

Timeline for Judicial Review process

Date	Event	Cllrs present at mtg	Cost of actions – running total
17/1/18	<p>Planning Committee consider application It was clear during the debate that some committee members felt they did not have enough information to make their decision and this was reflected in both the close final vote and a number comments made, as shown in excerpts from the transcript of the meeting:</p> <p><i>“From what I understand, this is a lawful site. This is what I have understood. What we are looking at is some development of the site, some expansion of the site, not whether the site should be there or not. A lot of the argument against seems to be specifically about whether it should be there or not.”</i></p> <p><i>“What I am trying to get clear in my head is what seems to me to be crucial to this decision is the status of the land. It is very very clear that the permission was granted to the individual and not granted on the land and so how did it become the land that is the beneficiary?”</i></p> <p><i>“I’m just slightly confused who is going to live in what and where, but they’ll sort that out between themselves no doubt.”</i></p> <p><i>“I speak the truth because I do not know which way to vote because of the conflicting advice in the officer report.”</i></p> <p><i>“Clearly this is a complex tangle of issues. There is complexity in the back history and the rightness or wrongness of the permissions already given. The implication of things that might not have been seen at the time. There is the complexity of the balance we are being asked to make between our own development plan document for traveller sites, which has yet to be formally adopted but can be given a certain degree of weight given the stage that it has got to.”</i></p> <p><i>“To my mind this tangle of complex circumstances is making it very, very difficult. There is also the weight to be determined between pieces of case law which have been cited in defence of both sides of the arguments. None of us are lawyers and personally I haven’t had time to look into that those particular cases and...(how) the excerpts cited should be adjudged. Whether our legal advisers can give us any help on that I don’t know.”</i></p> <p>Planning committee approve application only on casting vote of Chair. ‘The motion was carried on the Chairman’s casting vote there having been 5 votes in favour, 5 against and 3 abstentions.’</p>		
1/2/18	<p>Request from The Vauld Community Group for PC to challenge HC about decision. Advice received from Helen Hamilton (HH) of Marches Planning Consultancy that only way to challenge is to ask to Judicial Review.</p> <p>Extra public mtg – process needed considered – advised to use Hashi Mohamed (HM) as barrister. Noted could cost up to ?£50k</p> <p>Unanimous decision to ask for barrister’s opinion if likelihood of winning JR – cost £500</p>	Bennett (DB), Ryan (KR), Brook (RB), Batho (RBa), Darley (MD), Larkham (JL), Fraser (AF), Meredith (PM), Paske (RP), Gladwyn (SG)	500
8/2/18	<p>Extra public mtg – HM’s opinion noted ‘there are grounds which are plainly arguable and which have a reasonably good prospect of succeeding’</p>	DB, KR, RB, MD, JL, AF, PM, RP, SG	2,300

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	Majority vote (5 for, 2 against, 2 abstained) to instruct HM to write Pre-action Protocol Letter (PAPL) giving notice that MPC challenging decision on 5 grounds (4 as below + Proposed Ground 5 – Failure to properly assess the impacts likely to be caused by the inadequate drainage arrangements) – cost £1,800		
22/2/18	<p>Extra public mtg – response to PAPL noted, HC not conceding</p> <p>Majority vote (6 for, 1 against) to submit request to court for JR on 4 grounds as follows – cost £528 court fee (£109.51 Clerk’s hrs currently)</p> <p><i>GROUND 1 – Members misled by the misinterpretation of the Planning Policy for Traveller Sites (“PPTS”)</i></p> <p><i>GROUND 2 – Members were misled by the misconstruing of the 2005 original planning permission, and the 2006 variation application, as having created a lawful use for one family gypsy site</i></p> <p><i>GROUND 3 – Failure to properly consider the implications of inaccurate plans</i></p> <p><i>GROUND 4 – Failure to properly investigate and ascertain the Applicant and family’s traveller status for the purpose of the PPTS 2015</i></p> <p>(Ground 5 of PAPL not included in JR request)</p> <p>HM and HH stated continuing on contingency (no win, no fee) basis from this point</p>	DB, KR, AF, PM, RP, RB, SG	2,828.00
4/5/18	<p>Extra public mtg – noted judgement from court with permission to proceed to JR ‘The defendants advance a powerful response to this challenge. But, in my view, for the reasons given in the Statement of Facts and Grounds, the first two grounds (members misled and creation of lawful use) are properly arguable. Had they stood alone, I doubt if I would have given permission on grounds 3 and 4. However, I give permission generally because, against the factual background of this case, it is better if all arguments are advanced together, rather than leaving open the opportunity for the claimants to seek leave at, or in advance of, the full hearing.’</p> <p>Noted HM’s response to permission to proceed ‘it is very unusual to get permission to proceed with a JR at the first instance and almost unheard of to have permission granted on all grounds’</p> <p>HM/HH advised PC exposure to costs max £10k as HC’s costs to that date £2,312.60 in statement of costs – and losing party wouldn’t be expected to pay more than 70% of costs against.</p> <p>Unanimous decision to send letter to HC asking if willing to concede on basis of permission to proceed to JR</p>	KR, RB, MD, AF, PM, RP, RBa	
24/5/18	<p>Extra public mtg – noted response from HC that not conceding</p> <p>2 options considered:</p> <p>Continue with process to court hearing – if win MPC costs around £1k; if lose MPC have to pay, total max £10k (advice from HH/HM)</p> <p>Withdraw now – have to pay HM and HC’s costs to date, total £12.1k</p> <p>Majority vote (5 for, 3 abstained) to continue with court process and not withdraw</p>	DB, KR, JL, SG, MD, AF, PM, RP	
18/7/18	<p>First day of hearing on 17/7. New costs statement submitted on 16/7/19, increase in solicitor’s rate from £54/hr to £180/hr – statement of costs for HC now £18,592.40</p> <p>Routine public mtg noted – letter from HC on 18/7/19 ‘Further to the hearing at Birmingham High Court yesterday where only the Claimant’s case was heard and a second day of the proceedings has been set for 31 July 2018, I write to invite</p>	DB, KR, MD, AF, RP, SG, PB, PM, JL	2,900.77 221.21 salary

