

NAME OF COMMITTEE	Overview and Scrutiny Committee
DATE	4 June 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	Focus Review Working Group
WARDS AFFECTED	Tavistock

Summary of report:

This report updates Members on the progress of the Focus Review Working Group.

Financial implications:

There are no direct financial implications from this report which is for information only.

However, there were costs associated with the application for a Judicial Review and these costs are confirmed as £45,642.

RECOMMENDATIONS:

That the Overview and Scrutiny Committee note the progress to date of the Focus Review Working Group, and agree that a final report of the Working Group be presented to Council on 30 July 2013.

1. BACKGROUND

- 1.1 On 16 April 2013 Council received a report from the Chief Executive which responded to previous reports in relation to the Focus site, and which recommended a review of the process and decisions that led to the unfavourable High Court Judgement.
- 1.2 The report suggested that a Review Group be formed to investigate the process and decisions that led to the Judgement, and a report taken back to Overview and Scrutiny Committee on 4 June 2013, with a final report being taken to Council on 30 July 2013.

2. MATTERS FOR CONSIDERATION

2.1 In accordance with the recommendations within the Chief Executive's report, a Working Group was formed to include Cllrs Benson, Leech, Morse, Musgrave and Sampson. The Group met on 7 May 2013 and the Chief Executive and Deputy Monitoring Officer were in attendance.

2.2 The Group agreed to the following Terms of Reference:

- (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.

These points echo the scope of the review, as originally stated in the Chief Executive's report.

2.3 At the initial meeting, the Working Group also discussed the papers that they would like to see, to enable them to understand the processes that had been followed. Further information was also requested in advance of the next meeting of the Working Group, which was scheduled to take place on 20 May 2013.

2.4 In considering the papers provided, the Working Group were aware of the tight timescale within which to conduct their work, and felt that an interim report to Overview and Scrutiny Committee on 4 June 2013 was appropriate, with a final report being taken to Council on 30 July 2013.

2.5 At the 20th May meeting Members aired detailed points having been provided with the relevant papers. Questions were raised with the Deputy Monitoring Officer, the Head of Planning, Economy and Community and the Development Services Manager. Whilst there is a need to delve further in order to answer all the

questions posed within the terms of reference provisional conclusions were reached on two of the issues.

Referring to 2.2(i) above, whilst there was some suggestion that some warning lights could have been heeded by planning and legal officers the Review Group concludes that officers were not in a position to have been able to understand the implications in granting the variation to the 2007 permission in July 2011. Nevertheless the case has demonstrated the need for planning and legal officers to develop a more structured, systematic approach to sharing information.

Referring to 2.2(iii) above, Members were not made aware of the ability to revoke the planning permission. It is accepted by officers that in reports of this type in the future Members should be made aware of all the options available to them. Revocation was not put in front of members as a practical option because of the potential size of compensation costs that could have been claimed by the applicant.

- 2.6. The Review Group is planning to meet again on 11th June and will have further discussions with the Head of Planning, Economy and Community and the Development Services Manager. Key members will also be invited to provide views. In addition all Members have received an invitation to submit information.
- 2.7. Given the wide interest in this issue and the Council resolution to produce a final report for the 30 July meeting it is suggested that the Working Group reports directly to Council rather than through this Committee.

4. LEGAL IMPLICATIONS

- 4.1 None over and above the matters considered in the High Court.

5. FINANCIAL IMPLICATIONS

- 5.1 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.

6. RISK MANAGEMENT

- 6.1 There are no risk implications as the report is for information only.

Corporate priorities engaged:	Community Life; Economy
Statutory powers:	Section 2 of the Local Government Act 2000
Considerations of equality and human rights:	None
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None

<p>Background papers:</p>	<p>Planning applications 01575/2011 dated 11 July 2011 and 9215/2006/TAV dated 2 April 2007. Correspondence held by the Development Management team, the Monitoring Officer and the Deputy Monitoring Officer save those items which are protected by legal professional privilege which are not discloseable to the public.</p> <p>Report to Council of the Deputy Monitoring Officer – 17 April 2012</p> <p>Report to Council of the Head of Planning, Economy and Community – 15 May 2012</p> <p>R (Peel Land and Property Investments Plc) vs Hyndburn Borough Council and others [2012] EWHC</p> <p>Report to Council of the Chief Executive – 16 April 2013</p>
<p>Appendices attached:</p>	<p>None</p>