

IN THE MATTER OF LAND AT THE SANDS, DURHAM - COM/232618

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

THE SANDS INQUIRY

DECISION

BACKGROUND

1. During the course of the Inquiry Miss Allan, Counsel instructed on behalf of several of the Objectors, 23rd June 2021 gave notice that she was considering the possibility of making an application to adjourn the Inquiry. The purpose of such an application was to seek to clarify any possible policy alteration on the part of Durham County Council ('the Council') in its pursuit of the Application for De-Registration and Exchange of Common Land (*the Application*) at the Sands resultant upon the change in the political governance of the Council following the Local Government Elections held on 9th May 2021. In essence, Ms Allan sought to clarify whether the Council still intended to proceed with the Application.
2. To this end, Ms Allan made it known that she might wish to seek to re-call witnesses from the Council, or to seek that that an agreed statement be filed, in order to clarify whether there had been, or was likely to be, any change of approach on the part of the Council in furtherance of its objective, as enshrined in the Application.
3. In my written response by email dated 28th June 2021 I referred to this possible request and stated that I considered that it would be necessary for Miss Allan to make a formal written application in support of this proposal setting out the basis for the application, together with any evidence in support. I directed that such an application should be made at the latest by 9.00am on Thursday 1st July 2021. This application could then be considered prior to the resumption of the evidence in the Inquiry so as

to enable due consideration to be made by the Inquiry on the merits of the application and also for Mr Whale, Counsel for the Council to consider the matter.

4. Accordingly, I made the following direction:

“The Inspector directs that Miss Allan, Counsel for some of the Objectors, shall file and serve written applications in support of the proposal to re-call witnesses, or that an agreed statement be filed to provide evidence as to any change in approach by the County Council in the light of the change in the political control of the County Council”.

5. No such application was received by the time specified. However, at the re-commencement of the Inquiry on 1st July 2021 Miss Allan let it be known that she had received instructions that morning from her Clients to make a formal application for the Inquiry to be adjourned pending a review of options for the use of the Council’s Headquarters building (‘the HQ Building’) at the Sands, including its future use and functions.
6. As submitted by Ms Allan, the basis of her application centred upon the Report of the Corporate Management Team of the Council entitled - Review of Durham County Council Headquarters - (*‘the Cabinet Report’*) produced for the Cabinet Meeting held on 6th June 2021, to which I shall make further reference below.
7. The thrust of Miss Allan’s submissions was three-fold: -
- (1) that the Local Council Elections held on the 6th May 2021 in the area of County of Durham have altered the political dimension of control and governance of the Council which necessitates the adjournment of this Inquiry.
 - (2) that the material facts of the Council’s approach to the pursuing the Application might change following a review of the options at its disposal relating to reviewing the use of the HQ Building.

- (3) That the Inquiry should adjourned until at least a date after 15th September 2021 for the review to be conducted and the Report to be received on the deliberations of the Council upon which an appropriate decision be made as to the pursuit of the Application.

The Cabinet Report

8. At that stage, and without calling upon Mr Whale, Counsel for the Council, to make any detailed submissions on this late oral application made by Ms Allan on behalf of the Objectors, I decided that, in the circumstances, I should adjourn the hearing for a short period of time to study the terms of the Cabinet Report, which I did.
9. I concluded that a formal written application supported by evidence should be made by Counsel, to which Mr Whale, would then have opportunity to respond in writing.
10. Accordingly, on 1st July 2021 I made the following oral directions: –
 - (1) that Miss Allan, Counsel for some of the Objectors, should make a formal written application (*‘the Adjournment Application’*) together with evidence in support of her contention that the hearing of the Inquiry should be postponed, such application together with supporting evidence to be served and filed by close of business 1st July 2021;
 - (2) that Mr Whale, Counsel for the Council should respond by close of business on Friday 2nd July 2021.
 - (3) that the Inquiry will make such written determination on the Adjournment Application as it thinks fit, by close of business on Monday 5th July 2021.

