

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

IN THE MATTER OF An Application for Permission to Claim Judicial Review

BETWEEN:

THE QUEEN

on the application of

SAMUEL SMITH OLD BREWERY (TADCASTER)
(an unlimited company)

Claimant

-and-

NORTH YORKSHIRE COUNTY COUNCIL

Defendant

STATEMENT OF FACTS AND GROUNDS

1. FACTUAL BACKGROUND

The Claimant

- 1.1 Samuel Smith Old Brewery (Tadcaster) (the "Claimant") is a long established brewery and its head offices are in Tadcaster, North Yorkshire. The Claimant's Group of Companies has a licensed estate of public houses chiefly in the North of England including a number in the District of Selby and in Tadcaster in particular.

The Decision Under Challenge

- 1.2 The decision under challenge is that of North Yorkshire County Council (the "County Council") on 18 September 2006 to implement certain traffic calming measures in Tadcaster, along roads which directly affect the Claimant and its premises within the town, as well as its ongoing proposals for redevelopment of the Town Centre pursuant to an extant planning permission.

The Background to the Decision

- 1.3 For some considerable time, the Claimant has been pursuing proposals for the comprehensive regeneration of Tadcaster Town Centre. Tadcaster Town Centre is a Conservation Area. It contains many listed buildings. It is a historic area.
- 1.4 Since the late 1960s, the Claimant has been pursuing its efforts to achieve a comprehensive regeneration scheme to improve the Town Centre area. However, previously such proposals had been the subject of opposition from some Councillors of Selby District Council (the "District Council"), and there had been many disputes which had prevented the Claimant from progressing its scheme for the benefit of the town as a whole.
- 1.5 Finally, however, on 10 October 2003 the Claimant was granted planning permission by the District Council for its comprehensive improvement scheme. As part of those proposals, there is an intention that certain traffic changes are made to the flows of traffic within Tadcaster.
- 1.6 However, prior to the grant of that planning permission, in 2002 the County Council had carried out a consultation exercise in respect of a proposed Tadcaster Traffic Management Strategy. Three options for managing traffic movements were considered:
 - 1.6.1 Option A involved a range of proposals to improve road safety in Tadcaster, the main proposal of which was to include an extended 20mph zone for the town centre with certain traffic calming measures;
 - 1.6.2 Option B involved introducing a one-way operation of traffic southbound using Westgate and Chapel Street, and a one-way operation of traffic northbound on St Joseph's Street. A section of Kirkgate would be closed enabling pedestrianisation for part of the day; and
 - 1.6.3 Option C involved a "point closure" on Chapel Street, leaving the southern end of that street for two way operation into and out of the central area car park in the Town Centre, and the northern end for two way local access only to properties on the street. A section of Kirkgate would be closed enabling pedestrianisation for part of the day (see the street plan attached to these grounds).

- 1.7 On 11 September 2002 the County Council's Environmental Services Selby Area Committee considered the results of the consultation that had been carried out in respect of the Traffic Management Strategy. The Committee resolved at that stage to adopt a Traffic Management Strategy including the proposals in Options A and B, but no decisions were taken as to the implementations of those measures.
- 1.8 As outlined above, subsequently the Claimant was granted planning permission by the District Council for its Town Centre Regeneration Scheme. These proposals are based around elements of Option A and Option C in terms of traffic management. Therefore there has been a very significant change in circumstance since the County Council considered its adoption of a Strategy based on Options A and B, with the District Council now having granted planning permission for a very significant regeneration scheme affecting the Town Centre.
- 1.9 As indicated above, the County Council did not immediately seek to implement its Traffic Management Strategy. However, in late 2003 the County Council purported to carry out a consultation process in respect of the introduction of the 20mph limit for Tadcaster Town Centre which had formed part of Option A. The proposals were to introduce the 20mph limit in the Town Centre and to include widespread traffic calming features, predominantly in the form of the construction of speed cushions.
- 1.10 The principle of the introduction of a 20mph speed limit for Tadcaster Town Centre was widely endorsed through the consultation exercise, including receiving support from the Claimant. However, the elements of the traffic calming proposed were the subject of objection from many consultees including the Claimant.
- 1.11 The consultation on the proposals was reported to the County Council's Selby Area Committee on 19 April 2004. In light of the objections to some parts of the traffic calming proposals, the County Council's Committee accepted the recommendation of officers to carry out further consultations on proposed amendments to the traffic calming measures particularly affecting the central areas of Tadcaster. These were parts which directly affected (amongst others) the Claimant and its business. The Committee resolved to implement the remainder of the 20mph speed limit and associated traffic calming measures.

- 1.12 In the meantime, since the 2004 consideration of the proposals by the County Council, the Claimant and the District Council have been involved in detailed negotiations to secure the necessary land ownership agreements for the implementation of the Town Centre Scheme. In short, the Central Area Car Park which lies at the heart of the Town Centre and also the Town Centre Scheme, is currently in the ownership of the District Council. However, under the proposed arrangements, that ownership would be transferred to the Claimant (subject to certain conditions) to enable the Town Centre Scheme to be carried out.
- 1.13 While those negotiations have been continuing, the County Council has sought to carry out a further reconsultation exercise in respect of its amended traffic calming measures. This exercise was conducted in June 2005. In light of it, the Claimant (among others) submitted representations objecting to what was proposed.
- 1.14 By letter dated 5 August 2005, Cunnane Town Planning ("CTP") acting on behalf of the Claimant, wrote to the County Council setting out the Claimant's objections. As summarised in the background section of that letter, it was stated:

"Following adoption of the [County Council's Strategy in 2002], Officers of North Yorkshire County Council began the preparation of detailed proposals for individual elements of the town centre traffic-calming scheme. The Brewery has objected to the scheme, drawing out specific operational issues with regard to access for heavy goods vehicles and the ability of Drays to negotiate these obstacles.

Recently, however, as we have discussed on the phone, progress towards receiving the District Council's backing for the implementation of a comprehensive redevelopment of Tadcaster Town Centre, including the installation of an alternative traffic circulation and calming scheme to NYCC's currently adopted strategy, has resulted in a very real opportunity to fundamentally improve the economic, social and environmental core, and therefore prospects for the town as a whole. I'm sure you appreciated that the proposals currently being discussed between the Brewery and the District Council are much further reaching than simply the highways works, and include a comprehensive realignment of the towns appearance, function and long term prospects.

