

The hall mark of the Case Officer's report is bias by omission. There is selective quotation of the Acts, UDP policies and government advice, The report and recommendations do not have any regard for Ministerial instruction and it relies on its conclusions and recommendations on spurious material considerations (including cost) which have no precedence in case law (WAVE the case law list). And the application relies on a consultant's report which merely attempts to validate the foregone conclusions.

Below, I list the concerns which I believe to demonstrate why granting planning permission for the demolition of the existing school would be unlawful and contrary to government advice.

By its own admission, the Case Officer's Report states '*The current application does not vary from the previous scheme so as to create scope for the introduction of new reasons for refusal. The resubmission relies on additional detail and more extensive appraisal of need to justify development*'. **Yet nowhere in the report are these new reasons isolated or identified in order to clarify this point both for Members and the public objectors.** Without this clarification we can assume that, in reality, the Case Officer has been unable to come up with important and significant new information to justify this application as significantly different from the previous one.

1: Law

A) Contrary to the Unitary Development Plan BH 5:

- Valid planning reasons sufficient for recommending the overturning of UDP policies necessary for approval of the application have not been identified and substantiated or supported by cogent and relevant argument.
- The report quotes BH5 but focuses on that aspect of the policy associating particular educational advantages to the new build option but which also be achieved by sensitive modifications to the existing building couple with a sympathetic extension. And, in any case, these spurious educational advantages are not 'material considerations' related to land planning.

"Development proposals likely to have an adverse effect on a building or structure included on the local list will not be permitted unless it can be clearly demonstrated that there are reasons for the development which outweigh the need to safeguard the particular local architectural or historic value involved AND that any damage is the minimum necessary to enable the development to proceed."

B) Contrary to Unitary Development Plan BH 7: (2) Setting* of the main core area (3) the area may include... buildings on local list.

The Case Officer's Report attempts to disregard BH7 by asserting that '*its site cannot logically be considered to form part of the building groups*' (i.e. in the Conservation Area). Perversely, the Case Officer has chosen to disregard the advice of English Heritage which advised that the existing school would be an asset to the Conservation Area. And please note, that 'setting' has not been defined in law or case law.

- C) **The Local Planning Authority has failed in its duty under Section 69 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* to preserve and enhance the character of Stockton Heath Conservation Area by consciously ignoring the advice of English Heritage's Assessment in its letter dated 15 Dec. 2005 regarded the school as an 'asset enhancing the local character and one to be retained' (see also B above)**

Section 69 para 1 of the above Act states:

'Every local planning authority:

- (a) **Shall** from time to time determine which parts of their area are areas of special architectural and historic interest the character of which it is desirable to preserve or enhance.

(b) **Shall** designate those areas as conservation areas.

- D) **The Officer's Report has not addressed the issue 'setting' in Section 72 of the Planning (Listed Buildings + Conservation Areas) Act 1990 coupled with the Secretary of State's advice in PPG15: Para. 4.14**

- **Setting is not distance:** Appeals in case law interpret setting as being very wide: The setting of a Conservation Area has never been conclusively defined in case law (I have the print-outs), but clearly those cases where it has been a material consideration, setting has been very widely interpreted: the conclusion is that 'setting' does not mean 'distance'. The officer's report is severely inadequate on this issue and is vulnerable to legal challenge on this issue alone.
- EH obviously see the school as part of the Conservation Area and the report has not taken this recommendation on board.

- E) **The Council, as the Local Planning Authority, has abused its powers and discretion under Section 70 A(1)(b) of the Planning Act 1990 by granting itself special privileges which it is duty bound not to grant to developers and other applicants in repeat applications.**

Section 70 A(1)(b) states 'A local planning authority may decline to determine a relevant Application if (b) the Authority think that there has been no significant change in the relevant considerations in the relevant event. This is specified and clarified as an instruction of the Secretary in *Circular08/2005 Paragraph 8* in situations where the applicant (i.e, Warrington Borough Council) is trying to wear down the opposition from its own citizens and ratepayers as is clearly the case now. Especially as the present repeat application is the same as the previous application. No developer would be afforded this privilege.

It is very significant that the Case Officer's Report has omitted mentioning this Ministerial guidance on repeat applications and it appears somewhat underhand not to Draw. Member's and the public's attention to this serious **instruction**.

