



Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 30th January, 2014

Subject: HIGH COURT JUDGEMENT RELATED TO JUDICIAL REVIEW WHICH SOUGHT TO SECURE THE QUASHING OF PANELS DECISION TO APPROVE: APPLICATION 12/02434/FU – Part Two Storey, Part Single Storey Front, Side and Rear Extension and Laying Out of Car Park – Manor Park Surgery, Bellmount Close, Bramley.

APPLICANT	DATE VALID	TARGET DATE
Manor Park Surgery.	31/05/12	26/07/12

Electoral Wards Affected:

Bramley and Stanningley

Yes

Ward Members consulted
(Referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the contents of this report.

(Judicial Review Claim Seeking Quashing of Panel Decision REJECTED on all Grounds)

1.0 Introduction

1.1 This application sought full permission for the extension of an existing doctor's surgery to provide additional consultation rooms, waiting areas, an ancillary optician and 100-hour pharmacy. The application was originally brought before the South and West Plans Panel on the 11th of October 2012 due to the high level of interest from local residents and members of the public. Members of South and West Panel agreed with the officer recommendation and the application was unanimously approved by Panel following a site visit. A decision notice was subsequently issued dated 16th of October 2012.

2.0 History

- 2.1 On the 20th of November Leeds City Councils Legal Services received a letter from Pinsent Masons Solicitors acting on behalf of Lloyds Pharmacy. (Members will recall an unusual aspect of this application was that the proposal included not only extensions to the consulting facilities and an opticians but also an attached Pharmacy which would be in addition to an existing Pharmacy operated by Lloyds which is currently part of the Medical Practice building). The letter advised that Pinsent Masons had been instructed to challenge the decision made at Panel to grant planning permission. The formal challenge was duly made and related specifically to the Pharmacy element although; the outcome of any Judicial Review would be the quashing of all elements of the approval.
- 2.2 Following the submission of this judicial review discussions with Legal Services and Counsel were held, and the Council determined it could not successfully defend the claim as there were elements of the report that should have been more fully considered and that in view of this and the potential for additional costs to accrue the best course of action was to agree to a 'Consent Order' agreeing to the quashing of the decision and for officers to draft a re-determination report. The Consent Order was agreed and the decision quashed and the costs settled.
- 2.3 Subsequently the application was reported to South and West Plans Panel for a second time on the 28th of March 2013. A revised report was presented for the re-determination of the application which picked up the points made in the JR challenge to ensure that a safe decision was made.
- 2.4 Members again endorsed the Officer Recommendation and approved the application. On the 1st May 2013 however, a further letter was received from Solicitors acting on behalf of Lloyds Pharmacy advising the council that again their client intended to challenge the decision seeking a further Judicial review to quash the decision.
- 2.5 Further discussions with Legal services and Counsel were held, and the Council determined to vigorously defend the Challenge by Lloyds.
- 2.6 The Claim was heard in the High Court of Justice in Leeds on the 4th and 5th of December 2013, before his Honour Judge Behrens. Anthony Crean QC represented Lloyds Pharmacy Limited (Claimant) and Hugh Richards (Barrister) represented Leeds City Council (Defendant).

3.0 Grounds for Challenge and Judges Consideration

- 3.1 The grounds for challenge in summary are below with the Judges consideration in *italics* beneath. These were that Leeds City Council (Defendant) erred in Law as follows:-

3.2 Ground 1

Defendant failed to understand or apply s.38 (6) of the Planning and Compulsory Purchase Act 2004.

His Honour Judge Behrens considered that the officer report presented to Panel made it clear in the initial recommendation and in a number of subsequent paragraphs that it in the planning officers view Policy S9 was breached because

criterion i) was not met. Therefore the report was unequivocal in consideration of Policy S9 and the understanding and application of s38 (6) of the Planning and Compulsory Purchase Act 2004 in the related text was understood and properly applied and demonstrated.

Judge Behrens rejected ground 1.

3.3 Ground 2

The defendant failed in misapplying UDP Policy S9: The application was in conflict with Policy S9 which the report failed to bring to the attention of the Defendant's panel.