The proposals may be described as attempting to tackle the 'bigger picture'. Whilst the highways scheme is an important integral part of the Brewery's proposals, it is important to emphasise that they would be 'packaged' within the Brewery's proposals to provide a high quality streetscape, in matching locally sourced and appropriate materials.

I am sure you will appreciate that such an agreement would need to be a weighty consideration in the decision of NYCC to spend valuable public funds on the implementation of the 20mph zone. The potential waste of this opportunity to 'lever-in' private finance is the Brewery's primary reason for objection at this stage to the 20mph zone."

1.15 Further details of the progress that was being made in achieving the requisite agreement between the Claimant and the Council for implementation of the Town Centre Scheme were explained in the letter. It also included reference to the aspirations set out in the Selby District Local Plan Inspector's report in considering Tadcaster Town Centre in May 2002 when he had stated:

"19.218 I am surprised that a scheme which meets the agreement of all parties has not been sought more energetically by the Council so that it could be incorporated into the plan sooner.

...

It is necessary for an agreed scheme between the Council, NYCC and SSOBT to be prepared as a basis for inclusion."

1.16 CTP's letter also identified the work that was being carried out in tandem with an emerging agreement between the Claimant and the District Council, with Yorkshire Forward (the Regional Development Agency for Yorkshire and Humber) through the *Urban Renaissance Programme* supporting the Town Centre Scheme, including the traffic circulation proposals and calming measures within the town centre.

1.17 The letter went on to identify the nature of the costs of the abortive works that would be incurred by the County Council if it were to progress its traffic calming proposals at this stage, in light of the emerging agreement with the other stakeholders for the implementation of the Town Centre Scheme. Having set out the objections, it was stated in the letter at the end:

"The town of Tadcaster has, on a number of occasions, been recognised as wanting for a comprehensive, joined-up approach to its redevelopment and regeneration, that is sensitive to the needs of such a small market town, based as it is, around a historic core containing buildings of historic and architectural value. Currently, significant progress has been made in achieving just such an approach between the District Council and the Brewery. To avoid the potential expenditure of public money on abortive and uncomplementary works to the highways within the town, we seek the delay of the implementation of the 20mph zone works to provide an opportunity to fully explore the possibility of joint working between the District and County Councils, and the Brewery."

1.18 A number of other objections were received in response to the consultation exercise which are considered further below.

1.19 Notwithstanding the obvious sense in the approach identified by the Claimant, the Council's officers submitted a report to the County Council's Selby Area Committee for a meeting on 18 September 2006. This report purported to inform Members of the response to the reconsultation and public advertising in respect of the proposed

amended traffic calming measures, and sought to recommend their implementation.

- 1.20 The Claimant received a copy of the Report in advance of the Committee Meeting once it was made publicly available. In light of its content, the Claimant's planning agent CTP wrote a further letter of objection to the County Council on 15 September 2006. This was sent to the Chair of the relevant Committee as well as a number of other interested parties.
- 1.21 CTP's letter highlighted the Claimant's position that the Report contained a number of serious errors and deficiencies which would render reliance upon it unlawful. The nature of the errors and deficiencies are not set out again here, but it will be seen that the Claimant took such steps as it was able to prevent the County Council from taking an unlawful decision in the form that was being recommended by the Officers.
- 1.22 In addition, the letter explained that the County Council were failing to take any account of the nature and progress of the emerging agreement between the Claimant and the District Council for the implementation of the Town Centre Scheme. The letter provided an outline of what had been taking place. This included the formulation of detailed and advanced draft of an agreement to be made under section 106 of the Town and Country Planning Act 1990. This had already been the subject of detailed negotiation and large measure of agreement between the Claimant and the District Council. This latest draft agreement had been presented to the District Council's Full Council meeting on 12 September 2006. It was understood that there was broad support for the principle of such an agreement from the majority of Councillors. As explained in CTP's letter, the Council had deferred a final determination of its approach to the agreement to digest its implications. The next meeting was anticipated to be reconvened in only 2-3 weeks time. The letter pointed out that it was therefore obviously premature for any decision to be taken by the County Council on 18 September 2006 in light of these circumstances, and therefore CTP sought a deferral of consideration of the item.
- 1.23 Notwithstanding this, the County Council proceeded to consider the item on 18 September 2006. As the Minutes of that meeting record, the Report was considered with a further update from the Corporate Director of Business and Environmental Services. There was then a debate with contributions from various people. The debate concluded with comments made by County Councillor Metcalfe, speaking against the objections and the requests for deferral of the item, and then calling for a vote on the

item. The Committee then resolved that:

- "(i) having considered the objections received, the amended traffic calming features re-consulted upon be implemented;
- (ii) the Corporate Director – Business and Environmental Services undertake a clarification exercise with the three lowest tenderers and award a contract for the works in accordance with County Council procedures;
- (iii) the objects be advised accordingly;
- (iv) the Corporate Director – Business and Environmental Services investigate the situation that had been raised in the meeting with regard to Station Road."

1.24 So far as the involvement of Councillor Metcalfe was concerned, the Minutes record the following:

"In respect of the above item County Councillor Metcalfe declared a personal but non-prejudicial interest in the matter as the owner of shop premises in Tadcaster Town.
..."

1.25 In the meantime, as CTP had foreshadowed in its letter, on 28 September 2006 the District Council reconvened to consider the advanced draft of the section 106 agreement for implementation of the Town Centre Scheme. Significantly, the District Council expressly recognised that the draft agreement was a good start, but set out some further factors which needed to be addressed in negotiations. The resolution was made in the following terms:

"The following shall be read as a whole:

- i. That the drafted agreement, as presented this evening, be recognised as a good start in moving to a settlement with SSOBT but that the following have to be incorporated within any agreement,
 - a. the environmental issues identified in the Cunnane letter addressed to the Chair of Selby Area Committee of North Yorkshire County Council.
 - b. the completion of the car park, houses and associated works be within three years of the agreement being entered into.
 - c. that the houses to be constructed shall be occupied by the agreed completion date.
- ii. That the District Council, officers and Leader be instructed to continue to seek these requirements with SSOBT and to report back to full Council.
- iii. Any agreement being brought back to full Council should not be entered into without the settlement of traffic management with North Yorkshire County Council.
- iv. When having entered into an agreement that should SSOBT be in default howsoever at the end of the agreed period that those works that have been undertaken shall be passed to SDC without any recompense to SSOBT.

- v. The District Council continues with its action of defending its planning consent for the central area car park.
- vi. The whole of the foregoing shall be presented in a finalised legal document by the SDC legal department."

