LAND SOUTH OF HEYBECK LANE, CHIDSWELL, SHAW CROSS, DEWSBURY

RE: APPLICATION REFERENCE 2020/92350

OPINION

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1. I am asked to advise Kirklees Council in respect to the above planning application.

2. The backdrop to this application is that the Council previously granted planning permission in respect to the Site on 23 October 2024. That decision was quashed by the High Court,[1] following a legal challenge by Chidswell Action Group.

3. The Court quashed the decision essentially owing to the Council's failure to publish the draft Section 106 agreement associated with the grant of planning permission. One might characterise this as a 'procedural' issue – insofar as the Court criticised the process undertaken by the Council in granting permission, rather than the substance of the Council's reasoning in granting permission. Put another way, the Court did not criticise the Council's reasons for granting permission, but rather given that the draft Section 106 agreement was not published it meant that members of the public were deprived of the opportunity to fully partake in the decision-making process.

4. In light of the Council's decision being quashed, it follows that the Council now need to re-determine the application afresh.

[1] Judgement citation [2025] EWHC 2256 (Admin)

5. Ms Noémi Byrd of Counsel has advised Chidswell Action Group on this matter (her opinion is dated 29 September 2025). Ms Byrd's Opinion is essentially that the Council must redetermine this application by bringing this matter before the Council's planning committee, rather than for the decision to be dealt with by officers pursuant to delegated authority. Ms Byrd suggests that to do otherwise could result in a claim for judicial review, which would have strong prospects of success.

6. The Council have elected to take the matter back before the Council's planning committee. In light of this, Ms Byrd's Opinion is rendered somewhat academic. Indeed, whether Ms Byrd is correct or not is irrelevant, given that the Council are not determining the application through delegated powers.

7. For the avoidance of doubt, the High Court's judgment quashing the Council's decision should in no way inform how the Council ultimately determine the application going forward. The Court were critical of the process undertaken by the Council. Plainly the Council needed to rectify this error by publishing the draft Section 106 agreement henceforth, and I am instructed that the draft has indeed been published on the Council's planning portal since 23 September 2025. But the Court were not seeking to indicate how the application should be determined otherwise. Indeed, the Court's role is not to determine planning applications or indicate whether applications should be granted or not. The Court's reasoning should not be interpreted in this way (indeed it would be a separate error of law if the Council thought the High Court were telling the Council whether to grant or refuse the application).

8. I hope that my advice is clear and sufficient for present purposes. If I can assist further, please do not hesitate in contacting me.

Killian Garvey

Kings Chambers

22 October 2025