

**Audit and Risk Management Committee**  
**18 November 2019**

<b>REPORT TITLE</b>	<b>REPORT IN CONNECTION WITH THE COURT OF APPEAL CRITICISMS OF THE PLANNING PROCESS IN RELATION TO THREE MARQUEES AT THORNTON MANOR, THORNTON HOUGH, WIRRAL</b>
<b>REPORT OF</b>	<b>Interim Director of Economic and Housing Growth</b>

**REPORT SUMMARY**

To update and advise Members of the present position in connection with the erection of three marquees at Thornton Manor.

**RECOMMENDATION**

Members of the Committee note the report

## **SUPPORTING INFORMATION**

### **1.0 REASONS FOR RECOMMENDATION**

- 1.1 To provide Members with assurance that the Council is taking appropriate measures to address the criticisms set out in the recent Court of Appeal judgement.
- 1.2 To ensure that risks to the Council are managed effectively.

### **2.0 BACKGROUND TO COURT HEARINGS**

- 2.1 Planning application APP/10/00445 was received by the Council on 9 April 2010 seeking permission for the erection/retention of 3 marquees within Thornton Manor Estate (at The Dell, The Walled Garden and the Lake) to be used for private functions and conferences.
- 2.2 The proposed development constituted inappropriate development which is by definition harmful to the openness of the green belt. A case was presented that set out how the generation of an income stream would enable the restoration of the registered historic park and gardens and the lake which were at the time the application was made at risk and this was considered to constitute very special circumstances necessary to overcome the presumption against inappropriate development. The permission would be limited to a period of five years and was subject to a Section 106 Agreement.
- 2.3 The application was considered by Members of the Planning Committee on 7 September 2010 and was approved by a vote of 7:5 subject to a direction being made to the contrary by the Secretary of State, the completion of a Section 106 Legal Agreement and 11 conditions. The first condition limited the permission to a period of 5 years from the date of the decision notice whilst the other conditions related to noise control measures, signage, parking, lighting and the prohibition on the use of fireworks from January to July.
- 2.4 Following the Planning Committee decision, negotiations were begun about the detail of the Section 106 Agreement. On 11 November 2011, the Section 106 was concluded. Schedule 2 of the Agreement detailed a draft notice of the grant of planning permission, which included all 11 conditions and the reasons for them, including the condition with the five-year time limit. At this point the Decision Notice containing all conditions should have been issued to the applicant thereby releasing the grant of Planning Permission. However, for reasons that it has just not been possible to understand, a decision notice was not produced or issued on 11 November 2011 but was issued on 20 December 2011 and published to the Council's web. This Decision Notice was issued without any conditions.
- 2.5 On or around 17 May 2012, when the Section 106 Agreement came to be plotted against the land register, it was noted that 3 versions of a decision notice were on the web. Three versions were also available on the planning application file. At this point, it appears that these three notices were taken down from the web and a new notice, dated 11 November 2011 (the date the Section 106

Agreement was signed) was produced, uploaded to the web and placed on the relevant application file.

- 2.6 As the permission given by Committee was only for 5 years, the permission was due to lapse on 11 November 2016. Up until this point, both parties (the Council and the applicants) had continued to work together on the understanding that the Decision Notice dated 11.11.2011 was the Notice upon which all parties sought reliance.
- 2.7 As the permission “lapsed” on 11.11.2016, the Council sought to clarify this position with the applicants and advised them that a new application would be required to continue the use of the marquees. At a meeting on 5th May 2017 with the applicant, his agent and legal representative, the Decision Notice dated 20 December 2011 was produced which had no conditions on it. The Council were informed that this was the first and only decision notice that had been issued to them and that they were seeking to rely upon this Notice as being the lawfully issued decision. This, in effect, granted a completely uncontrolled grant of planning permission subject to no conditions. The Section 106 Agreement, signed on 11 November 2011, however, was still valid and in place.
- 2.8 As soon as the error came to light, Counsel’s advice was sought and a report was prepared for the Planning Committee on 20 July 2017 that set out the error and the investigation that was undertaken in light of the error coming to light.
- 2.9 Although it was possible for the Council to instigate judicial review proceedings against itself, the Leader of the Council decided that this was not an appropriate action to take and the Council decided not to contest the judicial review proceedings subsequently brought by Thornton Hall Hotel.

### **3.0 COURT PROCEEDINGS**

- 3.1 On 23 August 2017, a claim for judicial review of the Council’s decision was brought to the High Court by Thornton Hall Hotel Limited. The claimant (Thornton Hall Hotel Ltd) maintained that the decision issued on 20 December 2011 was a mistake and that the planning permission should have been subject to the conditions approved by the Planning Committee but omitted in error from the decision notice that granted the planning permission.
- 3.2 The Local Planning Authority accepted and asserted that it made the error and did not contest the claim.
- 3.3 Thornton Holdings Ltd submitted that the unconditional planning permission should stand and that the presence of the three marquees were therefore lawful and would remain so in the future without any time limit by virtue of the planning permission issued unconditionally on 20 December 2011.
- 3.4 Following an extensive internal investigation of both the Development Management Information System (ACOLAID) and administrative procedures that were undertaken when the error was realised by the Council, it was not possible to identify whether this incident was a system error, human error or a combination of both. The High Court concluded that the cause of the error,

however, was likely to have been human failing.