- 1.26 The Claimant is therefore seeking to progress the further points of negotiation with the District Council under the draft agreement as quickly as possible.
- 1.27 Following the County Council's Committee meeting, the Claimant's solicitors - Pinsent Masons - wrote a letter dated 2 October 2006 to the County Council. This letter gave them early notice that the Claimant was taking advice as to the legality of the Committee's decision, and it requested confirmation that the County Council would not take any steps to act upon the decision in the meantime, or at least prior notice of any intention to implement the traffic calming scheme.
- 1.28 The Council responded by letter dated 6 October 2006 stating that it would hold off any further implementation of the scheme for a period of 14 days to enable the Claimant to take advice, following which it reserved the right to proceed to implement the scheme.
- 1.29 In order to consider the nature of the County Council's decision, Pinsent Masons sought copies of the Minutes of the Council's meeting of 18 September 2006. By email dated 24 October 2006, the County Council's legal advisor informed Pinsent Masons that the Minutes would be available around the 12 November and a copy would be sent through when it was ready.
- 1.30 In the event, the Minutes were not provided until 15 November 2006.
- 1.31 Following receipt of the Minutes and a review of the decision that had been taken, the Claimant's solicitors wrote a letter before claim to the County Council dated 21 November 2006. In accordance with the Pre-Action Protocol for Judicial Review, this letter set out the details of the nature of the Claimant's challenge to the legality of the decision. Given the delays in the provision of the Minutes and the timescales applicable to the making of a judicial review challenge, the Claimant's solicitors sought a response from the Council within 7 days.

- 1.32 The County Council responded initially by letter dated 23 November 2006 in fact seeking a period of 21 days for a response. Pinsent Masons replied by letter dated 4 December 2006 stating that it would allow the County Council until 8 December 2006 provided it was agreed that:
- 1.32.1 The County Council would not take any steps to implement the resolution in the meantime.
- 1.32.2 The County Council would not take any point of delay in the event of the Claimant filing proceedings, referring to the delay that had already been caused to the Claimant by the late provision of the Minutes.
- 1.33 The County Council responded by letter of 8 December 2006 agreeing to these conditions, but stating that a full response to the letter before claim would not be provided until 12 December 2006.
- 1.34 In light of the assurances given by the County Council that it would not seek to implement the decision which was being impugned, and that the County Council would not take any point on delay, the Claimant awaited until receipt of the County Council's response to the letter before claim on 12 December 2006.
- 1.35 By that letter, the County Council indicated that it did not accept the Claimant's grounds of challenge.
- 1.36 Accordingly, following receipt of that letter, the Claimant has drafted and filed these proceedings.

2. RELEVANT LEGAL FRAMEWORK

The Enabling Legislation

- 2.1 Section 90A of the Highways Act 1980 ("the 1980 Act") sets out the power for a highway authority to construct road humps in a highway which is maintainable at the public expense.
- 2.2 Section 90C of the 1980 Act provides:

"(1) Where the Secretary of State or a local highway authority propose to construct a road hump under section 90A ... he or they shall consult with –

...

(b) such other persons or bodies as may be prescribed by regulations made by the Secretary of State.

...
(4) The Secretary of State or local highway authority shall consider any objections sent to him or them in accordance with a notice under subsection (2) above and may, if he or they think fit, cause a local inquiry to be held."

- 2.3 Section 90G sets out a power for a highway authority to carry out traffic calming works, pursuant to regulations made under section 90H. The regulations are the Highways (Traffic Calming) Regulations 1999 SI 1999 No. 1026.

Declaration of Interests / Apparent Bias

- 2.4 Decisions by public bodies affecting another legal entity's rights must be taken fairly, and in compliance with the basic principles of natural justice.
- 2.5 In the field of local government, this has led to the formulation of legal requirements under statute as to the creation of a Model Code of Conduct to be observed by local councillors in the performance of their functions: see Local Authorities (Model Code of Conduct) (England) Order 2001.
- 2.6 The importance of this Model Code was considered by the Court of Appeal in Richardson & Orme v North Yorkshire County Council [2003] EWCA Civ 1860; [2004] 1 WLR 1920.
- 2.7 The Model Code includes definitions of personal interests and prejudicial interests as follows:

"

Personal Interests

- 8.(1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself a relative or friend....

Disclosure of Personal Interests

9.(1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent...

Prejudicial Interests

10.(1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest ...

2.8 The Model Code sets out requirements in respect of disclosed interests of members as follows:

"...

Participation in Relation to Disclosed Interests

12.(1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee;
- (b) not exercise executive functions in relation to that matter;
- (c) not seek improperly to influence a decision about that matter.

..."

2.9 Whether a member has a personal or prejudicial interest is a question to be determined objectively, and the mistaken, even if reasonable, view of the member himself that he has no such interest is irrelevant: see Scrivens v Ethical Standards Officer [2005] EWHC 529 (Admin).

2.10 It is also clear that a council member's public declaration of opposition or support for a proposal on previous occasions is capable of amounting to a personal and prejudicial interest: see eg Murphy v Ethical Standards Officer [2004] EWHC 2377 (Admin).

2.11 As to apparent bias, the legal test is set out in Porter v Magill [2002] 2 AC 357 per Lord Hope of Craighead at para 103:

"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

- 2.12 As stated in Georgiou v Enfield LBC [2004] LGR 497 applying Porter in a planning context at para. 3, it was necessary to consider –

"whether, from the point of view of the fair-minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues."

3. GROUNDS OF CHALLENGE

- 3.1 The Claimant submits that in deciding to implement the amended traffic calming measures on 18 September 2006, the County Council has erred in law in that it has acted in breach of the requirements of procedural propriety, it has failed to have regard to material considerations, alternatively had regard to irrelevant considerations, alternatively it has come to a conclusion which was unreasonable in the Wednesbury sense as set out below.

Ground 1: Procedural Impropriety

- 3.2 As set out above, the County Council Committee meeting was attended by Councillor Metcalfe. Councillor Metcalfe acted as a member of the Committee, participated in the debate, and he voted in favour of the resolution under challenge.
- 3.3 Councillor Metcalfe is the County Council Area Member for Selby. Councillor Metcalfe is also a District Councillor of Selby District Council. Councillor Metcalfe has also been a member of the Tadcaster Town Council.
- 3.4 Councillor Metcalfe owns property within Tadcaster itself. He is the registered owner of property at 12 Kirkgate, a property directly affected by both the traffic calming measures and, more significantly, the Claimant's Town Centre Scheme. It was presumably for this reason that Councillor Metcalfe declared a personal interest in the item which was considered by the County Council regarding the traffic calming measures. However, there is no doubt so far as the Claimant is concerned that Councillor Metcalfe also had a prejudicial interest which he should have declared, and which should have precluded him from attending and taking part in the Committee's decision.

