

**Item 5 - Public Participation and Councillors' Questions**

**From Councillor Ernie Clark, Hilperton Division**

**Question**

Re Wiltshire Council v Secretary of State for Communities and Local Government [2015] EWHC 1459 (Admin) - judgment handed down on 20 May 2015.

This seems to be a truly appalling decision by a High Court judge, and surely needs to be appealed to the Court of Appeal on grounds of procedural error and error of law.

The old saying is that it is a woman's privilege to change her mind, but that cannot extend to a decision handed down by a High Court judge which has already finally determined an issue, viz. [74] of [2015] EWHC 1261 (Admin):-

"In the circumstances and, with a degree of reluctance, I find that I am unable to exercise my discretion not to quash the decision letter."

Furthermore, it is plainly inconsistent and wrong not to quash the decision letter in Appeal B on the basis that the decision would have been the same in spite of the Secretary of State's error of law, but to refuse to quash the decision letter in Appeal A because the decision would almost certainly have been different and hence would deprive the Developer Defendants of the benefits of that unlawful decision letter.

The consequences of such flawed reasoning must be that a Local Planning Authority can never overturn an Appeal Decision, however serious the unlawfulness of it may be.

The judge also seems totally to have ignored the fact that Wiltshire Council is the Local Planning Authority with a duty to the public at large to ensure that the integrity of the planning system in its area is maintained and in that respect it cannot be treated as on a par with developers. There is no proper evaluation in the judgment of the harm to the public interest that will be caused by not quashing the decision letter.

I am advised that the proper approach to the exercise of the discretion, which is supposed to be exceptional, not to quash a decision that has been found to be unlawful is that of Mr Justice Gilbart on 19 February 2015 in *Davies v Carmarthenshire County Council* [2015] EWHC 230 (Admin), following *Bateman v South Cambridgeshire District Council* [2011] EWCA Civ 157, particularly Moore-Bick LJ at [31].

In the circumstances will Wiltshire Council be taking this decision to the Court of Appeal? If not, why not?

## **Response**

Officers can confirm that the Council is seeking permission from the Courts to appeal the Judge's decision not to quash the decision letter issued by the Secretary of State in relation to the planning appeal at Devizes Road, Hilperton.