- F) **The Officer's Report has not identified any valid and relevant 'material considerations' to justify contravening Policy BH5 + BH7**
Section 38 (6) of the *Planning and Compulsory Purchase Act 2004* states:

*'If regard is to be had to development plans for the purpose of any determination to be made under the planning Acts, the determination **must** be made in accordance with the plan unless material considerations indicate otherwise.*

You will be aware that 'material considerations' are not defined in planning law but have been derived from various sources which include Ministerial guidance and Court rulings. However, information on the *Planning Portal: Determining Planning Applications: Para 12* states that material considerations include:

*'All the fundamental factors involved in **land planning** ... Such as the number, size,*

layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood, and the availability of infrastructure.'

Para 13: stresses:

'The Courts have held that the Government's statements on planning policy are material considerations which must be taken into account.'

Principal material considerations include such things as: the development plan, government policy and guidance, the Council's supplementary planning guidance, highway and access matters, potential noise or small, flood risk, etc.

Clearly, **educational policies and preferences have not been identified by the Courts as material considerations**. In this case since the educational policies can also be achieved by sensitive modification of the existing building. In other words, the educational reasons are not exclusive to the new build option.

Since there are no material considerations sufficient to contravene BH5 or to warrant this application as unique, Warrington Borough Council are duty bound by statute and in recognition of its policies, to REFUSE this repeat application. To do otherwise would render its legality challengeable.

2: PUBLIC CONSULTATION + PROCEDURES:

A) Community Involvement: Planning Policy Statement 1:

The Government's Objectives for the Planning System: 7, 9, 11

National Planning Policies:

- 13(vi), 26 (vii) viz:
'Take full account of the need for transparency, information and participation
- 40, 41, 42 +
- 43 viz: Community involvement should not be a reactive tick box process enabling them to participate in developing proposals and options.
- 44 viz:
'The Planning and Compulsory Purchase Act 2004 **requires** regional planning bodies and local planning authorities to prepare a Statement of Community Involvement ... on consulting in planning applications.

B) Notices in Newspapers, Site Notices, Neighbourhood Notices

The publicity notices have not conformed to the requirements of **the Town and Country Planning (General Development Procedure Order) 1995** namely that the proposed development is:

- A departure from the Unitary Development Plan: GDPO Section 8 (2b)
- Of wide public concern : GDPO Section 8

And

- Setting of a Conservation Area: P(LB+CA)Act 1990:S 73

This application needs re-advertising and public consultation organised on this basis.

3: GOVERNMENT ADVICE:

A) Planning Policy Guidance 15: Section 4.14: Setting of the Conservation Area

supporting the duty under P(LB+CA) Act 1990 Section 72

The report does not justify in legal terms as to why, in the Council's view, the building does not affect the setting of the Conservation Area. Evidence from case law, demonstrates that 'distance' is not 'setting' 'Setting' has not been conclusively defined in law but I would maintain that the present building, by its proximity, size and stylistic harmony with the conservation area does affect the setting of the conservation area and is a **strong material consideration** in this case.

B) Planning Policy Statement 1: Urban Conservation:

The Case Officer's Report only partially and selectively quotes from PPS 1 but does **NOT** give due regard to other paragraphs such as paras:

4, 5, 9, 13(iv), 17, 18, 34, 36, 37, 38

Conclusion: That the Report is inadequate in that it is very selective in order to support the recommendation. It does not fulfil the advice in PPS1

**Retaining the existing school fulfils ALL the advice in PPS 1.
i.e. design, sustainability, conservation, public involvement.**

C) Circular 08/2005: Repeat Applications:

In addition to being contrary to the policies in its own Unitary Development Plan, I believe that Warrington Borough Council is abusing its entrusted powers for its own end contrary to Government statute under *Section 70A(1)(b)* of the 1990 Act and the Secretary of State's **instruction** in *Circular 08/2005* concerning repetitive and subsequent applications. *Section 70A(1)(b)* states: 'A local planning authority may decline to determine a relevant application if -(b) the authority think that there has been no significant change in the relevant considerations in the relevant event'. *Circular 08/2005, para 8 instructs* 'Local planning authorities **should** use the power to decline to determine repeat applications only where they believe that the applicant (Warrington Borough Council) is **trying to wear down opposition by submitting repeated applications.**' *Circular 08/2005 para 12 further instructs* 'where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. However, local authorities **should** be mindful of the intention (i.e. of the SoS) behind this power. It can be a major source of frustration to **members of the public and the local community to have to deal with a repeat application when they have already dealt with the original application and seen the development refused.** (my bold). It is very clear that Warrington Borough Council is abusing its powers by giving itself favours which it is duty bound not to give developers. (i.e. *Circular 08/2205*, the Secretary of State instructs '**should**'). It is important to appreciate that this planning situation has been going on for at least two years and it is quite evident that the local planning authority is deliberately trying to wear down very strong opposition from the local community.