3.5 Councillor Metcalfe has been a long-established and hostile opponent of the Claimant and its proposals for Tadcaster's regeneration. He has openly declared or manifested this hostility on repeated occasions in the past, and has been involved in litigation directly against the Claimant.

3.6 The examples of Councillor Metcalfe's long-standing animosity are given as follows (without prejudice to the right to add further detail or examples as may be necessary or appropriate in due course):-

1. Public Opposition to Claimant's Town Centre Supermarket Proposal

3.6.1 In 1991 the Claimant submitted an appeal against the District Council's failure to determine its application for construction of a 15,000 sq ft supermarket in Tadcaster. Then, as now, Councillor Metcalfe owned his own "Costcutter Shop" within Tadcaster Town Centre.

3.6.2 Councillor Metcalfe attended the public local inquiry held in 1992 to oppose the Claimant's appeal and gave evidence against it. However, the appeal was subsequently allowed by the Inspector appointed by the Secretary of State by decision letter dated 22 June 1992. Therefore Councillor Metcalfe's objection was rejected. However, it is clear that Councillor Metcalfe had a clear personal and prejudicial interest in this item, and the outcome of the appeal was in direct conflict with those interests.

2. Public Statements on Quaker Burial Ground

3.6.3 On 29 October 1997 the District Council's Planning Committee considered a development proposal for the Quaker Burial Ground in Tadcaster. The Claimant objected to this as an inappropriate form of development. At the Committee meeting, Councillor Metcalfe spoke in support the proposal and criticised the Claimant's director as follows:

"... It is interesting that up to the point of the Council trying to find a solution no-one other than the local residents was concerned at the state of the area or tried to do anything -- it is in a disgusting state. A certain individual in the town did not like that was being proposed -- an anonymous letter was sent round asking people to object -- several misleading statements were contained in it -- good stone walls which will be demolished, long used footpath blocked -- the stone wall will be reduced in height and the footpath will be redirected. The development there has already been destroyed.

Vandalism has constantly been repaired by Selby and still goes on. A gentleman who lives in a large house in private grounds outside of Tadcaster is out of touch with residents of Tadcaster."

- 3.6.4 Both statements regarding an individual were intended to relate to Mr Smith of the Claimant.

3. Publicly Expressed Hostility to Claimant Supplemented by Press Release

- 3.6.5 At a District Council Meeting on 14 July 1998, Councillor Metcalfe expressly endorsed comments made by District Councillor Roy Wilson to the effect that the Director of the Claimant was responsible for the "keeping down" of Tadcaster and for delaying its progress with the implementation of a market. The two Councillors moved for the issue of a Press Release in respect of the proposed relocation of Tadcaster Market. They claiming that a successful legal challenge to the District Council's unlawful attempts to relocate the market amounted to "a spoiling tactic" by the Claimant, and it was asserted that the Claimant "rode roughshod over the people of Tadcaster", "dictated" to the whole of Tadcaster what was and what was not acceptable and threw up obstacles for the re-generation of Tadcaster.
- 3.6.6 In fact, that Press Release was patently false, as it is crystal clear that it is the Claimant that has always in fact been striving to secure the regeneration of Tadcaster for many years. It is the Claimant's efforts, which have previously been thwarted by the hostile opposition of a minority of District Councillors, that are now finally coming to fruition.

4. Public Statements of Incorrect Allegations regarding Claimant's challenge to unlawful market proposal

- 3.6.7 On 9 July 1998 Councillor Metcalfe (then a Tadcaster Town Councillor, a Selby District Councillor and a North Yorkshire County Councillor) was reported in the local press as saying the following regarding the Claimant:

"Quite clearly Samuel Smith did not want the Market in Kirkgate and the Traffic Order was just a way of squashing that plan.

Councillor Metcalfe wants more answers from the brewery as to why, if they were going to seek an injunction, they did not warn anybody earlier.

During Tuesday's Council meeting he said: "The County Council was given just seven hours notice that the brewery was meeting with their solicitors.

I want to know they left it until the 11th hour with no time for negotiations – no time for anything.”

- 3.6.8 In fact, as was subsequently pointed out by the Claimant's solicitors in a letter to the County Council dated 23 July 1998, that account of events reported from Councillor Metcalfe was simply inaccurate and set the record straight as to the repeated warnings that had been given of the illegality of what the County Council had been attempting to do with the Market, and the intention to challenge any such decision. The letter requested Councillor Metcalfe to refrain from making incorrect allegations of the kind he had done.

5. Recusing Himself from Consideration of Nun Appleton – Bridleway No. 9

- 3.6.9 In 1998 the County Council considered whether or not to propose a modification to the Definitive Map regarding Bridleway No. 9 passing over land of the Claimant. As a result of repeated requests that Councillor Metcalfe (and Councillor Wilson) should not sit on any Committee making a determination in respect of the Bridleway affecting the Claimant because of their past history of opposition, and in particular the production of the Press Release referred to above.
- 3.6.10 At the County Council's Environmental Services Committee meeting on 11 September 1998, while both Councillors disclaimed the existence of any pecuniary or non-pecuniary interests in the item of the proposed modification order, both agreed that they would not take any further part in the item at the Committee, and both recused themselves from debating or voting (although they remained in the room).
- 3.6.11 There can be little doubt that they did so having regard to the potential for apparent bias if they participated in the meeting dealing with an item directly concerning the Claimant. There has been no reason why such continued apparent bias does not continue to exist today. Indeed, so far as the Claimant is concerned, the nature of the apparent bias has only increased since 1998.

6. Public Position of Councillor Metcalfe on District and Town Councils Witnessed by Former Councillor Auton

- 3.6.12 As is confirmed by former Councillor Graham Auton, Councillor Metcalfe was the single factor in his decision in early 2000 not to stand for re-election to his position as Councillor for both the District and Town Councils, which posts he had held for 20 or so years. The

reason was that former Councillor Auton was totally demoralized in his own personal efforts to move the regeneration of Tadcaster forward by Councillor Metcalfe's continual sniping and negative attitude towards the Claimant and Mr Smith.

3.6.13 As former Councillor Auton has explained, Councillor Metcalfe was a very experienced and articulate Councillor of many years standing who continually found fault with the applications concerning the Claimant's Town Centre Scheme, and he often went out of his way in Council to malign and speak negatively against the Brewery and did this publicly.

