



TITLE:	PLANNING APPEAL DECISION Application 2003/659: Temporary use of land for the parking of 20 trailers and 2 tractor units. Land at Newhallhey, Rawtenstall
TO/ON:	DEVELOPMENT CONTROL COMMITTEE 3 rd February 2005
BY:	Brian Sheasby
STATUS:	For Publication.

1. PURPOSE OF THE REPORT

To inform Committee of the result of the appeal and the implications for the Council of the Inspector's decision

2. RECOMMENDATIONS

That the report be noted both in relation to the appeal decision and the decision in relation to award of costs.

3. CORPORATE AIMS

Quality of service, the environment, regeneration and economic development, and confident communities.

4. RISK

Quality of service, robustness of decision making and adverse financial penalties arising from inappropriate planning decisions.

5. SERVICE DELIVERY/PERFORMANCE MANAGEMENT ISSUES

The Council's decision has been overturned in relation to the imposition of two conditions

6. IMPLICATIONS ARISING FROM THE REPORT

LA21/Environment	*	IT	
Human Rights Act 1998	*	Land and Property	*
Equalities Issues		Personnel	
Community Safety		Legal	
Financial	*	Partnership Working	

LA 21/Environment implications are considered to be the effect of the appeal decision on the local environment.

Human Rights Act 1998 implications are considered to be Article 8 which relates to respect for private and family life, home and correspondence and Article 1 of Protocol 1 in relation to the right of peaceful enjoyment of possessions and protection of property.

Financial implications relate to the decision of the Inspector in allowing the appeal to grant a full award of costs in favour of the appellant and against the Council.

The relevant **Land and Property** implications were considered in the officer's report.

7. WARDS OR AREA FORUM AFFECTED

Longholme

8. CONSULTATIONS

None

9. REPORT

The Appeal Decision

An application was received on 13th October 2003 for the temporary use of land (up to 3 years) at Newhallhey, Rawtenstall for the parking of up to 20 trailers and 2 tractor units. The application was approved (subject to conditions) by the Development Control Committee on 9th December 2003.

The applicant lodged an appeal against the imposition of two of the eight conditions imposed by the Council. They were:

Condition 7. The use hereby permitted shall cease not later than 12 months after its commencement and the land restored within one month of the cessation of use in accordance with a scheme of work to be submitted to and approved by the Local Planning Authority. Reason: In accordance with the timescale requested by the applicant and in order that compliance with conditions 03, 04 and 05 can be monitored and assessed in the interests of residential amenity and highway safety in accordance with DC.1 and T.3 of the Rossendale district Local Plan.

Condition 8. No vehicular movements, including the movement of trailers and /or tractor units shall take place within, to or from the site except between the

hours of 7:00am and 10.00pm Monday to Sunday inclusive. Reason: To prevent noise nuisance to residential properties on Railway Terrace in accordance with DC.1 and E.12 of the Rossendale District Local Plan. The appellant had sought consent for a 24 hour operation.

The Inspector identified the main issues of the appeal as:

- 1) Whether it was necessary and reasonable to allow for the review of the permission after one year: and
- 2) Whether it was reasonable to restrict night time operation at the site, in view of the potential for disturbance to nearby residents, and the effect of restriction on the operational flexibility available to the appellant Company.

It should be noted that condition 7 was imposed by Committee in accordance with officer recommendation whereas condition 8 was imposed by Committee on its own initiative as an additional means of control of the development.

The Inspector determined that there was no need for condition 7 as a means of reviewing the effectiveness of conditions 3, 4 and 5 (control of traffic movements preventing use of Newhallhey Road and restriction of the number of tractor/trailer units operating from the site) as there was no recognition by the authority that those other conditions did not meet all the tests of reasonableness and enforceability and that it was within the capability of the Council to manage their enforcement should the need arise.

As regards condition 8 the Inspector found the noise evidence of the Council flawed as regards both methodology and content and considered that the likelihood of nuisance being caused to residents of Railway Terrace from the correct operation of the site to be unlikely given the characteristics of both the noise generation of the operation and that of the local noise climate.

The Inspector therefore determined that both conditions should be deleted. Furthermore he considered that whilst the applicants had requested a three year consented use as long as the development accorded with the provisions of the development plan there was no reason for any time limit on the use. It was accepted however that a change in operator or operating circumstance might create a possibility for harm to be caused to environmental conditions and therefore imposed a three year operational consent but allowed extension of that permission by written agreement without recourse to further applications where there had been no material change in planning circumstance.

The Costs Decision

The appellants sought an award of costs against the Council on the grounds that the Council had acted unreasonably and contrary to officer advice in respect of the imposition of condition 8 and that condition 7 was wholly unnecessary for monitoring compliance with other conditions.

The Inspector considered the justification for the imposition of condition 7 to be flawed and that the Council should have recognised this before proceeding to defend it at Inquiry. In this respect unnecessary expense had been incurred by the appellant.

In respect of the evidence presented by the Council in support of condition 8 the Inspector found the case to be fundamentally flawed and inexpertly presented by a witness who showed an inability to adopt a rigorous approach necessary to the presentation of technical evidence.

The Inspector orders the Council to pay the full costs of James Killelea in respect of the appeal proceedings. The Council also stands its own costs in respect of the separate presentation of evidence in relation to planning and noise by outside consultants.

Background documents: Appeal decision letter.

For further information on this report please contact Brian Sheasby Team Manager: Development Control.