

LAVENHAM PARISH COUNCIL

To: Members of Lavenham Parish Council

You are duly summoned to attend an Extraordinary meeting of Lavenham Parish Council to be held at 7.30 pm on Tuesday 8th August 2023 at Lavenham Village Hall, Church Street, Lavenham.

Public Attendance

Members of the public and press are welcome to attend. At item 4 the public will be invited to give their views/question the Parish Council on the issue on the agenda.

AGENDA

1. Apologies and approval of absences
2. Declarations of Interest
3. To consider requests for dispensations
4. Public participation session
5. Receive report from the Chair and Clerk of the Council concerning Planning Application DC/23/01044.

Motion 1: Lavenham Parish Council notes with regret the decision of the local Planning Authority to approve application DC/23/01044 and after careful consideration, resolves to take no further action.

If Motion 1 falls:

Motion 2: Lavenham Parish Council notes with regret the decision of the Planning Authority to approve the application DC/23/01044 and after careful consideration of the future of the Conservation Area and the village economy, resolves to engage a legal team to prepare an appeal and further resolves to commit resources up to £25,000 to include a reserve for unknown costs and minor disbursements.



Andrew Smith
Clerk to the Council

Date: 2nd August 2023

Report to Extraordinary Council Meeting 8th August 2023

Purpose of the Report

To consider initiating legal proceedings against the local Planning Authority in its decision to approve DC/23/01044 for the erection of roof solar panels within the Lavenham Conservation Area.

Background

The decision to grant permission was issued on 24th July 2023 by way of a Delegated Officer report. This is shown as Attachment A. This decision effectively means that any property owner in the Conservation Area can apply to erect solar panels on their property and the same considerations of the decision to allow DC/23/01044 would have to be applied to ensure fairness and consistency in planning decisions. The Conservation Area has had that status since the 1970s.

An independent planning adviser provided complimentary advice that the decision may be challengeable arising from the **Planning (Listed Buildings and Conservation Areas) Act 1990**. Guidance from a barrister was recommended.

Legal Proceedings

The barrister has confirmed that an appeal must be made by 1st September 2023.

The Kings Counsel advice is as follows:

“There is an argument here that the Officer’s Report (OR) has not followed the approach to heritage assets required by law. In particular, the OR has found a “slight departure from policy” with regard to the historic core of a very important village in heritage terms. Given the finding of a departure from policy (even if slight), the OR must have found some harm to the significance of a heritage asset, for which reason the NPPF requires the OR to have undertaken a balancing exercise of that harm against the benefits of the proposal (with substantial weight attributed to the conservation of the heritage asset). That exercise was not undertaken, however. Moreover, if it had been, the answer may have been different.

Further, insofar as the OR proceeds to state that there is no adverse impact on the setting etc. of heritage assets, when also stating that there has been a departure from policy, that is internally inconsistent and gives rise to a potential reasons challenge as well.

Whilst I consider these arguments to be both good and technically correct, they will attract the response that, first, they depend on an over-legalistic reading of the OR; and, second, the decision would have been the same anyway.

These counter-arguments have some weight and success is not guaranteed. Nonetheless, I would consider the prospects of obtaining permission to challenge to be good, and the prospects of ultimately winning reasonable, which given the sensitivity of Lavenham in heritage terms, and the risks of this adverse decision setting a precedent, needs also to be taken into consideration when deciding whether to proceed.”

Matters to Consider

The key issues for Council to consider are whether:

- the integrity of the Conservation Area is of sufficient importance to the village in presentational AND economic terms in light of the climate emergency
- breaching of the planning restrictions placed upon a Conservation Area, encapsulated in our Neighbourhood Plan 2016 policies D1 and ENV2 (Appendix B attached for ease of reference), would be to the detriment of the village
- the cost of pursuing a legal challenge to the planning decision is appropriate

There are over 200 listed buildings in the village. Lavenham's economy is driven by local, national and international tourism. There is no hard evidence to confirm why Lavenham receives visitors in significant numbers, but it is reasonable to assume that the presentation of the village is a principal draw. In turn visitors spend in local shops, hospitality and services. Although slightly historic, Babergh DC research produced in 2017, indicates visitors contribute upwards of £7m to the local economy. If through breaches of long held policy on additions to heritage buildings were to change and the degree of change became significant, the economy of the village may be placed at some risk.

Legal action will require services from solicitors and barristers. It will be expensive and there can never be a guaranteed outcome. Councillors need to weigh up whether there is benefit to the community of pursuing action, against the risk of accepting the planning decision.

Known Costs

KC charges are £6,000 per day. Estimate of time 1-2 days. Solicitor costs not yet known. Best assumption of full costs £20,000.00 to take unknowns into account.

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Irene Mitchell
Chair

and

Andrew Smith
Clerk to the Council

2nd August 2023