7. Purchase of 12 Kirkgate

3.6.14 As part of progressing the Town Centre proposals, the Claimant sought to purchase a property at 12 Kirkgate which was owned by the Yorkshire Electricity Board. The Claimant entered into negotiations to purchase the land, but it was outbid significantly by a third party who paid an inflated price for the property.

3.6.15 It subsequently emerged that the property in question was purchased by Councillor Metcalfe. In January 1995 Councillor Metcalfe requested a meeting with the Claimant following his purchase of 12 Kirkgate. At that meeting he told the Claimant's director that he did not agree with the Claimant's Town Centre Scheme proposals, but that he was prepared to exchange ownership of 12 Kirkgate in substitution for a gap site at 4, 6 and 8 High Street to be developed for one large shop. The area of this latter property is 296 square metres, as compared with 12 Kirkgate which is only 105 square metres in area.

3.6.16 Councillor Metcalfe's proposal was rejected by the Claimant's director.

3.6.17 Councillor Metcalfe subsequently prevented the Claimant's proposal for redevelopment of land behind 12 Kirkgate at the derelict Robin Hood's Yard and Hodgson Terrace sites from proceeding. The proposed development would require an enlargement of the access road through Pegg Lane. Councillor Metcalfe asserted rights over part of this access road, and upheld these in legal proceedings. He also applied for, and obtained, planning permission for redevelopment of the property at 12 Kirkgate for a larger single shop, although this planning permission has never been implemented by him.

3.6.18 Councillor Metcalfe's ownership of 12 Kirkgate is therefore not only a direct personal interest relevant to any proposals or objections by the Claimant on public agenda items relating to delivery of its Town Centre Scheme, but is one which he has sought to exploit against the Claimant when he has publicly declared his opposition to the Claimant's Town Centre Scheme proposals.

8. Public Position of Councillor Metcalfe on District Council Witnessed by Councillor Ashton

3.6.19 Councillor Metcalfe's direct and open hostility to the Claimant was witnessed by Councillor Ashton directly. Upon attending a memorial unveiling, Councillor Ashton heard Councillor Metcalfe declare that he had "stopped [Mr Smith's] plans" as he had outbid him and bought 12 Kirkgate. Councillor Metcalfe remarked "That will stop him!"

9. Conduct Witnessed by Former Mayor of Tadcaster Town Council

3.6.20 The former Mayor of Tadcaster Town Council, E Helsdon, served as Mayor and Chairman of the Council between 1999-2000 and was Chairman of the Environment Committee for several years.

3.6.21 It was evident to him that there was a strong resentment among some members of the Town Council against the Claimant. He noted that everything that came through the Town Council that involved the Claimant was more heavily scrutinised than applications from any other company or person, and great delight was shown by certain councillors when the applications contained matters to criticise.

3.6.22 It appeared to him that this resentment later grew into hostility. He has stated that Councillor Metcalfe adopted a particularly hostile attitude to the Claimant as a member of the Town Council. Councillor Metcalfe was jubilant when he purchased the old Yorkshire Electricity premises at 12 Kirkgate, Tadcaster even though he had paid a price far above the true market value of the site. Councillor Metcalfe stated within the former Mayor's hearing that he had "stuffed" the Claimant by obtaining these premises. Mr Helsdon considers that Councillor Metcalfe continued to maintain his, often open, hostility to the Claimant and he was able negate any incentive to move matters forward using his positions at Selby District Council and North Yorkshire County Council.

3.6.23 Mr Helsdon considers that this never more evident than when the traffic-calming measures were under consideration for Tadcaster. He considers that there was never much support for these measures amongst the town residents, and indeed most people that Mr Helsdon consulted considered these measures to be a total waste of public money. Mr Helson's experience is that Councillor Metcalfe was determined to have traffic calming and stated this view publicly and openly, long before Councillor Metcalfe or the NYCC committee had heard the recommendations of NYCC officers in light of the consultation. This action on the part of Councillor Metcalfe caused Mr Helsdon to write to the chairman of the NYCC committee concerned to question whether it was appropriate for Councillor Metcalfe to be involved in determining whether the traffic calming should go ahead.

3.6.24 Mr Helsdon has also stated that the Claimant's plans for the Town Centre Scheme have received continual opposition from Councillor Metcalfe, despite the benefits that the Scheme would bring with greatly improved facilities at no cost to the public ,with no maintenance cost to the public and no cost for car parking to the public (in contrast to plans promoted by Selby District Council).

10. Tadcaster Town Team

3.6.25 In furtherance of the objective of regenerating Tadcaster in accordance with the relevant Local Development Framework, a Renaissance Town Team managed by an executive group was formed under the auspices of Yorkshire Forward's consultants URBED.

3.6.26 It was understood that the team executive members and the team they represent would require to share a common purpose to achieve the agreed objectives of renaissance and muster the significant contributory but erstwhile disparate forces within the Tadcaster township to achieve a regeneration scheme.

3.6.27 In assessing the way forward a strategic choice had to be made. Following more than twenty years of aborted attempts at regeneration of the town core, the Town Team considered it prudent to build upon the considerable planning, design and architectural investment already made by the Claimant, the major landowner and company responsible for promoting the Town Centre Scheme.

3.6.28 Accordingly the Claimant's Town Centre Scheme was in fact subsequently adopted by the Tadcaster Town Team, and adopted as the priority project. It received the strong support of Yorkshire Forward the Regional Development Agency and its consultants who recognized the substantial public economic gain inherent in the private investment.

3.6.29 The Town Team realised that some local governmental office holding personalities would find difficulty with this choice since some have, over many years, shown hostility towards the Claimant. In the event, the position was worse because the District Council arbitrarily appointed a representative to "assist" the Town Team with its project. Councillor Metcalfe was the arbitrary appointee. The appointment was made without consultation.

3.6.30 The appointment was simply unacceptable to the majority of the active Tadcaster Town Team Executive members in light of Councillor Metcalfe's known attitudes towards the Claimant. Consequently the Town Team rejected the appointment. In consequence, the District Council withdrew funding for the Town Team and this has caused further administrative difficulties. This account is confirmed by the Chairman of the Tadcaster Town Team, Sir Bryan Askew.