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	<p>the Parish Council to consider the appropriateness of pursuing court proceedings and the financial implications should they choose to do so.</p> <p>Herefordshire Council is confident of successfully resisting the claim and in the event that this Council is required to attend court on the above referred to date and possibly any subsequent date for the handing down of judgement, we will seek to recover alongside those costs already incurred, all additional costs incurred in doing so from your authority. This will potentially render the Parish Council liable to pay as well as their own costs incurred, that of this Council in attending court for 2 or possibly 2.5 days. The sums involved are likely to be substantial and will be in the order of tens of thousands of pounds.'</p> <p>Clerk advised specialist costs solicitor required if lose and probably if win case. Second day of hearing due 31/7/18</p> <p>Unanimous decision not to withdraw</p>		
28/7/18	Statement of costs for HC now £22,863.20		
8/10/18	<p>MPC case dismissed by judge – JR lost</p> <p>Routine public mtg noted judgement 'costs to be assessed if not agreed' – not received formal judgement yet; accept have to pay justifiable costs; start negotiations based on justifiable costs once judgement received from Court; contact barrister re timings for agreement on costs; send judgement to The Vault Action Group</p> <p>Letter to HC making points:</p> <ol style="list-style-type: none"> 1. The statement of costs submitted to court by you dated 20 March 2018 charged out the solicitor at £54 per hour 2. On the basis of the £2,079.27 costs shown, which included the response to the PAPL letter, grounds of resistance and acknowledgement of service, the PC reasonably expected your costs to be approximately £7,000 and therefore it resolved to proceed with the action 3. It is regrettable that in your letter of 17 May, offering the PC the chance to concede with a 'no order for costs', you did not inform the PC at that point that you were intending to increase the charge out cost to £180 per hour 4. This shows a lack of transparency on behalf of Herefordshire towards another public body; had the information been available it might have affected the PC's decisions 5. The statements of costs submitted to court dated 16 and 26 July charged out the solicitor at £180 per hour, a more than 3-fold increase in the hourly rate 6. Not only was the rate per hour massively increased but the actual hours quoted for work already in the costs submission of 20 March increased 7. 'Instructing counsel on response to PAPL letter' quoted as 3.40 hrs at £54/hr in March increased retrospectively and was quoted as 3.69 hrs at £180 in July. 'Considering PAPL response/client response' similarly increased retrospectively from 0.50 hrs at £54/hr in March to 3.39 hrs at £180/hr in July 8. 'Photocopying' is similarly increased – in addition, to charge the clerical task of photocopying at the inflated rate for the solicitor is difficult to understand and if true shows a mis-use of taxpayers' money using a solicitor to undertake a clerical job 	DB, KR, RP, SG, PM, JL, PB, Geoff Lloyd (GL)	2,913.59 530.46 salary and expenses (S&E)

