

Heriot Community Council

Minutes Concerning Legal Appeal March 2019.

Councillors: John Williams, Gavin Whittaker, Frank Connelly, Helen Brinkworth:

The 5th and final councillor, Sue Sharp was excluded. The four other councillors had taken a decision that due to her interest in Wull Muir windfarm, she should not be involved in any discussions or legal action relating to Gilston as it was considered that she would be presented with a conflict of interest. She was advised of the appeal to the Court of Session against the Reporter's decision after the legal action was mounted

Reporter's decision re the Gilston Hill wind farm appeal, February 7th 2019.

The Gilston Hill planning application had been considered by Heriot CC at a public meeting on March 22nd 2017. Voting was: 5 councillors objected to the application, 1 abstained and 1 had submitted apologies. Heriot CC made further representations during the appeal by Forsa Energy to Scottish Ministers, maintaining its objection.

The Reporter's decision granted approval of the application, with the usual proviso that any appeal had to be registered with the Court of Session within six weeks from the date of the decision. Furthermore any appeal can only be on a point of law, dealing with the Reporter's handling of the appeal, and not on the facts as determined by the Reporter.

Initial consideration of the Reporter's decision raised a number of fundamental issues, both omissions and also reasoning. It became clear during the six week period that these concerns were shared within Heriot CC and also by other concerned local parties. However, time was very much of the essence. As in all matters concerning Heriot CC, their determination rests with the elected councillors, and although local residents are consulted when possible, only the councillors have voting powers on decisions.

Initial legal opinion confirmed that Heriot CC's concerns about the decision are valid, and that an appeal has merit. In this instance, Heriot CC will be bringing an action as the Appellant to the Court of Session against the decision by the Reporter. In order to carry out such an appeal it is essential that Heriot CC has financial resources available to protect the Community Council and its officers from the substantial likely legal costs involved. Legal advice has made clear that discretion must be exercised over publicly revealing information in the early stages of the appeal. This is to comply with the Court's instructions in such appeals.

In the last two weeks remaining before the expiry of the six week period discussion took place with legal advisers and others about:

- a) The merits of any appeal on legal grounds
- b) A financial indemnity, which was being offered by someone with an interest in Heriot, to ensure that all associated costs will be met. Initial advice was that their identity should not be disclosed.

During the course of March 18th and 19th a series of discussions, brief meetings and email exchanges between legal advisers and Councillors confirmed that Heriot CC had assurances on both the above matters to approve the appeal; which was accordingly submitted on the final day allowable. In view of the extremely tight deadlines, and the advice about public disclosure, Heriot CC proceeded on the basis that the community will be informed after the appeal has been lodged. Information will be posted on Heriot Facebook pages and possibly fuller documentation in due course on Heriot web site.

John O Williams
Chairman Heriot CC
April 5th 2019