Don’t Move Saddleworth School

KEEP IT IN UPPERMILL – THE MOST VIABLE SITE

Oldham Council push through a FLAWED planning application to move Saddleworth School to Diggle TWICE. HIGH COURT JUDGE RULES latest decision: UNLAWFUL.

On 2nd March 2017, following a two day Judicial Review hearing brought by Diggle residents against Oldham Council, high court judge Mr. Justice Kerr ruled that the process followed by Oldham Council in reaching its decision to grant planning permission to build a new Saddleworth School in Diggle was unlawful.

The decision was based not just "on a technicality", as others are now suggesting in the media, but on a serious breach of planning law.

Many more serious errors were brought to light during the two day hearing including instances of mismanagement, misdirection, incompetence and misapprehension which cumulatively, are clearly not acceptable from a public body, especially if accompanied by other points which are judged to be illegal! We show in this newsletter that the planning process and the school planning application itself were deeply flawed.

It was clear from the evidence presented at the Judicial Review hearing that the only source of verifiable facts about the whole process has come from the Save Diggle Action Group (SDAG) and local residents who supported the school being built in Uppermill. We gathered evidence, met with the Education Funding Agency (EFA) and obtained information via Freedom of Information requests. The Secretary of State for Education had the opportunity at the Judicial Review to challenge the statement that the EFA were willing to build in Uppermill within budget, but sought not to do so. This situation was conceded by the Council’s barrister as confirmation of the integrity of the information provided by SDAG.

Why was the decision unlawful?

The judge found that the site on which the school is currently located in Uppermill is a viable alternative to Diggle and should have been a material planning consideration, given the ‘significant harm’ to Cultural Heritage expected in Diggle. The Uppermill Site was NEVER considered as part of any planning exercise.

Major deficiencies in the site selection process

Oldham Council claimed that Uppermill was fully considered against Diggle. They relied on a previous site comparison study carried out by the Education Funding Agency (EFA) and Oldham Council in 2015. However this study was NOT a planning exercise. In this EFA Feasibility Study a total of four site options were compared using a basic un-weighted scoring system (1= good 4 = bad)This system of comparison makes no sense because the relative ranking of any two options can be varied simply by increasing the number of other options. Criteria on which sites were compared focused mainly on cost & difficulty of build (see table). All four options were determined ‘feasible’ and within EFA budget for the school build, but Diggle was chosen as the ‘preferred option’ having scored “best” according to this basic matrix. It did not include any assessment of issues which the EFA were either not responsible for, or were outside of the site option boundaries e.g. the highways works in Diggle [see P2]

Impact on cultural heritage ignored: Crucially, one of the most important planning considerations – whether or not harm would be caused to heritage assets e.g. the Victorian clock tower at the Diggle site, was not included when comparing sites. [More on next page]
The swiftest and surest route to a new Saddleworth School would be to build it on the existing site at Uppermill – we ask what advantages at Diggle could possibly compensate for all this harm?

‘Substantial Harm’ to heritage and Diggle’s landmark Victorian clock tower

Oldham Council have a legal obligation which requires them to have a ‘special regard’ in preserving listed buildings and their settings. However, this obligation was ignored on no less than FOUR separate occasions over two years. This was despite the fact that professional consultees such as Historic England, the Canal & River Trust and OMBC’S own (heritage) Conservation officer expressed serious reservations about the impact the proposals would have on heritage in Diggle.

Occasion 1: At the site selection stage (EFA Feasibility Study) not only was heritage excluded as a criterion for comparing sites but it was stated that the school development in Diggle would result in a ‘better setting’ for the listed building – based on no evidence or assessment whatsoever! Occasion 2: After Diggle, was chosen as the ‘preferred site’ to take forward to the planning stage, residents thwarted an attempt to rush through an application to demolish heritage buildings linked to the listed building. This was an attempt to demolish buildings outside due process - to downplay overall impacts by fragmenting the school development project into separate planning applications - which is of course, according to established case law - unlawful! As a result Oldham Council was forced to revise the school planning application to include demolition & highways.