- 3.5 The High Court determined that the decision notice that was issued on 20 December 2011 did not faithfully reproduce the decision made by the Planning Committee. It is clear that the LPA had intended to include the conditions the Committee had decided upon and set out in the original committee report and set out within the draft decision notice that was appended to the Section 106 Agreement. The planning permission that was issued was not as it should have been.
- 3.6 On 23 March 2018 the High Court quashed the planning permission that was issued with the decision notice dated 20 December 2011.
- 3.7 Following the decision of the High Court, Thornton Holdings Ltd appealed that decision. The Court of Appeal revisited the arguments made by all parties in relation to the erections of the marquees.
- 3.8 In its judgement of 30 April 2019, the Court of Appeal upheld the High Court's decision to quash the planning permission and was critical of both the LPA and Thornton Holdings Ltd. The Court felt that the Council could have done more than it has in terms of the error that it made, for example, the use of its statutory power of revocation under Section 97 of the 1990 Act or the power to make a discontinuance order under Section 102 of the Act. When the error was first realised by the Council it did consider the powers outlined by the Court but resolved not to take such action due to the risk of a claim for compensation by Thornton Holdings.
- 3.9 The Court of Appeal also criticised the Council in terms of generating a "fictitious decision notice and manipulating the planning register." As outlined in the report brought to the Planning Committee on 20 July 2017, despite every effort to investigate the systems and administrative procedures and the personnel involved it had not been possible to identify beyond any doubt who or how the errors had been made. The LPA accepted the error had been made and has not sought to conceal this fact at any point since it was first brought to light. The investigation concluded that the decision notice created on or around 17 May 2012 was not an attempt to manipulate the planning register but was done to reflect the Committee decision without realising the implications and was done with the best intentions.
- 3.10 The LPA accepts poor administration and has never sought to hide the mistake since it came to light. Systems and procedures have been put in place to reduce the potential for a system error to reoccur and procedural changes have been introduced. The Council is also currently undergoing an exercise to procure a new ITT system which will look to secure improvements on the system that was in place (and remains in place) at the time the errors were made. As part of any system the Council procures, a robust audit trail will be part of that system that will key personnel and managers to see when actions have been made and who made them.

## **4.0 PRESENT POSITION**

- 4.1 Following the Court of Appeal decision, the Council has redetermined the planning application APP/10/00445. The application was refused on 27 June 2019 for the following reasons:
1. The site lies within the Green Belt and the proposed development is inappropriate which is in conflict with the principles of Green Belt control. The Local Planning Authority does not consider that there are any very special circumstances in the present case to justify overriding Green Belt policy. The development is therefore contrary to Policy GB2 - Guidelines for Development in the Green Belt of the adopted Wirral Unitary Development Plan and The National Planning Policy Framework.
  2. The application is not accompanied by sufficient information to determine the impact of the development on protected species within the application site boundary. The proposals are therefore contrary to Policy NC7 of the Wirral Unitary Development Plan.
  3. The retention of the marquees, in particular the marquee located at The Dell, would, by virtue of the siting, scale, materials and associated hard surfaced areas, result in harm to the heritage assets of Thornton Manor and its grounds. This development is therefore contrary to Policies CH1 and CH26 of the adopted Wirral Unitary Development Plan and the National Planning Policy Framework.
- 4.2 Following the refusal of planning permission, an Enforcement Notice was issued requiring the removal of the marquees. It subsequently came to the LPA's attention on 28 August 2019 that Thornton Holdings had recently transferred ownership of a small section of the land subject to the Enforcement Notice (comprising an area where 2 cottages are located) to Dawpool Properties Ltd, a subsidiary company of Thornton Holdings operating from the same business address. In order to ensure effective service of the Notice, the Enforcement Notice (dated 25 July 2019) was therefore immediately withdrawn and a new Notice (dated 28 August 2019) was served on all landowners. The effective date for compliance with the Notice remained unchanged.
- 4.3 On the 23 August 2019 an Appeal was lodged with the Planning Inspectorate against the Council's decision to refuse planning permission. An appeal against the Enforcement Notice was also lodged on 17 September 2019. Both matters are now with the Planning Inspectorate and are likely to be subject to a public inquiry in the coming months.
- 4.4 It is undoubtedly of both concern and regret that the original decision was issued without planning conditions. The LPA acknowledges and accepts that it has not emerged with much credit, as highlighted by both the Court of Appeal and the High Court before it, as a result of this matter and that the reputation of the LPA and the wider Council has suffered as a result. The LPA will robustly defend the appeals and, if necessary, appropriate legal proceedings will be taken to ensure compliance with the Enforcement Notices served.

## **5.0 FINANCIAL IMPLICATIONS**

- 5.1 At the High Court hearing the Council were ordered to pay 90% of Thornton Hall Hotel's legal costs up to the date of the Council agreeing to the application before the Court on 16 July 2017. This amounted to £30,973.90 plus statutory interest of £780.71.
- 5.2 It is possible that the current appeals against the refusal of planning permission and the issuing of the Enforcement Notice will go to public inquiry. It will be necessary to appoint Counsel to represent the Council at Public Inquiry which will have some financial implications. This will be managed within current budget provision.

## **6.0 LEGAL IMPLICATIONS**

- 6.1 These are set out in this report.

## **6.0 RESOURCE IMPLICATIONS**

- 6.1 There will be additional resource required due to the need to appoint Counsel to defend the Council's position at the Public Inquiry.

## **7.0 RELEVANT RISKS**

- 7.1 Appropriate actions will be taken by officers in response to the matters raised by the Court of Appeal to avoid repetition of errors made in the future.
- 7.2 The Development Management Service will comply with best professional practice to meet its statutory functions in an efficient and effective manner.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 There are none arising from this report.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 There are none arising from this report.

## **10.0 ENVIRONMENTAL AND CLIMATE IMPLICATIONS**

- 10.1 This report has no impact on the emissions of CO2

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