Hogger

22nd April 2018