Not ‘The Listening Council’

Occasion 3: The Environmental Assessment - an important part of the final planning application - concluded that the school development in Diggle would cause ‘substantial harm’ to the listed building. However, this was not reported in the Planning Officer’s summary report to Planning Committee at their Feb 2016 decision meeting. Instead, councillors were told that the impacts would be ‘less than substantial’. This again was unlawful as the planning committee were misled. Despite prior warning from objectors, it was only after the council had approved the application that they were forced to concede that they were wrong, resulting in a second Committee meeting in April!

Groundhog Day

Occasion 4: Now that Oldham Council had been forced to acknowledge that proposals would cause significant harm to heritage, they were now legally obliged to consider alternative sites where such harm could be avoided e.g. Uppermill. However, at the second Committee meeting in April 2016 yet again councillors approved the Diggle site without considering Uppermill – despite warnings from objectors that they would be acting unlawfully. Judicial Review, therefore, was the only option remaining.

The account of events given above shows that residents were forced to go to great effort, over a protracted timescale to expose the true adverse impacts just on one issue - heritage – impacts that were hugely downplayed by Oldham Council!

Green Belt Harm – Judicial Review Verdict: Oldham Council had an incorrect opinion that the playing fields themselves were ‘appropriate development’ in the Green Belt, contrary to planning case law and national planning policy guidelines. Mr. Justice Kerr agreed with SDAG that the playing fields on the Green Belt land should be viewed as ‘inappropriate development’ in the Green Belt. Planning reports had tried to downplay the fact that development was taking place e.g. ‘The playing fields will remain relatively open, with only lighting and fencing adding to the constructed elements to the area’ [Environment Statement Chapter 7]

Flawed Highways Scheme

The deeply unpopular highways scheme proposed for the Diggle site option is a source of great concern for Saddleworth residents & parents. Now that a judge has ruled that the Uppermill site is viable and should be considered – OMBC can no longer fall back on the argument that the Diggle scheme is ‘necessary’ or ‘needed’. Time & time again, Oldham Council has downplayed the adverse impacts of the proposed scheme – a scheme that would cause, not ameliorate, traffic problems, congestion & hazards. It’s now time to scrap these ill-thought plans in favour of the common sense option – keeping the school in Uppermill.

Transport

The Diggle alternative would lead to unnecessary duplication of infrastructure (e.g. bus turning circle) and expense, illustrated by the estimate of £200,000 extra annual transport expenditure to bus children in from surrounding areas. At the JR hearing, SDAG challenged the fact that the planning officer (in his report to planning committee) had not included the £200,000 per annum expense as something for councillors to balance against the move to Diggle.

At the JR hearing it became clear that the council officers STILL did not know whether or not this extra money would fall to OMBC to pay, or to TfGM (Transport for Greater Manchester). Mr. Justice Kerr therefore, concluded that OMBC were not legally obliged to consider it, because at the time it was not ‘clearly a saving to the council’. However, during the JR hearing officers had confirmed via phone to OMBC that the Council ARE paying these costs. The fact remains that Oldham Council granted planning permission, without knowing who was paying transport costs. What other costs haven’t they accounted for in rushing through this scheme?

NEXT ISSUE – MORE ON THE FLAWED HIGHWAYS SCHEME
Sport England & the Environment Agency were MISLED through the planning application and other documents regarding flood risk. The risks and costs arising from an environmentally damaging major earth restructuring project within a river floodplain [to create level sport pitches on steeply sloping ground] were significantly downplayed by Oldham Council.