11. Complaint to Standards Board

3.6.31 The continued involvement of Councillor Metcalfe on District Council items relating to matters in which the Claimant has an interest has been the subject of a separate complaint made by a Mr Gordon Spencer to the Standards Board for England. Mr Spencer has complained, amongst other things, about observing Councillor Metcalfe's personal animosity and hostility towards the Claimant and its chairman which he considers substantially affects Councillor Metcalfe's judgment of the public interest.

3.6.32 The Standards Board for England has initially decided that the complaint should not be referred to an ethical standards officer for investigation by decision notice dated 25 October 2006. However, the complainant has the opportunity to request the Chief Executive of the Standards Board to conduct a review in writing of this decision. Mr Spencer has submitted such a request and therefore the outcome of the complaint remains outstanding.

3.7 The Claimant submits that Councillor Metcalfe's participation in the County Council meeting on 18 September 2006 was:

- 3.7.1 Unlawful by reason of unfairness in permitting a known opponent of the Claimant's scheme to participate in considering the Claimant's objections to the traffic calming measures for Tadcaster; further or alternatively,
- 3.7.2 A breach of the Code of Conduct applicable to members, in that Councillor Metcalfe's interest was not limited to a personal one (by reason of his property ownership), but was also a prejudicial one precluding his participation in the County Council meeting; further or alternatively,
- 3.7.3 Gave rise to unlawful apparent bias on the part of the County Council through the participation of Councillor Metcalfe as someone who took part in the debate, spoke against the Claimant's objections, and then voted on the item itself.
- 3.8 The Claimant relies upon, and refers to, the various instances where Councillor Metcalfe has made plain his open hostility to the Claimant which has been evidenced by other persons, taken in conjunction with his declared personal interests. It is clear that a member of public with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the Councillors judgment of the public interest.
- 3.9 The involvement of Councillor Metcalfe at the meeting was particularly marked, given that Councillor Metcalfe took part in the debate at the very end, speaking against the Claimant's objections and in favour of the implementation of the proposals, and then immediately inviting the Councillors to vote on the issue.
- 3.10 Accordingly, the County Council's decision is fundamentally flawed by the participation of the Councillor in the way set out above, in light of the true extent of his personal and prejudicial interests in the outcome of the item on the agenda. It is nothing short of extraordinary that the Councillor was entitled to take part in the County Council's meeting in the way he did. On any basis the County Council's decision is fundamentally flawed on this ground alone.

Ground 2: Failure to Deal with Changed Circumstances since 2004

- 3.11 Further or alternatively, it is clear from the Report to the Committee on 18 September 2006 and attendance at that meeting by a representative of the Claimant, that the Committee failed to deal with the question of changed circumstances affecting whether or not to implement the proposed traffic calming measures based upon a decision which had previously been taken by the Council over 2 years previously.
- 3.12 The duty to have regard to all material considerations in taking a public decision of this kind is well-established in public law. The Council was therefore obliged to take account of all material considerations capable of affecting its decision at the time that the decision was taken. It was therefore incumbent upon it to deal with any changed circumstances affecting the implementation of the proposed traffic calming measures that had occurred since 19 April 2004, when the County Council had last considered traffic calming measures for Tadcaster generally.
- 3.13 The County Council conspicuously failed to have regard at all to the very significant changes that had in fact occurred, and / or to acquaint itself with the relevant information on those changes in order to make a proper decision.
- 3.14 These significant changes included the continuing dialogue that had occurred between the Claimant and the District Council to reach a legal agreement as to the redevelopment of Tadcaster Town Centre as a whole, in accordance with a scheme being promoted by the Claimant and for which planning permission had been issued by the District Council.
- 3.15 At the time that the County Council were considering the proposed traffic calming measures on 18 September 2006, the Claimant and the District Council were extremely close to the completion of a legal agreement to bring about this comprehensive redevelopment strategy for the benefit of Tadcaster town centre as a whole.
- 3.16 Such agreement when implemented, would render the implementation of some of the traffic calming measures in the form proposed by the County Council wasted expenditure. Therefore the County Council clearly should have considered deferral of the proposed measures, or alternatively, the promotion of a form of traffic calming that would have been compatible with the Claimant's comprehensive scheme for Tadcaster as a whole.

- 3.17 Contrary to the apparent assertion in the County Council's response to the letter before claim, the Council members failed to inform themselves (whether by the Report or otherwise) as to the nature, extent and significance of such agreement between the Claimant and the District Council, and its effect and relevance in selecting the appropriate traffic strategy for Tadcaster as a whole, and the timing and nature of the interim traffic calming measures.
- 3.18 Moreover, in its response, the County Council suggest that agreement on heads of terms between the Claimant and the District Council does not mean that the planning permission in question would necessarily be implemented, and the terms of the agreement could change in the future. This is, however, no answer to the legal flaw in the decision. The County Council's decision was not in fact based upon the concept that the agreement was not finalised, but if the County Council had sought to consider the status of the draft agreement, it would have been bound to direct itself properly as to the advanced stage of the agreement and, again, it would have been simply perverse not to defer any decision in light of the pending District Council meeting to consider the draft agreement.

Ground 3: Failure to Deal with Changed Circumstances Since 2002

- 3.19 Further or alternatively, the Report to the Committee misdirected the members as to the relevance of what officers considered to be a "comprehensive and integrated strategy for traffic management in Tadcaster which had previously been adopted".
- 3.20 It is clear that this was a reference in the Report to a decision of the County Council taken over 4 years ago (at a meeting on 11 September 2002) to follow a strategy known as Option B (rather than Option C promoted by the Claimant and Tadcaster's Chamber of Commerce as part of a comprehensive improvement scheme for Tadcaster as a whole) in dealing with the strategy for traffic in Tadcaster.
- 3.21 The decision taken in 2002 to choose Option B was based upon surveys of members of the public and other interested bodies in 2002. It was claimed by officers at the time that Option B had received widespread support from the local community. In fact, both Options B and C had received support, and the degree of difference between the level of support was not significant.