THE COUNCIL’S POSITION

11. In this contextual framework it is to be noted that the Adjournment Application does not emanate from the Council itself, but from Counsel for some of the Objectors. Nor does the Council support the Adjournment Application. Indeed, the Council opposes the Adjournment on two grounds – the first substantive and the second procedural.

The substantive grounds –

12. The claimed benefits as set out in paragraphs 11 – 12 of the Adjournment Application were drafted at the stage before the evidence was adduced, and were at best to be construed as an ‘other matter’ for the purpose of the Application – not a ‘fundamental tenet’ as contended by Ms Allan. As the evidence unfolded the Council’s position has been the subject of reconsideration. As Mr Whale states, the Council can no longer rely upon these claimed benefits. As a result, the principal basis for the Adjournment Application falls by the wayside.
13. Too much is made of the Report. No suggestion is made that the construction work on the HQ Building should cease, and/or the building be demolished. Indeed, at this very moment work continues apace. On the contrary, the Report is solely concerned with the future use of the HQ Building. Furthermore, in the letter dated 2nd July 2021 (appended to Mr Whales’ submissions) from the four Council Leaders this position has been confirmed. It is stated in terms that there is no Cabinet approval or intention to stop the construction works ‘*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 use, as set out in the Report. Mr Whale makes further submissions as to the fact that the Freeman have agreed that the Release Land be used as a municipal carpark until the year 2080.

The procedural grounds –

14. Mr Whale in his submissions emphasises the time that it has taken to arrive at the stage of hearing the Application at the Inquiry and the various delays and further delays that have beset a timely progress to the conclusion of the Inquiry. Any adjournment of the Inquiry until after 15th September 2021 would be the sixth delay to the progress of the hearing. The Application was originally initiated as long ago as August 2019.
15. Mr Whale also makes further representations on procedural issues set out in paragraphs 11 to 14 of his submissions, which I shall not repeat here, save to say that despite the direction made on 28th June 2021 Ms Allan did not make any application to adjourn the proceedings at that stage, and reason has been provided for this failure. Indeed, the Cabinet decision was made by Council as long ago as 16th June 2021.

THE DECISION

16. Having regard to the various points made by both Counsel, I have come to the following conclusions: -

The Cabinet Report

- (1) The Purpose of the Cabinet Report sets out proposals “*to review the options for use of the newly constructed Durham County Council Headquarters at the Sands in Durham City and to set out an approach for reviewing the options for the Council’s HQ functions*”.
- (2) The Executive Summary states that the Report reflects the Council’s newly appointed joint administration’s commitment to review the “*options for Durham County Council’s Headquarters including a review of the use of the newly built HQ building on the Sands in Durham City*” together with regard for the growth and employment opportunities at Aykley Heads (said to be a strategic employment site), and that the review would be undertaken as quickly as possible by ensuring the appropriate due diligence is in place.
- (3) Paragraph 6 of the Cabinet Report refers to a number of points which include the review of the options for **utilising** the new HQ building at the Sands, and that work on considering such options would commence immediately.
- (4) The recommendations of the Cabinet Report were agreed and adopted by Council on 16th June 2021.
- (5) However, as I have emphasised the Cabinet Report is solely concerned with the **future use** of the HQ Building. This position is reflected in the letter dated 2nd July 2021 (appended to Mr Whales’ submissions) from the four Council Leaders this position has been confirmed. In as is stated in terms that there is no Cabinet approval or intention to stop the construction works which would result in the HQ *Building and car park not being completed.*’ In essence therefore the review is to consider how the building will be used.

- (6) Furthermore, it is to be noted that despite the change of political complexion, the County Council as Applicant in this Application, itself, has not sought to pursue any request for an adjournment. Mr Whale opposes such an application, as set out above.
- (7) I therefore find that there no evidence of any intention on the part of the Council to seek to re-consider the Application.
- (8) Furthermore, it is not in the interests of justice or indeed for the benefit of the public, to adjourn the Application the basis of which can only be described as speculative, and also has no direct bearing on the outcome of the Inquiry.
17. In my judgment, there is no merit in the Adjournment Application which I accordingly dismiss for the reasons stated. The Inquiry must therefore proceed to a conclusion.

The Inspector
5th July 2021