Environment Agency Misled

The Flood Risk Assessment report and Environment Statement [Chapter 9] – part of the school planning application state: “no assessment has been required to be undertaken in respect to the southern sector as this is to remain as grassed areas and utilised as sports pitches” & “within the southern section there will be no development”

These statements are clearly and unequivocally not true! The ground engineering alone constitutes major development in a river floodplain requiring a full environmental assessment. By saying that ‘no development’ is taking place in this field – the Environment Agency (EA) have been consulted with documents that seriously misrepresent facts. When SDAG contacted the local EA – we were told that as far as they were aware the field would remain ‘flat’, they were not aware of the re-structuring project or plans for gabion walls (to hold back the river during flood events)! Such a project would require a Permit from the EA because it would affect Diggie Brook (a main river), the hydrology, drainage & flood risk. Such a permit would be by no means guaranteed!

Sport England Misled

Oldham Council failed to invite Sport England to comment on the school planning application and sports facilities. SE are an organisation who’s very purpose is to ensure that youth sports facilities are top drawer – so you would expect them to have been involved and included at all stages in order to ensure the highest standards. It was only because a local resident contacted Sport England, asking for their consultation response, that their exclusion from the consultation process came to light – SE then had to request to be consulted!

’dubious flood report 1′ (*obtained by FOI)

When SE requested to comment on the planning application they were the given only days to respond – at which time OMBC Head of Planning forwarded a report entitled ‘Floodling & Sport Use’ produced by the consultancy firm working on behalf of the developer (ultimately the Council). The report (a) contained false information and (b) was not made available as part of the planning application (against due process) i.e. sent only to Sport England. The document contained a plan of sport pitches which did not match that submitted with the planning application & misrepresented its location & misrepresented the river flood extent. * If you would like copies of these two flood reports obtained by FOI please contact SDAG savedigglenewsletter@gmail.com

The Head of Planning should have been well aware that (i) the plan of pitches within the document was incorrect and (ii) should have been well aware of the true flood extent by reference to the OMBC Strategic Flood Risk Assessment maps for planning (available via the council website).

“Sport England considers that the proposed scheme is a missed opportunity for the school and the community as it will not be fit for purpose and meet modern sporting requirements”

The effect was to persuade Sport England that there could be no flood risk to pitches, and that the new pitches would be equivalent quality to the current pitches in Uppermill that they would replace. Sport England accepted this as truth – but it was later shown not to be true. Nonetheless, Sport England OBJECTED to the proposals due to the fact that the proposed all-weather pitch does not meet FA design guidance. [More on this in the next issue]

By-passing consultation – ‘dubious flood report 2’ (*obtained by FOI)

There was a second report that fed into the planning decision but that was not included in the list of documents associated with the planning application (yet again - against due process). It was produced NINE months after the planning application was validated in an attempt to rectify the fact that the WRONG sport pitch plan (as shown in ‘dubious flood report 1′) had been used to apply the Flood Risk Assessment (and other environmental assessments) a fact that only came to light after residents obtained ‘dubious report 1′. This should have invalidated the environmental assessments. [Continued over the page]
A brief summary of the content within ‘dubious report 2’ was provided in a ‘Late List Report’ produced just days before the final Planning Committee meeting in April 2016. The original report was not made available for public view & the council chose not to re-consult on this report despite the fact that the previous ‘error’ had resulted in Flood Risk not being assessed properly.

At the Judicial Review hearing Robert McCracken QC submitted that this last-minute report constituted a ‘substantive change’ requiring the planning application to be re-submitted and further consultation with the relevant organisations e.g. Sport England and the Environment Agency - a point conceded in court by the barrister representing Oldham Council!

