



Response to Manchester City Council's response to the appellant's costs claim regarding
APP/B4215/D/21/3282561: 23 Lakenheath Close, M20 2WP

The appellant contends that the Council have now further demonstrated that they simply do not understand what their legal responsibilities are under the Regulation 7 of the Openness of Local Government Bodies Regulations 2014 (SI 2014 No. 2095) and the implications this has had on the appellant.

The Council arguments lack coherency. Firstly, they argue that the case that the appellant refers to, *Shasha v. Westminster Council* (2016) EWHC 3283 (Admin) does not apply because that was for an approval.

That misconstrues the case. Sasha re-established that the reasons for granting approval which were no longer required to be given under the Explanatory Memorandum to the DMPO (Amendment) Order 2013. Sasha effectively requires that authorities need to ensure that they "produce a written record" of a delegated decision to grant planning permission containing the information required by reg. 7(3) including "the reasons for the decision"

This brings providing reasons for approvals back to the same level as providing reasons for refusal. That is it!

7.—(1) The decision-making officer must produce a written record of any decision which falls within paragraph (2).

(2) A decision falls within this paragraph if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body either—

(a) under a specific express authorisation; or

(b) under a general authorisation to officers to take such decisions and, the effect of the decision is to—

(i) grant a permission or licence;

(ii) affect the rights of an individual; or

(iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

Regulation 7 (3) requires that a written record must be produced as soon as reasonably practicable after the decision-making officer has made the decision and must contain the following information—

- (a) the date the decision was taken;
- (b) a record of the decision taken along with reasons for the decision;
- (c) details of alternative options, if any, considered and rejected; and
- (d) where the decision falls under paragraph (2)(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.

Regulation 6 clarifies that “background papers” in relation to a decision which falls within regulation 7(2), means those documents other than published works, that—

- (a) relate to the subject matter of the decision or, as the case may be, part of the decision; and
- (b) in the opinion of the proper officer—

- (i) disclose any facts or matters on which the decision or an important part of the decision is based; and**
- (ii) were relied on to a material extent in making the decision;**

Therefore, for the Council to argue in paragraph 1.4 of their rebuttal that the issuing of a decision notice meets the requirements of Regulation 7 demonstrates that they fail to understand the difference between a formal determination (the issuing of a decision notice) which is a juridical act, and a background paper which leads to that juridical act.

The Council further claim that the decision notice is itself clear enough as to why the appeal application was refused. In submitting an appeal, the appellant would wish to know why the Council considered the proposal to be unacceptable and in coming to that conclusion what issues the Council considered. In this instance the Council contend that the proposal is incongruous in the street scene and that it therefore has an adverse impact on the setting of the Conservation Area.

On reading the officer’s report, it is now clear to the appellant that the basis of the officer’s objection (which was not included in the decision notice) was partly historical in that in the paragraph at the bottom of page 5 and top of 6 the officer comments on the historical layout of the appeal site and how it was turned around because of mature trees on Wingate Drive, and that the built form was to be kept back Wingate Drive. It then says without linking how the appeal development compromises that spaciousness, that it is unacceptable.

As above, that thinking is not included in the decision notice.

The delegated report then addresses the issue of the effect on the Conservation Area. When I say addresses it, it does not address it. It offers no assessment of what the character of the Conservation Area is in this location other than to say the appeal site is on the edge of the Conservation Area. It further offers no explanation as to what the harm to the character of the Conservation Area other than to re-iterate the view that it is incongruous in the street scene and as such causes less than substantial harm. By now being able to assess the officer’s report the appellant can make the case that the proposal does not cause less than significant harm to the Conservation Area. The townscape of the Conservation Area is defined as follows:

“Townscape

Most of the conservation area is on level ground, but there is a slope down Millgate Lane, Kingston Road and Stenner Lane where the higher land gives way to the lower level of the Mersey flood plain. This is mostly used for playing fields, whilst buildings are generally confined to the upper level or the sloping land.

The original centre of the village is at the point on a pronounced bend in Wilmslow Road where it is joined by Stenner Lane. At this location the road is wide where formerly there would have been a green, but now there is only hard paving. Two public houses and a restaurant are located here, and in the distant past several shops also existed. This was Didsbury Village long before there was a settlement at the present village a kilometre to the north.

Architectural styles vary from the Perpendicular of St James's Church to the Classical and Gothic of public buildings and of the more grandiose houses. Remnants of older and more modest houses exist in simple vernacular character.

A great variety of building materials is used in the conservation area. Most common is red brick for walls and blue slate for roofs. Stone dressings, in conjunction with brickwork, are used extensively, and several buildings are built entirely of stone, notably the two churches.

Several buildings are finished in stucco or rough-cast render and one, Lawnhurst, consists of red brick with yellow moulded terra cotta dressings.

The grounds of the Shirley Institute, originally parkland to the Towers, have recently been developed with glass office blocks. The large variety of building materials to be found in the area is not as discordant as would first appear.

The whole of the conservation area, except for playing fields, is well wooded. The trees serve not only to screen one group of buildings from another, but to provide a unifying, leafy backdrop to the whole area.

Most of the existing buildings in the area are characterised by vertically proportioned sash windows which are used singly or in groups. In older buildings, sashes are sub-divided by glazing bars into smaller panes.

Entrance doorways help to create the character of the area. Perhaps the most notable entrance is the semi-circular arched gateway to the grounds of the former Fletcher Moss Gallery and the door to the building itself, which is set in a rustic frame. Other doorways range from the 18th century Ionic door-case at Broome House to a range of arches to entrance porches. A flat entablature on Ionic columns over a glazed and panelled door with rectangular light at the Elms contrasts with simple entrances without porches or canopies which are found at the cottages on Millgate Lane. Few of them have their original doors.

The forecourts of some Millgate Lane cottages are paved with cobbles, and the change to tarmac is all that distinguishes the property boundaries. Elsewhere, most houses have gardens enclosed by brick or stone walls, although the height varies up to about three metres. Some properties have fences or hedges, mostly in addition to or above the wall. Walls with railings make a significant contribution to the character of the conservation area. Hedges on their own are not usual in Didsbury St. James. Garden gates are wrought iron or timber, supported by stone or brick piers although many gates are now missing.

Roads and footways have been re-surfaced over the years so that original setts or flags may be seen in very few places, though some original stone kerbs are evident.

Street lighting is a relatively recent innovation compared with the age of Didsbury village. Cast-iron standards were installed at some time in the past but have been replaced by a variety of steel and concrete columns of different heights. The ideal would be to install an appropriately designed fitting throughout the area, in order to create a sense of identity, but this is not feasible for economic and technical reasons."

The Council go on to say: "The quality of the built environment, as well as the setting of buildings, is of a very high standard, and a similar high standard will be expected of any scheme which proposes new buildings, extensions, or other major developments.

The existing well-treed suburban character of the conservation area should be maintained, and any development proposals should respect this. The construction of large floorplan buildings without substantial landscape intervening would inevitably damage the quality of the setting."

The Council's decision notice does not explain how the appeal proposal fails to retain the suburban character of the Conservation Area. Indeed, the officer's report fails too as well. As such now that the appellant has been able to see the officer's report, it is clear that the assessment fails to identify what that character is and how the introduction of a low-level domestic garden room and store would adversely affect the suburban character which rationally is made up of residential properties and their outbuildings.



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