

NAME OF COMMITTEE	Council
DATE	16 April 2013
REPORT TITLE	Review of the process and decisions that led to the Judicial Review Judgement relating to the former Focus DIY Store, Tavistock Retail Park, Plymouth Road, Tavistock
REPORT OF	Chief Executive
WARDS AFFECTED	Tavistock Wards with financial impact across all Council Taxpayers

SUMMARY OF REPORT: This report responds to the resolution from the last Council on 12 February 2013 to the effect that “when the full Judgement is available, the Chief Executive shall advise the Council as to the appropriate means for carrying out an investigation”.

FINANCIAL IMPLICATIONS: None anticipated from the report with the exception of officer and Member time engaged in the review. Costs awarded as a result of the High Court decision were contained within the £50,000 budget indicated in the reports to Council in April and May 2012.

RECOMMENDATION:

That Council agrees a review of the process and decisions that led to the unfavourable High Court Judgement, along the lines set out in this report.

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1. BACKGROUND

1.1 Members need little reminder that the High Court dismissed the application to seek an extension of time to judicially review the grant of planning permission for external works at the former Focus DIY Store, Tavistock Retail Park, Plymouth Road, Tavistock.

2. ISSUES FOR CONSIDERATION

2.1 Having taken into account the views of the Deputy Leader of the Conservative Group, the Leader of the Independent Group and the Leader of the Liberal

Democrat Group, and having now received the Judgement, I recommend the following:

- (a) that five Members – two Conservatives, two Independents and one Liberal Democrat – form a Review Group to investigate the process and decisions that led to the Judgement and report back to Council on 30 July 2013 with any recommendations and learning points from the review;
- (b) that Tavistock Town and Ward Councillors and those Councillors who have made public comment be excluded from the Review Group;
- (c) that the Review Group reports its findings to Council via the Overview & Scrutiny Committee on 4 June 2013;
- (d) The scope of the review will include considering:
 - (i) should officers have understood the implications of granting consent to divide the retail unit without requiring the re-imposition of conditions from the planning permission granted in 2007? If so, was the failure to understand the implications due to a matter of professional error or a system failure or some other cause;
 - (ii) why it took some 11 months after the grant of permission to make the application for Judicial Review and what, if anything, should have been done to expedite matters;
 - (iii) why Members were not made fully aware of all the practical options available to them;
 - (iv) the quality of the external legal advice received;
 - (v) the involvement of elected Members before the matter was reported to Council in April 2012 and the role of local Ward Members in matters of this kind;
 - (vi) had the Council fully considered the planning merits of the permission when it was granted or when provided with Counsel's Opinion would it have drawn different conclusions on the impact of the potential food retail use.
- (e) The Review Group will invite the Development Manager and the Borough Solicitor to support the review and will have the ability to interview officers and Members who may have a contribution to make as well as having access to all documents. The Review Group will decide how to conduct the review and will give those who wish to make an input an opportunity to submit their views.

3. LEGAL IMPLICATIONS

3.1 None over and above the matters considered in the High Court.

4. FINANCIAL IMPLICATIONS

4.1 None other than the costs involved in bringing this matter to the High Court and the costs awarded to the interested party which fall within the budgeted sum.

5. RISK MANAGEMENT

5.1 The risk management implications are as set out in the Appendix attached to this report.

6. OTHER CONSIDERATIONS

Corporate priorities engaged:	Economy, Environment and Community Life
Statutory powers:	Section 2 of the Local Government Act 2000
Considerations of equality and human rights:	N/A
Biodiversity considerations:	N/A
Sustainability considerations:	The proposal will help to support a sustainable economic future for the town and protect its heritage
Crime and disorder implications:	N/A
Background papers:	Report to Council - 15 April 2008 (CM118)
Appendices attached:	Strategic Risk Assessment

STRATEGIC RISK ASSESSMENT

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
1	Failure to learn from the process	That we have an opportunity to learn lessons from a Judicial Review process and thereby reduce the risk of future mistakes	5	2	10 ⇄	If the Review Group identifies lessons and these are taken on board by officers and Members the future risk of following this path will be significantly mitigated in future	Review Group

Risk Score 20-25: very high; 12-19: high; 8-12; medium; <8: low

Direction of travel symbols ↓ ↑ ⇄