D) Best Value Performance Indicators: BVPI 219 a-c:

The Planning Service is well aware of the implications of the Best Value Performance Indicators concerning the review and designation of Conservation Areas. But no cogent reason has been given as to why a slight adjustment to the boundaries of Stockton Heath Conservation Area cannot be accommodated now in order to comply with the advice of English Heritage.

It can only be concluded that the Council has wilfully avoided such a modification because it is determined to demolish the existing school building against all policies and advice which support its retention.

E) English Heritage Advice:

The Report studiously omits English Heritage Advice that the building, if included in the Conservation Area, would enhance it: which is a statutory duty of the LPA.

4: OTHER REPORT INADEQUACIES:

1) The Report by Paul Butler Associates:

This is a commissioned report solely to justify and give 'conservation' support to the demolition of the Stockton Heath Primary School. It is not an independent consultant's report the purpose of which is to inform the local planning authority of conservation law and practice such that the Planning Committee can make an informed and impartial planning decision.

Section 2.3 of the Report clearly states that *'it is the purpose of this document to consider the reasons for refusal and to address the Development Control Committee members' concerns by demonstrating that the demolition of the existing school building and the subsequent construction of the replacement building is fully justified.*

The members of the Planning Committee should realise that this report is wholly inadequate as a basis for demolition of the school since it quotes extremely selectively by omitting relevant law, policy and government advice which would strongly advise to the contrary. The document offers a 'fig leaf' of conservation comfort to the Members and Planning Service but leaves the Council inadequately informed and exposed to legal challenge.

For example:

The Report quotes BH5 without giving any considered and well argued conservation advice on how it might be interpreted. In *'Local Listing' para 4.5* the report advises that *'inclusion on the local list does not convey any special privileges'* the implication being that BH5 is, in effect, useless and meaningless. This is a very risky assertion since recent cases to the Ombudsman in which UDP conservation policies are contravened without significant reason would indicate that the Council would be treading on very dangerous ground.

Under 'Statutory Listing', the Butler Associates Report maintains that *'even if the school were to be statutorily listed then its demolition would still be possible within the advice of PPG 15 paras. 3.16-3.19.* If only conservation law and practice were so easy: land speculators would have a field day ! These conditions apply primarily to Buildings at Risk which are usually in derelict condition. The school is obviously not in this category. The Butler Report omits to mention that these tests are difficult to overcome and are sequential. The tests of para 3.19 (i)(ii)(iii) are (i) the condition of the building and the costs of repairing it: (the school building fabric is in excellent condition), (ii) the adequacy of efforts made to retain the building in use: the building is in good repair and condition and is in full occupation as a school. (iii) the merits of alternative proposals. This test is the last of the sequential tests and is not applicable in this situation. Authorised demolition of listed buildings is not easy. And the consent of English Heritage is also required at the last.

In essence, the Paul Butler Associates Report on conservation issues is inadequate as a basis to recommend demolition in that a) it omits significant government law and considerable advice and practice pertaining to this application for demolition and b) it is hugely selective in its quotes. It cannot be said to balance the pro's and con's in a weighty and meaningful argument.

A major concern is that the conservation report of Paul Butler Associates does not take inspiration from **The Code of Conduct of the Institute of Historic Building Conservation** (as written in Annual Report of the Institute of Historic Building Conservation 2006) in that it does not:

- *'strive to conserve and preserve historic buildings...'* (Clause 18)
- demonstrate *'a responsibility for .. conservation, preservation and enhancement'* of historic buildings and historic urban environment. (Clause 17)

and nor does it

- *'seek to encourage owners and managers of historic buildings and sites (Warrington Borough Council) to respect and enjoy their buildings and sites and consider repairs' alterations and extensions in a sensitive and caring manner. (Clause19)*

These clauses together can be considered together as constituting the Hippocratic Oaths of building conservation. The Butler Associates Report, which is conservation based, sets out with the intention of giving complete and uncritical support for the demolition of a named *Building of Local Interest* (Stockton Heath Primary School which requires only a little care and repair at one neglected spot..