- 3.22 But in relying upon this historic decision and consultation, it is quite apparent that the County Council failed to assess whether or not such strategy, and the purported support for it, continued to enjoy such support at the time of proposed implementation of traffic calming measures some 4 years later. Accordingly, the Council simply failed to have regard to changed circumstances since that original decision in 2002.
- 3.23 Such evidence that did exist, and would have been available to the County Council if they had sought it out, demonstrated that there was now strong and emerging support by a number of stakeholders for an agreement for regeneration of Tadcaster as a whole, and this would involve implementation of Option C as part of that package. Therefore it is clear on any basis that perceived public support for the previous Option B (based on the public's understanding of the situation in 2002) could no longer be relied upon in 2006 without verification.
- 3.24 The position would inevitably have been very different in 2006 (had the County Council tested it), given the unprecedented levels of co-operation existing between the Claimant and the District Council, and the clear and imminent prospect of a legal agreement to implement a comprehensive scheme for Tadcaster.
- 3.25 The Council therefore simply failed to deal with these circumstances at all, and erroneously acted upon the inexplicable advice of the Officers that the previous historic support for Option B could continue to be relied upon 4 years later without further investigation.
- 3.26 *Once again, the County Council's response to this ground of challenge in its response to the letter before claim simply does not grapple with the essence of the legal flaw. The County Council states that it was entitled to take a view that any alleged change was not so material that it required a further fundamental reconsideration of the strategy itself. However, there is no evidence at all that that was the ratiocination of the County Council, and the County Council had failed to inform itself as the nature of the changes that had in fact transpired since 2002 (as outlined above), so it could not have in fact made a lawful judgment that the changes which it had not identified were not so material as to require any reconsideration of the traffic calming proposals.*

Ground 4: Misdirection as to support for Traffic Calming Measures

- 3.27 Further or alternatively, the Report to the Council members advised that there was widespread support for the traffic calming measures themselves. This was misleading and inaccurate and led the Committee members into error.
- 3.28 While there clearly is and was support for traffic calming in principle (whether in conjunction with Options B or C) and the introduction of a 20mph speed zone (both of which are supported by the Claimant), there is and was no previous clear support for the detail of the "associated traffic calming measures" that were under consideration at the Committee meeting on 18 September 2006.
- 3.29 The Claimant had already raised concerns with the County Council officers as to being in the dark about what the associated traffic calming measures in fact entail by way of detail. When this was raised in respect of the County Council's proposals for traffic calming measures as considered at the County Council's meeting on 19 April 2004, the Claimant was advised that the details of the measures were not then under consideration, and they would only be dealt with at the detailed design stage. The Claimant has made extensive representations on the importance of the details for the historic centre of Tadcaster, and is very concerned to ensure that any measures that are built are consistent with that historic nature.
- 3.30 The County Council was therefore wrongly directed that the measures had received widespread support, when in fact the details of the measures have never been considered by the public and remain at large. The detail of the measures and how they will be implemented is of particular importance, and the Council members and the County Council should have dealt with the details but have failed to do so. The County Council has therefore failed to consider what type of works it is purporting to authorise, and thereby failed to consider the true effects of those proposed works in any event, let alone any potential modifications to them.
- 3.31 Again, the Council's response to this allegation in its reply to the letter before claim is deficient in seeking to address the point. It is claimed that the misleading direction contained in the Report was not in fact directed to the individual measures, but was making reference to the Traffic Management Strategy as a whole. This is not a satisfactory explanation because:

- 3.31.1 It is clear from the Report that there is no way of distinguishing the elements of the proposals in the way now suggested. The effect of the Report was to suggest (misleadingly) that the traffic calming measures had received widespread support. In fact this was not accurate.
- 3.31.2 The distinction now sought to be drawn is not one which is evident from the County Council's decisions and deliberations. The Claimant will rely upon the terms of the Minutes in this regard.

Ground 5: Failure to consider Claimant's Objections

- 3.32 Further or alternatively, the Report to the Committee failed to deal with the Claimant's objections and/or the Council was misdirected as to the nature and significance of those objections.
- 3.33 The Report to the Committee fails to report adequately, or at all, the nature of the Claimant's objections. These were as contained in a four page letter submitted by the Claimant's representatives setting out objections to the proposed measures.
- 3.34 In so far as the concern on the issue of wasted expenditure is referred to in Annex A of the Report, it is clear that the officers have misdirected the members as to the nature of this as an objection. Thus, in respect of item 7 in Appendix A, the report records that it has been observed that installation of traffic calming measures should be put on hold pending resolution of plans by all the key parties (such resolution now being imminent), and that otherwise installing measures in the street that could be closed, or in which direction of traffic would be reversed, would thus render measures irrelevant and waste public money.
- 3.35 The Report misdirected the Committee by contending in response that the traffic calming measures "compliment the traffic management options for the town centre supported by the majority of the community who responded to the consultation for the Traffic Management Strategy". This advice is flawed by the same error of approach in relying upon historic surveys conducted in 2002 without having regard to any changed circumstances at all.

3.36 In so far as the Report at Appendix A notes at item 23 the consultation view that the 2004 Consultation is out of date, and based on out of date information and an out of date consultation, the Officer response is similarly misleading and deficient. All that is said in response to this is: "Relates to Town Team being set up since 2004 consultation". It is impossible to understand what this means as a response, but it is clear that the gravamen of the objection has not been addressed in the Report, nor in the County Council's consideration.

3.37 Contrary to what appears to be asserted by the County Council in its response to the letter before claim, these errors were not cured by what transpired orally at the County Council Committee meeting. There was no correction of what appeared in the Report (which therefore would have continued to guide the County Council members in their approach).

Ground 6: Misdirection as to Impasse

3.38 Further or alternatively, the County Council members were misdirected as to the existence of an "impasse" in the progress of the Tadcaster Renaissance Town Team proposals for Tadcaster as a whole, and were misdirected that the Town Team's proposals might effectively be discounted because they were supporting the implementation of Option C over Option B for the traffic strategy.

3.39 These were clear misdirections because:

3.39.1 There was no such impasse as alleged. In fact, members should have been advised that the Town Team had (since the County Council's decision in 2002) considered a wide variety of options for Tadcaster, with a view to engaging as many local stakeholders as possible, securing the most comprehensive solution to Tadcaster's problems and attempting to arrive at a solution that best reflected the desires of the local population to see investment in all areas of Tadcaster. This included using the traffic circulation Option C which had previously been rejected by the County Council in 2002. The desire to support this traffic circulation option that now exists has been arrived at by balancing the objectives aims and desires of the residents of Tadcaster, the District Council, the County Council, local businesses, stakeholders, community groups and statutory bodies. This was a highly material change in circumstances since 2002.

- 3.39.2 Even if there had been an impasse as alleged concerning any dispute over Option B or Option C, that was not a basis for refusing to consider changes to the traffic calming measures so that they could accommodate either Option in due course. Both Options were compatible with traffic calming measures, provided that they were modified to be suitable for both Options.

