

## RECORD OF DECISION



**DECISION TAKEN  
BY**

**Mr Paul Carter  
Leader of the County  
Council**

**DECISION  
NO.**

**07/01078**

*If decision is likely to disclose exempt information please specify the relevant paragraph(s) of Part 1 of Schedule 12A of the Local Government Act 1972*

**Subject:**

**BOROUGH GREEN & PLATT BYPASS**

**Decision:**

That:

- a) the County Council conclude an agreement with H+H UK for the acquisition of land at Borough Green for a bypass to Borough Green & Platt
- b) the County Council submit a new planning application for a bypass to Borough Green & Platt
- c) expenditure from budgets be approved

**Any Interest Declared when the Decision was Taken**

None

**Reason(s) for decision including alternatives considered**

1. A recent "called in" Public Inquiry for a block making plant at Borough Green, and the construction of a bypass to Borough Green & Platt, was abandoned when the applicant, H+H UK, withdrawing the application.
2. At the Inquiry it became clear that a Certificate of Lawful Proposed Development issued by the County Council for the completion of the bypass was the subject of judicial review. Following Counsel advice, the Council did not contest the legal challenge on the basis that the decision was vulnerable to the challenge as evidence within the application was insufficient for the Council to have come to the conclusion it did. The decision was not a determination that planning permission did not exist for the development. Subsequent consideration of the planning history has however established that the planning permission for the bypass has lapsed.
3. H&H UK have put in process a claim for costs from the County Council, although costs are not normally awarded in "called in" Planning Inquiries. The County Council has entered a counter claim. It is for the Planning Inspectorate to determine whether either case for costs is appropriate.
4. An Agreement H+H UK has been drafted that would see H&H UK and the County Council not pursuing claims, on the basis that the County Council will pursue a new planning application for a bypass to Borough Green & Platt and that H+H UK will allow the County Council to acquire land for the bypass for a sum of £1. A number of environmental matters, not least the management of pollution on the land to be acquired, will remain with H&H UK. The County Council is not therefore taking on liabilities that cannot be assessed in the short term.
5. The Agreement does not bind the County Council to implementing a bypass, only to submitting a new planning application for the bypass within 24 months, an achievable programme.
6. The Leader of the County Council has already publicly committed the County Council to submitting a new

application for a bypass to Borough Green & Platt.

7. The cost of promoting a new planning application is estimated to be some £200k.
8. Funding for the work in the 2007/08 financial year can be absorbed from realignment of budgets for similar work. In 2008/09 funding would be from float in the limited revenue budget for forward design. Costs are expected to be some £50k in 2007/08 and £150k in 2008/09. However, these costs might rise as surveys are progressed, and depending on the level of debate promoted by local bodies.
9. A report, as a matter of urgency, was made to the Leader of the County Council as H&H UK and the County Council had until 9 November 2007 to formally decide whether to opt not to formally pursue the claims for costs. This was the cut-off date for rebuttals to either party's case and a lack of agreement would have seen all evidence submitted to date made public. That could have exposed both parties to adverse public comment. Had the agreement not been concluded the Planning Inspectorate would then have determined the case for costs, with the County Council at risk.
10. In accordance with the requirements of the Constitution, the Chairman and Spokesmen of Cabinet Scrutiny Committee have been consulted about the urgency of this decision.
11. The Chairman of the Cabinet Scrutiny Committee, Dr Eddy, commented as follows:-

"I feel that consultation on this highly contentious and difficult issue could and should have begun earlier in the day, given that the lawyers completed their negotiations yesterday evening and it must then have taken someone in E&R an hour or two to put together the accompanying report. As it is, I have been left with only an hour and a quarter to come to a view.

This strikes me as the last and possibly the least serious of many misjudged actions in this sorry saga.

A full and detailed report on this matter needs to be taken to members of the E&R POC and Cabinet Scrutiny Committee at the earliest possible opportunity in order to inform the management actions which are required to ensure similar situations do not arise in future. As such, while nothing can be done to prevent this decision being taken at the present stage, I am minded to call it in to the next meeting of Scrutiny.

I would also like to add that I feel that the recommendations at the bottom of the report should read as follows:

*'13. The Leader of the County Council is recommended to agree that:*

- a) *the County Council conclude an agreement with H+H UK that will see H&H UK not pursuing its claim on the basis that the County Council will pursue a new planning application for a bypass to Borough Green & Platt, which will see the County Council acquiring land sufficient for the bypass for a sum of £1, and which would then mean the County Council would not pursue its claim for costs*
- b) *the County Council submit a new planning application for a bypass to Borough Green & Platt*
- c) *expenditure from budgets be approve'*

This more accurately reflects paragraphs 4 and 10 of the report, and also reflects the need for urgency **as it has been identified in paragraph 10:**

***'10. This report is made to the Leader of the County Council as a matter of urgency as H&H UK and the County Council have until 9 November 2007 to formally decide whether to opt not to formally pursue the claims for costs. This is the cut-off date for rebuttals to either party's case and if there is not an agreement to not pursue the claims all evidence submitted to date will be made public. That may well expose both parties to adverse public comment. It would then be for the Planning Inspectorate to determine the applications for costs, with the County Council at risk.'***

12. The Conservative Group Spokesman on the Cabinet Scrutiny Committee, Mr Law, commented that,

having been made aware of the options, he understood the situation and consequently supported the recommendations in the report.

**Background Information:**

Report by the Managing Director of the Environment & Regeneration Directorate to the Leader of the County Council dated 9 November 2007

.....  
Leader of the Council

9 November 2007

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|---------------------------------------|--|--------|--|
| Decision Referred to Cabinet Scrutiny |  |        |  |
| YE<br>S                               |  | N<br>O |  |

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|---|--|--------|--|
| Cabinet Scrutiny Decision to Refer Back for Reconsideration |  |        |  |
| YE<br>S   |  | N<br>O |  |

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| Reconsideration Record Sheet Issued |  |    |  |
| YES                                 |  | NO |  |

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|---------------------------------------|--|--|--|
| Reconsideration of Decision Published |  |  |  |
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