Judge Behrens concluded that the allegations in relation to Criterion i) of policy S9 have been fully canvassed and dealt with in relation to the discussion on Ground 1. In his view the Panel was told and aware when making their decision that the application was in conflict with S9.

Judge Behrens rejected ground 2.

3.4 Grounds 3 and 4

The defendant took account of an immaterial consideration when granting permission on the false premise that the interested party was required to have the pharmacy component of the application co-located with the surgery.

The defendant took account of an immaterial consideration when granting permission on the false premise that the interested party required the pharmacy component of the application co-located with the surgery to fund improvements to the surgery.

Judge Behrens considered that it was convenient to consider the aforementioned grounds together. He concluded that a fair reading of paragraphs 10.3 and 10.4 of the officer's report is that the need for integration was to assist in the funding of the expansion. In his mind this was not misleading and was a material consideration. Furthermore he thought that the Council was entitled to rely on the evidence in an email from the Surgery which explained the need to have 100 hrs. Pharmacy on site. He went further to say that he considered that this was not an error in law and did not require corroborative evidence.

Judge Behrens rejected grounds 3 and 4.

3.5 Grounds 5 to 8

Ground 5: The defendant took account of an immaterial consideration when giving weight to an ineffectual, and therefore irrelevant, condition. Specifically condition 9 of the permission which seeks but fails to limit the pharmacy use to an ancillary use to the surgery.

Ground 6: The defendant Council took account of an immaterial consideration when giving weight to a planning condition which unlawfully sought to nullify the benefit of the planning permission (condition 9).

Ground 7: The defendant took account of an immaterial consideration when giving weight to an unenforceable condition (condition 9).

Ground 8: The defendant took account of an immaterial consideration when giving weight to an ineffectual and therefore irrelevant condition. Specifically condition 9 of the permission which seeks, but fails to limit the Pharmacy use to only medical and healthcare products excluding A1Retail.

*Judge Behrens was referred to a number of cases of law by Anthony Crean QC and accepted the legal principles referred to. **He stated that conditions are to be construed benevolently and given a common sense meaning.** He did not therefore accept that as a matter of construction Condition 9 should be interpreted as permitting the sale of A1 retail goods.*

Judge Behrens accepted that there could be difficulties in enforcing the condition in that it would not be straightforward to police the sales from the pharmacy. However, it would not be impossible. Records would be available as to the prescriptions dispensed by the Pharmacy and the identity of the patients. Equally there would be records of other goods sold by the Pharmacy. Furthermore intelligence might well be available from rival retailers.

In the course of the submissions criticism was made by Anthony Crean QC of specific parts of the wording of the condition such as 'shall operate as shown on the approved plans' and 'be fully integrated as part of the surgery'. Judge Behrens noted that these phrases were fundamental parts of condition 9 and accepted that although some of the phrasing could have been better, the approved plans clearly show where the pharmacy is to be situated and that it is within the same building as the surgery.

Using the benevolent construction as referred to above, Judge Behrens stated that he would have little difficulty in interpreting the phrases as meaning that the pharmacy shall be constructed as indicated on the plans and be an integral part of the surgery. In his view therefore condition 9 is lawful.

Judge Behrens rejected grounds 5 to 8.

4.0 Conclusion

4.1 Judge Behrens dismissed the application for judicial review on the 19th of December.

In the view of his Honour Judge Behrens none of the Challenges to the grant of planning Permission succeeds.

5.0 Costs

5.1 The Defendants (Leeds City Council) application for costs was granted.

The Claimants application for costs was rejected.