- 2) There is still no independent **Traffic Impact Study** on the Conservation Area, the neighbourhood and its environs. There a statement of school travel aspirations which is inadequate for the purposes of this application.

CONCLUSION:

Essentially, the Case Officer's Report (in both its body text and in the six lines of *Reasons for Recommendation: page 14*) identifies nor isolates not one scintilla of significant UDP policy, statutory act and instrument, government advice, material consideration or English Heritage advice which would support the demolition of such an attractive school building. Yet, like an oxymoron, it perversely continues in its essential contradiction of arriving at the opposite conclusion from that deduced from the evidence it reports.

The Report weakly dismisses all law and government advice at the very end by stating that:-

- *'There is no departure from the development plan in terms of any strategic policy'* without alerting the Committee to its selective editing of UDP Policies and omission of substantive parts of government advice.
'... wider planning considerations (the words 'policies' and 'laws' and 'statute' studiously avoided) support the granting of planning permission'. But these 'considerations' have never been specifically identified or evaluated in the report !

The retention of the existing school is, in fact, strongly supported by all the Council's planning policies, the principal planning acts and government advice and can fulfil the educational requirements by sensitive alterations to the historic fabric which respects its Edwardian character.

Can the Members of the Planning Committee really believe that they can decide to demolish the school and replace it by a nondescript carapace of a building on such an enfeebled legal basis and weakness of evidence ? The question has to asked as why the Council has wasted so much time, effort and ratepayers money over the past year in pursuing such a wilful yet unproductive goal: a goal which can be easily achieved by a sensible and common sense alternative of refurbishing and extending the existing building.s

I would ask you to inform the Members that if they decide to demolish Stockton Heath Primary School and grant planning permission for the new school that they would have done so by contravening a myriad of law and government advice because the Conclusions of the Report in this repeat and virtually identical application in which there is nothing new at all: they would be merely overturning an already democratically decided application

Finally, it is important for Members to understand this application in the context of the enormity of Warrington's failure to preserve its historic architectural heritage and urban character. There is no better public record of this calamity than in the latest Pevsner guide: *Buildings of England: Lancashire: Liverpool and the South West: Richard Pollard and Nikolaus Pevsner 2006* which observes wryly that: *'half of the fifty-two buildings listed by 1968 have been demolished and others exist only as facades.. This has done much to destroy the pleasant Georgian character noted by Peter Fleetwood-Hesketh as recently as 1955'. (p.603) Prosperous motorway Warrington is blighted by a general poverty of urban design and architecture; the retail shed, distribution warehouse and suburban estates*

are its defining characteristics'. (p. 604). Three quarters of Warrington Town Centre, including Warrington's very own and unique non-conformist university: The Warrington Academy, has been bull-dozed during the last forty years.

This is a seering indictment of the past performance of Warrington Borough Council in preserving the borough's architectural, historic and cultural heritage which is continuing today in this vein by this application. This continuing disregard of Warrington's architectural and historic urban heritage is exemplified by this destructive and unnecessary application.

As a Warringtonian, born and bred, I implore the Planning Committee to examine their hearts and draw back from approving this unnecessary corporate destruction of Warrington's architectural heritage. By desisting from this action, all parties can achieve their goals by sensitive refurbishment and extension of the very handsome Arts and Crafts school building.

In summary,

The case officer's report has:

- NOT identified one UDP conservation policy which supports its arguments, conclusions and recommendations without relying on vague 'get outs'.
 - **Whereas they completely support our case of objection**
- NOT Identified one Section of the principal Planning Acts which supports its arguments, conclusions and recommendations.
 - **Whereas they completely support our case of objection**
- NOT Identified one significant piece of government advice from English Heritage and in the Planning Circulars which unreservedly supports its arguments, conclusions and recommendations.
 - **Whereas they completely support our case of objection**
- NOT identified a single valid 'material consideration' (i.e. un-substantiated cost and un-substantiated educational benefits) which has had its legal validity confirmed by precedence in the Courts. (Planning Practice: R. 37. December 2003)
 - **Whereas our case for the retention and sensitive refurbishment of the Arts and Crafts school is supported by a huge caseload of Planning Appeals based on proper and validated 'material considerations'.**
- And seriously,
- NOT mentioned that this is a **repeat application** which, by Ministerial instruction, should not be brought before this Committee for determination. The case has already been decided in March 2006s
(Note: At the Planning Committee, the Council's legal officer quoted from the requisite Statutory Instrument Section 30 ? which gave planning authorities exemption from Section 70 A of the principal Act.