

## LAND AT PRESTON NEW ROAD, LANCASHIRE

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### ADVICE

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1. I am asked to advise the Preston New Road Action Group in relation to advice that Lancashire County Council have received from David Manley QC dated 24 June 2015 and made available to the public via its website.
2. Whilst I agree with the advice as far as it goes, I am of the view it does not reflect the full picture of evidence before the Committee, or the full extent of members duties and powers.
3. The legal duty on the members is set out at s.38(6) Planning and Compulsory Purchase Act 2004 which is to determine the application in accordance with the policies of the development plan unless material considerations indicate otherwise. In other words, applications which do not comply with the development plan should be refused unless other planning considerations of sufficient weight outweigh that presumption.
4. The development plan for this application comprises the Lancashire Waste and Minerals Plan and the Fylde Local Plan.
5. Whether an application does or does not comply with the development plan or, if it does not, whether material considerations outweigh that conflict is a matter of planning judgment for elected members. In particular, members are entitled to depart from their officer's advice provided there is a rational and discernable basis for doing so: R v Newbury DC ex parte Blackwell [1998] JPL 680 per Potts J at pp. 681-692.

6. Recently the Court of Appeal has endorsed that approach in R(Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ. 567 where Richards LJ held at [49] that:

“The members were of course not bound by the opinions of experts or officers. In any event, however, in the light of passages drawn to our attention by Mr Findlay and Mr Katkowski I do not accept that the expert evidence and officers' advice all pointed in the one direction. There was certainly a body of evidence that the development would be harmful to the landscape, but there was also evidence the other way and it was recognised in the officers' advice that there was a balance to be struck.”

7. Importantly the weight to attach to a material consideration is also a matter for the decision taker: Tesco Stores v. Secretary of State for Environment [1995] 1 W.L.R. 759 per Lord Hoffmann at p.780:

“The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.”

8. Members have before them an Environmental Statement compiled by the Applicant and the benefit of an officer's report. Within those documents both the Applicant and the Council's own expert officers identify demonstrable harm that will arise from the scheme. That is particularly the case in terms of landscape impact and visual amenity. The officer accepts that such harm to the landscape “could be seen” as a breach of policy EP11 Fylde Local Plan but that temporary and reversible effects of the harm outweigh the breach. Such a judgment is however for the Committee. The Committee may conclude that the harm which the Applicant themselves has identified to the landscape

(and with which the Council's officers agree) is a breach of both EP11 FLP and also DM2 LWMP, and that such harm is not outweighed by the temporary nature of the scheme.

9. The Committee also has before it a report compiled by my client's expert noise consultants, MAS Environmental, together with their oral submissions to the Committee on 18 June. That advice firmly concludes there will be an unacceptable noise impact and, importantly, that the proposed conditions are not appropriate to mitigate that harm in breach of DM2 LWMP.
10. It is for the Committee to take this evidence and their officer's advice and come to a view as to whether the proposal complies with the development plan and, if it does not, whether material considerations outweigh that breach.
11. I understand that a motion was proposed and seconded to refuse planning permission on the basis the application conflicted with policy DM2 of the Lancashire Waste and Minerals Plan because of harm caused by landscape impact/visual amenity and noise.
12. Should the Council refuse planning permission the applicant is entitled to appeal to the Secretary of State. The usual rule is that in that process, irrespective of the outcome, each party bears their own costs irrespective of the outcome of the appeal. The exception to that rule is where a planning authority act "unreasonably". An example of which would be where a planning authority do not substantiate their reasons for refusal at appeal or only provide vague and unclear reasons for refusal, which fail to identify the planning harm.
13. In my view that either or both of the following reasons would be wholly defensible at appeal on the evidence before the Committee:

*"01. The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policies DM2 Lancashire Waste and Minerals Plan and Policy EP11 Fylde Local Plan"*

*"02. The development would cause an unacceptable noise impact resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to policies DM2 Lancashire Waste and Minerals Plan and Policy EP27 Fylde Local Plan".*

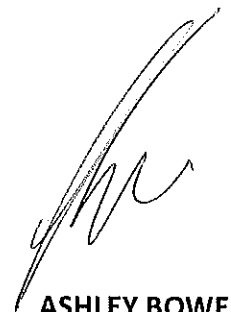
14. Whilst I agree with Mr Manley that the planning officer who provided the advice to the Committee that the application should be approved might be in conflict with their obligations under the RTPI Code to then support refusal at appeal, it would not preclude another planning officer supporting the Council's case or, as is very common, an independent planning consultant called by the planning authority at appeal to substantiate its reasons for refusal.

15. I am instructed that my client, the Preston New Road Action Group would also seek Rule 6 status in that appeal and support the Council in the above two reasons for refusal with its own noise consultant and planning consultant.

### Conclusion

16. Elected members of a planning committee are entitled to come to a different view to their officers provided there is a rational and discernable basis for doing so. In particular they are entitled to place greater or less weight on material considerations than that of their officers, for example they may place greater weight on the landscape harm and less weight on the temporary effects of that harm than their officers. In my view a refusal based on landscape and noise impact would be rational in that it is supported by

evidence before the Committee, and the harm could be adequately identified in a reason for refusal such as to be discernable. Provided the eventual reasons are supported by evidence at appeal, there is no serious risk of costs even if the appeal is allowed.

A handwritten signature in black ink, appearing to read 'Ashley Bowes', written in a cursive style.

**ASHLEY BOWES**  
**GUILDFORD CHAMBERS**

**26 June 2015**