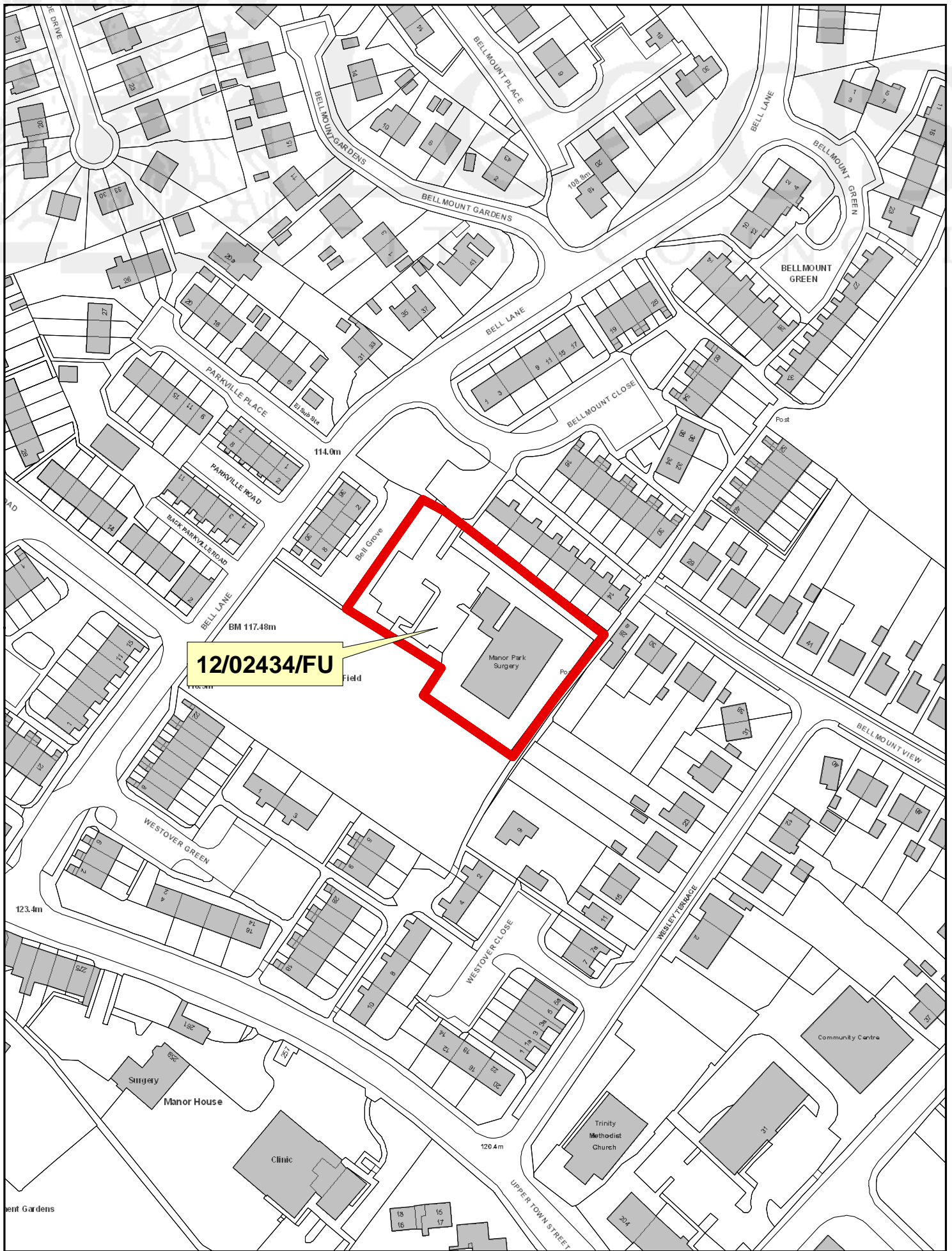
6.0 Current Position

6.1 Shortly after Christmas Judge Behrens denied an application by Lloyds Pharmacy's Limited seeking leave to appeal.

Subsequent to the issuing of the decision the Claimant, Lloyds Pharmacy's limited, has sought Leave to Appeal Judge Behrens decision. This has to be done within 21 days of the handing down of the decision. This has to be lodged initially with the determining Judge. This has been submitted and has been refused by Judge Behrens. Lloyds once denied permission by the judge can also seek leave to

appeal from the Court of Appeal in London. This has to be done within the 21 days referred to above. Legal Services have advised that on occasion a 7 day extension can be granted, but this would mean that the period in which an appeal can be lodged (with a 7 day extension) ran out on the 15th of January. At the time of drafting this report we are not aware of such an application being submitted.

- 6.2 As a result of lessons learned during the above process and advice provided by Mr. Hugh Richards, work is being carried to improve report formats to ensure as far as possible that Officer reports are robust enough to stand up to the level of scrutiny that the reports for this application were subjected to.



SOUTH AND WEST PLANS PANEL