

IN THE MATTER OF 0.17HA OF LAND AT “THE SANDS”, DURHAM

**AND IN THE MATTER OF AN APPLICATION UNDER SECTION 16(1)
COMMONS ACT 2006**

**DCC’S RESPONSE TO THE OBJECTORS’
ADJOURNMENT APPLICATION**

Introduction

1. DCC opposes the Objectors’ adjournment application, on substantive and procedural grounds.

Substantive

2. The Objectors’ application refers at paragraphs 11-12 to certain claimed benefits and to an aspect of DCC’s Opening Statement claimed and made *before* the giving and testing of any evidence. These claimed benefits are not, as the Objectors claim, a “fundamental tenet” of DCC’s case. They have only ever been, in section 16(6) terms, an “other matter”.
3. Moreover, during the course of the inquiry DCC’s witnesses conceded in cross-examination that the claimed benefits in question (essentially, DCC HQ staff spend in the city centre and the benefits of the current County Hall site at Aykley Heads as a strategic employment site) do *not* depend upon the outcome of this application.
4. As such, DCC can no longer rely upon these claimed benefits and it does not do so. Very properly, it will again make that clear in its closing submissions. The Objectors

seek in their application, paragraph 17, clarification of DCC's position. This response provides it.

5. The principal foundation on which the Objectors base their adjournment application therefore collapses. The thinly-veiled threat of a judicial review claim is otiose.
6. Second, the Objectors make far too much of the Cabinet's resolution. The Report records that practical completion of the HQ scheme is estimated in October 2021. There is nothing in the Report remotely to suggest that the construction scheme will be halted. Indeed, construction is ongoing today. Thus, in and around October 2021 there will be a completed building with an adjacent car park on the release land. There is nothing in the Report remotely to suggest that the building and car park will be unbuilt. On the contrary, the Report is concerned with the *use* of the building (which, naturally, presupposes that it will remain). Furthermore the four Leaders of DCC's Joint Administration ("the JA") have confirmed, for the avoidance of doubt, this position. A copy of that letter dated 2 July is appended at Schedule 1 to this response.
7. As the Report recommended, and as Cabinet agreed, an options appraisal as set out in paragraph 6 of the Report will be prepared. As the first of the bullet points in paragraph 6 makes clear, the Joint Administration is seeking to review the options for *utilising* the new building. To repeat, the building will not be unbuilt. Put another way, whatever the outcome of the review there will be a newly-built building in and around October 2021 and thereafter plus a newly-built car park besides it on the release land. It is to be recalled that the Freeman have agreed to the release land being used as a municipal car park until the year 2080. The *de facto* position, which is to say a car (or coach) park on common land over many years with the likelihood of a car park on the release land for many more decades to come, is entirely unchanged. The rationale for the section 16

application, and for its prompt determination, is therefore entirely unchanged by the nascent review.

8. DCC agrees with the Objectors that the outcome of the review cannot be pre-judged. But a determination of this section 16 application prior to the review will not pre-judge its outcome, just as the granting of the planning application for the HQ scheme does not pre-judge the outcome of this section 16 application. There is thus no question of the inquiry process being “compromised”. In any event, the Objectors’ concern (see paragraph 17) is as to clarification of DCC’s position. To repeat, DCC has provided that clarification.

Procedural

9. DCC agrees with the Objectors that the section 16 application ought to be “dealt with efficiently”. Their adjournment application is contrary to that interest.
10. The section 16 application was made as long ago as August 2019. It was delayed by a change from written representations to the inquiry process. It was further delayed by the Covid pandemic, and then again by IT/technical issues. It was then delayed again by an issue regarding Statements of Case. It was then delayed yet again by an issue concerning PINS webcasting. It is unacceptable for it to be delayed for a sixth time until an unknown date after 15 September 2021.
11. The timing of the Objectors’ application does not withstand scrutiny. The Cabinet Report was published, and hence in the public domain, in the week prior to 16 June 2021. The possible review was reported by the BBC and in the Northern Echo. Moreover, on 8 June 2021 Councillor Elizabeth Scott was quoted in a DCC website item announcing the possible review. Councillor Scott, a witness at the inquiry, is a

City of Durham Parish Councillor but also a Durham County Councillor. Moreover, as the Report makes plain on its first page, Councillor Scott is in fact DCC's Cabinet Portfolio Holder for Economy and Partnerships. As such, The City of Durham Parish Council and the other Objectors plainly knew or ought to have known about the possible review as long ago as 8 June 2021. Yet more than 3 weeks elapsed thereafter without any indication of any adjournment application.

12. There is more. Cabinet met on 16 June 2021. The meeting was open to the public. It was also livestreamed. Councillor Scott attended. Very properly, Councillor Scott withdrew from the meeting during the discussion of the item in question. Indeed, there can be no criticism whatsoever of her conduct as a County Councillor and there is no such criticism whatsoever in this response. Cabinet resolved on 16 June 2021 to agree that an options appraisal be prepared. The Objectors therefore knew or ought to have known the outcome that day. But, still, any adjournment application came there none.
13. The Inspector gave a direction that any application by the Objectors to recall a DCC witness had to be made before 9am on 1 July 2021. It was obviously implicit that that was the deadline for any procedural application. But, still, there was no suggestion from the Objectors that there would be any adjournment application until the Inspector, DCC and everyone else was ambushed by its announcement on the morning of 1 July 2021.
14. No reason at all has been provided by the Objectors, let alone any good reason, as to why the adjournment application could not have been made on or very shortly after 16 June 2021. The fact is that no credible reason exists. The Objectors' procedural failings ought not to be rewarded by the granting of their adjournment application.

Costs

15. Subject to the Inspector having the necessary power, DCC reserves the right to apply at the close of the inquiry for an order that the adjournment application Objectors must pay its wasted costs already incurred by the adjournment application plus any additional wasted costs incurred by that application.

Conclusion

16. The adjournment application should be refused.

STEPHEN WHALE
LANDMARK CHAMBERS, LONDON
2 JULY 2021

Schedule 1 – letter from JA dated 2 July 2021

Contact	Cllr Amanda Hopgood
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2 July 2021

Dear Mr Davis

We have been asked to clarify the Council's position in relation to the building at the Sands in Durham City. The Joint Administration has requested a review of the use of the building however it is important to note that there is no cabinet approval (or intention) to stop the construction of the building or to cease work on any aspect of the construction that would result in the building and car park not being completed. The review is to consider how the building will be used as set out in the cabinet report dated 16 June 2021.

Yours sincerely

Councillor Amanda Hopgood

Councillor Richard Bell

Councillor Alan Shield

Councillor John Shuttleworth

Cabinet Office

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