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	<p>9. This retrospective increase from 10.70 hrs already submitted to court in March to 16.96 hrs submitted in July for the same work is difficult to justify or explain. Therefore, the PC would appreciate a justification for the increase in the hours previously submitted</p> <p>10. It is noted that Herefordshire advertised in July 2018 for a Senior Commercial Procurement Lawyer at a salary of £37,107–£40,858, with a possible £15,000 supplement. Even at the highest rate for this job, £55,858, this only equates to £29.03 per hour</p> <p>11. The Judicial Review was listed for one day in court and therefore it can be reasonably argued that only one day of your solicitor's time should be charged</p> <p>12. Based on the rate for your solicitor of £29.03 per hr (in line with point 10. above which appears to suggest a reasonable salary rate) and allowing for only one day in court, the PC considers your costs to be in the region of £8,759 (without VAT as you will reclaim this from HM Revenue and Customs and therefore it cannot be double claimed from the PC)</p> <p>13. Applying a reduction of 6.26 hours for the work that was submitted in the costs in March and then retrospectively increased in July, the costs based on a rate of £29.03 per hr are in the region of £8,578</p> <p>Allowing for a reduction to 75-80% of costs, as is understood to be normal practice, the PC is happy to make an offer of £7,200 in settlement of this case.</p>		
<p>5/11/18 and 10/12/18</p>	<p>Routine public mtgs – no response from HC Resolved not to contact but wait for response</p>		
<p>21/12/18</p>	<p>Letter from HC: 'In the statement of costs submitted on 20th March 2018 to the Court and PC, an incorrect hourly rate of £54.00 was inadvertently quoted. The £54.00 hourly charge out rate is for an in-house solicitor for internal matters between departments for the purposes of service level agreements, and a solicitor of more than 4 years post-qualification experience in criminal matters in the Magistrates Court. This oversight was duly amended as soon as the error was noted, more particularly in the subsequent 2 costs assessment schedules submitted for 17th July 2018 hearing and that of the 31st July 2018 hearing. These were promptly served on the PC as the Claimant. It is noted that as early on as February 2018, the PC were aware of the potential costs that could be incurred from a judicial review claim. This is confirmed in the Clerk's information sheet for the Extra Marden Parish Council meeting on 1 February 2018 which refers at point 6 of the sheet entitled 'Clerk has found out the following information' showing that it could be up to £50,000. The next comment thereafter stipulates that the 'process can be stopped at any point'.</p> <p>In correspondence dated 9th May 2018 from the PC to this Council, the PC stated that it would proceed with the matter, and that it would be 'seeking its costs on an indemnity basis against the Council'.</p> <p>On 18th July 2018, this Council made a without-prejudice-save-as-to-costs offer to settle the matter on the basis of the PC withdrawing the action with no order for costs. The PC rejected this. By then the PC was well aware that the relevant hourly rate was £180 per hour. The PC's rejection of this offer cannot be reconciled with its assertion that it only proceeded with the matter on the basis of an hourly costs rate that its advisers would have known was exceptionally low, and that it was aware in February 2018 that the process could be stopped at any point.</p> <p>On the basis of the above the Council's costs claim of £22,863.20 is fully justified and accords with normal practice. This Council is not trying to make money out of another party, but charging at a level widely approved by the court contained in national guidance, and is markedly below private-sector and government guidance rates. The PC's offer of £7,200 in settlement of this Council's costs incurred is therefore not accepted.'</p>		

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14/1/19	<p>Routine public mtg – noted following letter on 21/12/18, Clerk spoke to costs solicitor – for £300 will look at costs schedule, letters, info and advise likely costs if go to assessment by court</p> <p>Majority vote (8 for, 1 abstained) to obtain advice from costs lawyer (Bidwell Henderson)</p>	DB, KR, RP, GL, JL, RB, Mike Blake (MB), PB, PM	2,913.59 594.49 S&E
11/2/19	<p>Routine public mtg – noted advice from costs solicitor ‘In terms of likely value we have proceeded on the basis that we believe that the Court is unlikely to make sweeping reductions on the basis of the error in the March 2018 statement. On this basis we would suggest that the costs as presently claimed could be assessed at around £17,500.00. However, given that the Defendant is clearly aware of the issues, and they must accept that there is some risk as to how a Court might deal with the statement issue, they may be willing to consider settlement at a lower level. The fact that the Defendant has thus far has declined to serve a bill formally may be suggestive that there is some reluctance to put the matter before the Court. Until such time as a formal bill is served costs of assessment should not begin to accrue and therefore further negotiations at this stage should bear minimal costs risk.’</p> <p>Resolved to send letter to HC solicitor ‘ask for meeting, state that sought legal advice and would like to discuss reasonable offer that council would like to make.’</p> <p>Clerk delegated to offer £15,000 and up to £17,000 if required. If no meeting agreed by Herefordshire, Clerk instructed to state that disappointed as current political agenda by Leader encourages closer ties and co-operation between Herefordshire and parish councils.</p>	DB, KR, RP, GL, RB, MB, PB, PM	3,213.59 594.49 S&E
17/2/19	<p>Email sent to HC: ‘The parish council has taken advice and has now instructed me to request a meeting with you, rather than write another letter. The council believes it would be better for both parties to meet, to reduce the time involved in further exchanges of letters and so that the parish council can make a reasonable offer face-to-face with the intention of finalising the matter quickly.’</p>		
8/4/19	<p>Routine public mtg noted email received from HC on 3/4/19: ‘The Council has been awaiting instructions and has now instructed a costs draftsman to draw up a bill of costs in this matter. Once the bill of costs is received it will be sent for your consideration. However at this point in time and until the bill of costs has been drawn up and the Council has a figure for the costs reasonably incurred it is not felt to be prudent to discuss the matter.’</p>	DB, KR, RP, RB, GL, PM	
15/7/19	<p>Extra confidential mtg noted: email and Bill of Costs from Costsdragon (HC costs lawyer) ‘These costs amount to £28,234.87. Interest will accrue at 8%pa on this sum until the costs are paid.’</p> <p>Advice from Bidwell Henderson noted ‘In terms of figures I haven’t found this an easy bill of costs to consider – they have prepared the bill in electronic format (which is not required) which always makes the exercise more difficult. I would in the first instance make an offer by way of Part 36. Making it by part 36 will mean that it will carry cost consequences should the opponent fail to beat it and as such it will have to be given careful consideration. Part 36 Offers are inclusive of interest but exclusive of costs of assessment – at this stage costs of assessment should be negligible. The Opponent will rarely accept your first offer and so I would recommend going in slightly lower than you are prepared to go – I would suggest going in at £21,500.00 (by Part 36) and if this is rejected be prepared to increase to £23,500.00 (by Part 36). On a fully inclusive basis (i.e. inclusive of bill, interest and costs of assessment) I would be prepared to go up to £24,000.00.</p> <p>I don’t think that it is necessary to set out in any particular detail the basis of the offer – Points of Dispute would be the appropriate place to do so and costs arguments have previously been rehearsed in correspondence in any event. They will know that they are not going to get a 100% recovery and so they will know that there are areas of vulnerability.’</p>	DB, KR, RP, PM, MB	