Ground 7: Failure to Consider Changes to Measures to Accommodate Either Option B or C

- 3.40 Further or alternatively, the County Council members (no doubt in consequence of the misdirections they received) failed to consider whether or not the traffic calming measures could be modified to a form which would be compatible with either Option B or C traffic strategies for the future. Such modifications would have prevented the prospect of any wasted expenditure, as well as have addressed the Claimant's concerns.
- 3.41 The County Council's response to the letter before claim appears to contain an acceptance that potential modifications to the scheme were not taken into account. Instead it is claimed that the County Council were entitled to make the decision without considering such potential modifications. The Claimant submits that this approach must be wrong. The Council cannot lawfully exclude what would plainly be a material consideration, namely modification of the scheme to ensure that no prejudice or aborted expenditure would occur. The County Council conspicuously failed to do this.

Ground 8: Irrelevant Reliance Upon Previous Tenders

- 3.42 Further or alternatively, the Committee took into account an irrelevant consideration in the form of existing previous tenders for the traffic calming measures considered in 2004.
- 3.43 The Report to the Committee advised that contractors had submitted, and agreed to hold for three months, tender prices for the works proposed in 2004. However, that three month period had since elapsed, and there was no rational reason why the existence of such previous tenders should be relevant to consideration of whether or not to go ahead with the proposed traffic calming measures.
- 3.44 The County Council respond by suggesting that the reference to the tenders was really an informative to Members. However, this is certainly not apparent from the Report itself and it is not a legitimate re-interpretation of what is clearly set out in the Report, and reflected in the County Council's resolution.

Ground 9: Failure to Give Reasons

- 3.45 Further or alternatively, in deciding to implement the traffic calming measures as amended, the Council has failed to give any, or any adequate proper or intelligible reasons for doing so in light of the strong objections set out above.
- 3.46 While there is no statutory duty to give such reasons, it is submitted that fairness requires the provision of such reasons, in light of the clear and strong objections to the implementation of these measures at this crucial stage of negotiation between the Claimant and the District Council for a solution for Tadcaster as a whole.
- 3.47 The County Council suggests that the reasons are apparent in any event from the Report and Resolution and the Minutes of the meeting. This is clearly not accurate. Those documents do not give proper, adequate or intelligible reasons on the principal important controversial issues that arose from the Claimant's objections.

Ground 10: Failure to Consider Holding a Public Inquiry

- 3.48 As set out above, it appears that the traffic calming measures under contemplation by the County Council comprised (in part) provision of speed humps or cushions under section 90A of the 1980 Act. Pursuant to section 90C(4), it is clear that a local authority considering such proposals needs to consider whether or not to hold a public local inquiry before deciding to proceed with such measures.
- 3.49 It is self-evident from the Report, the Minutes and the Resolution that the County Council failed ever to consider whether or not a public local inquiry should be held. The Council members were not directed as to the relevant legal framework, and failed to give any consideration to this issue.
- 3.50 In view of the substantial objection to the implementation of the traffic calming proposed in light of the Town Centre Scheme developments, it is clear that had the County Council given proper consideration to this provision, there is a real possibility that it might have decided to hold a public local inquiry to address this issue.

Ground 11: Irrationality

- 3.51 Further or alternatively, the County Council's decision to implement the traffic calming measures, or to implement them now without deferring consideration further in light of the anticipated legal agreement between the Claimant and the District Council, is

irrational in light of all the factors set out above.

4 TIMING OF CHALLENGE

4.1 For the reasons set out in the factual background section set out above, there is no issue between the Claimant and the Defendant that the Claimant has acted promptly in bringing this claim. The Claimant gave early notice to the Defendant of its potential intentions to challenge the decision, and obtained confirmation that the decision would not be acted upon. There has therefore been no factual prejudice arising from the timing of this challenge.

4.2 As to the lodging of these proceedings, the Claimant had to wait for receipt of the Minutes dealing with what occurred at the Committee meeting itself. These were not provided by the Council until 15 November 2006 (ie some 2 months after the decision itself). The Claimant has since then acted promptly in submitting a letter before claim, allowing the Council the time it requested to respond, before filing this claim.

5 SUMMARY

5.1 For the above reasons, the Claimant respectfully requests that the Court make an order quashing the County Council's decision of 18 September 2006.

PETER VILLAGE QC

JAMES STRACHAN

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

IN THE MATTER OF An Application for Permission to Claim Judicial Review

BETWEEN:



THE QUEEN
on the application of
SAMUEL SMITH OLD BREWERY (TADCASTER)
(an unlimited company)

Claimant

NORTH YORKSHIRE COUNTY COUNCIL

Defendant

ADMINISTRATIVE COURT OFFICE
BY CONSENT ORDER AS ASKED

W. Chapman
01 APR 2010

L. CHAPMAN
CLERK MASTER OF THE CROWN
OFFICE

UPON the Claimant and the Defendant agreeing terms of settlement

CONSENT ORDER

Royal Courts of Justice
Transaction: 497955
Fee Code : ADMIN 2.7 07
Fee : £40.00
Operator : WALSLEY, K
Dated : 18/01/07 15:48:11
Payment Ref:

THE UNDERSIGNED parties consent to an order:-

That the Claimant has permission to claim a judicial review as outlined in the Detailed Statement of Grounds herein;

The Defendant's decision dated 18 September 2006 to implement certain traffic calming measures in Tadcaster as more particularly outlined in the Detailed Statement of Grounds herein be quashed; and

That the Defendant do pay the Claimant's costs of and occasioned by this claim in the sum £7,500 plus VAT within 14 days of the date of this Order.

PARTICULARS

This is an application for Judicial Review of the Defendant's Selby Area Committee's decision dated 18 September 2006 to implement certain traffic calming measures in Tadcaster North Yorkshire, along roads which directly affect the Claimant and its premises within the central area of Tadcaster as well as the Claimant's ongoing proposals for the comprehensive redevelopment of the central area of Tadcaster pursuant to an extant planning permission (the "Decision").

The Defendant has carefully considered the Decision in the light of the Claim Form for permission to claim a Judicial Review and the attached Detailed Statement of Grounds, and the matters contained in the Witness Statements herein filed in support of the claim and the documents exhibited thereto and accepts that the Decision should be quashed for the reasons given in the Claim Form and the Detailed Statement of Grounds.

By the Court

DATED: 15 January 2010

Signed Pinsent Masons LLP

Pinsent Masons LLP
1 Park Row
Leeds LS1 5AB

Ref: MCB.111093.00153
Solicitors for the Claimant

Signed Karen Galloway

North Yorkshire County Council
Legal Services
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North Yorkshire DL7 8AD

Ref: Karen Galloway
Solicitor for the Defendant