Absurd plan for ‘flood compensation’ [See diagram, page 3]

Planning Officers reviewed the late ‘dubious report 2’ & decided it was fine – they didn’t consult again with independent flood experts. The report suggests that only a small volume of river water would be ‘displaced’ by embankments when Diggle Brook (a fast flowing river) comes into contact with them & that a small 10cm deep pit could be dug out in the proposed ‘shot putt’ area to compensate for this. Unfortunately there are some very big flaws with this ‘cunning plan’:

- The detailed technical reports (ground survey reports) submitted with the school application say that you can’t put flood water storage in an area where the water table is already close to the surface.
- The same technical reports say that you can’t put flood storage/compensation within the area that already floods – but this is exactly where they propose to put the flood compensation ‘pit’!
- The entire Environment Assessment was undertaken on the basis that ‘no development’ was happening in the Green Belt field so the change in hydrology & flood storage lost as a result of development (and the foundations required for it) has never been assessed.
- If you introduce a steep bank within a river floodplain – it will canalise the flow of the river. The river is fast flowing, so the sport pitch embankments would be highly vulnerable to erosion during any river flood event, undermining the long-term stability of sport pitches; costing lots in repairs & presenting a hazard to users!

STOP PRESS: MOVE TO DIGGLE WILL COST OLDHAM COUNCIL MORE ANYWAY!

Within the Council’s recent budget reports to Cabinet (February 2017), it has now been acknowledged that the funds to be received from the land swap deal between Oldham Council and WRT Developments for the school to be built in Diggle, are not sufficient to cover all the costs to which Oldham Council is committed to in supporting the move to Diggle. This previously perceived cost benefit to Oldham Council for building the school in Diggle is no longer valid. Oldham Council has seriously underestimated the money required to move the school.

Should the Council push ahead with the move to Diggle they have agreed to fund the unknown areas of the whole project: demolition; as yet uninvestigated historic contamination beneath the existing buildings; redirection of culverts beneath existing buildings, ground preparation, further surveys, additional highways costs, moving stone walls - some of these costs could prove to be enormously expensive. Given the unknown nature of these costs at the outset, they are the ones most likely to spiral out of control.

It is now apparent that the costs to support the school move to Diggle have already gone above and beyond what was initially anticipated when the site selection process was undertaken. By contrast, the Council would have certainty over the amount of costs they have committed to in supporting the school to be built in Uppermill. Their commitment is minimal: “the hire of a remote sports facility during refurbishment of the existing Sports Hall, temporary car parking at Diggle and transportation of staff from / to there.” [EFA’s feasibility study - page 68]. The demolition and ground preparation works in Uppermill will be entirely funded by the EFA.

The Council could well be seen as irresponsible & reckless with its finances if it now takes on the uncertainty of the rising costs associated with Diggle, when they can still choose a much more certain route in requesting the school be built in Uppermill.

TAKE ACTION to get the school built without delay

The surer & sooner route to a new Saddleworth School is for one on the existing site at Uppermill. All who genuinely see a new Saddleworth School as in the interests of the children of the area should now work together on that.

- A judge has upheld that Uppermill is a Viable alternative that would attract full EFA funding. An EFA feasibility study confirmed this in 2015, but many people have since been misled by false reports implying that Uppermill site is not a feasible option.
- The same EFA study outlines an option to build the school on existing school playing fields in Uppermill – this option has been confirmed to be FEASIBLE and will allow the new school to be built alongside the existing school in Uppermill, with minimal disruption.
- The previous flawed site selection process and unlawful approach of the Council has led to an unnecessary delay in the provision of a much needed new school for Saddleworth. The alternative continued pursuit of the controversial site at Diggle is likely to lead to further delay & escalating cost because of the many unresolved environmental, site and highways issues.

We must now work together to ensure that the Council now recognise Uppermill as the most viable site to build the new school and to ensure that they start work with the EFA to put forward a planning application for the Uppermill site without any further delay.

Write to the decision-makers in Oldham Council and to Debbie Abrahams MP: SDAG have prepared a template letter available at post offices or by e-mailing: savedigglenewsletter@gmail.com. Return directly to the public officeholders at the address(s) provided in our letter, or to your local PO. Website updates: www.savediggle.org.uk

NEXT TIME: More on HIGHWAYS issues, Impact on wildlife & alternative uses for the Diggle site