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	Resolved to offer £21,500 under Part 36, for 21 day period; if not accepted make second offer of £23,500 under same terms; if second offer not accepted, raise cheque for total £28,234.87 plus accrued interest.		
22/7/19	<p>Email from Costsdragon 'I have looked though our client's bill of costs with your offer in mind and would make the following comments:</p> <ol style="list-style-type: none"> 1. Marden Parish Council pressed this claim all the way to a two day trial. 2. Both sides were represented by Counsel. 3. The issues were not straightforward, as reflected by the lengthy pleadings and 24 page judgment. <p>These factors, in addition to the modest hourly rates claimed, support the undoubted reasonableness of the costs and I simply cannot see where almost 25%, as reflected by your offer, might be disallowed on detailed assessment. You have not provided any explanation as to how you have reached the amount offered and so I am unable to provide our client with informed advice as to the strength of the offer. Points of dispute to the bill are due by 2 August which is within the time period allowed for acceptance of the offer. Accordingly, unless a more favourable settlement can be achieved in the interim, I have instructions to simply await the points.</p> <p>As you will undoubtedly be aware, however, the preparation of points of dispute will further increase your expenditure in this matter which I'd anticipate has already been quite considerable especially for Parish Council funds. Accordingly, in the hope of reaching a compromise, I have instructions to propose an offer to accept £26,250.00 in full and final settlement of the costs claimed and interest, provided that agreement is reached before 2 August 2019.'</p> <p>Email discussed with Chair and Vice Chair, agreed no point in making second offer of £23.5k, have to agree £26,250. Discussed with Bidwell Henderson, agreed no point in making second offer of £23.5k; advice noted to make offer 'I have instructions to offer £26,250 in full and final settlement, fully inclusive of the costs claimed, interest and costs of assessment. Please confirm that this is acceptable.'</p> <p>Email sent to HC to this effect. Offer accepted.</p>		
12/8/19	<p>Routine confidential mtg noted 'Cheque raised and taken to Herefordshire on 8 August, will be on September agenda as delegated payment, following delegation on 15 July to pay full cost if required. Resolved to undertake virement of £26,250 from reserves to new expenditure line for legal fees.'</p> <p>Cost paid was £2,000 less than full amount of bill of costs excluding accrued interest of £6.19 per day (£28,234.87 plus accrued interest).</p> <p>Taking further court action to fight the bill of costs would have led to a further increase in the costs claimed by Herefordshire 'If you choose to dispute this bill and your objections are not upheld at the assessment hearing, the full amount payable (including the assessment fee) will be £29,340.87 (together with interest). I shall also seek the costs of the assessment hearing.'</p>	DB, KR, RP, Rod Lees (RL), MB	<p>Final cost £29,463.59 + £753.93 S&E Total £30,217.52</p> <p>£2,828 in 2017-18. £980.08 in 2018-19. £26,409.44 in 2019-20</p>