

NOTIFICATION LETTER – FAILURE TO SEND

NOTE FROM HCC

1. On 14th October, PINS asked HCC to provide a site notice for the Appellant to display and for a notification letter of the date, time and place of the inquiry to be sent to all persons who had made representations on the application and/or appeal. Yesterday evening, counsel became aware that the latter had not been done and immediately requested that some mitigation steps were taken. No excuse for this omission is offered, but sincere apologies for the administrative oversight are. The focus of this Note is what to do in the light of it.

Other Notification of the Inquiry date and venue

2. The following facts are relevant to that question:
 - a. PINS provided direct notification to all persons entitled to appear in accordance with regs 10 and 11 – the outstanding issue therefore applies to those who may wish to watch the inquiry or to make a short statement to it but not to those who are entitled to play a role in hearing sessions, to call evidence, to cross-examine or to make opening and closing speeches;
 - b. The Council provided site notices which have been displayed at clear and prominent locations at the site;
 - c. The council provided a press advertisement of the date and time of the inquiry;
 - d. The Council's website has a dedicated page for the inquiry which makes the date and place of the inquiry clear and provides a contact point as does the website set up by the Appellants for the inquiry;
 - e. The active rule 6 parties have heavily publicised the inquiry; and
 - f. There have been recent press articles as to the inquiry starting today.
3. In those circumstances the potential for any relevant member of the public who made representations and is interested in this inquiry not to know of it must be minimal at worst.
4. Further, in order to seek to mitigate any consequences of the omission, counsel asked that notification letters (albeit very late) be sent last night to all those who had provided an email address with their representation. This was done. Letters will be sent out today to all those who did not provide an email address. This will further reduce any remaining potential for people interested to not be aware of the hearing. They will not get the two weeks normal notice but will have the next 10 days to contact the inquiry (and attend or watch online) if they wish.

Prejudice

5. In such circumstances it is difficult to see how anyone could claim any prejudice (*Main v. Swansea*) and it is therefore proposed that the inquiry proceed, that further efforts are made to contact everyone today and that flexibility is shown to allow any members of the public who were not previously aware of the inquiry date to appear at anytime over the course of the inquiry.
6. As to the legal framework, the SoS can require HCC to give notice (reg 10(6)) in a number of ways. The Council has done the Site Notice as requested and has provided a press

announcement which was not but which serves the same purpose. Procedural failings are only of significance if they cause prejudice. For the reasons stated above it is difficult to see any possible route to prejudice here.

DFQC

16/11/21 (prior to meeting with team this morning)

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