

CA/22/00888 Land at Whitstable Beach, Whitstable Foreshore (landward of mean low water line), CT5 1EJ

This submission has been prepared by Cllr Valerie Kenny & Cllr Chris Cornell who are elected city council representatives for the above site. We submitted representation to the initial planning enquiry (APP/J2210/C/18/320927) and are opposing the appealing of Canterbury City Council's decision to refuse the Beach Safety Assessment on this site (made 18th October).

Both of us were present at the meeting and as such have limited our statements to the [Appeal Statement submitted by Furley Page on the 22nd November 2022](#). This statement criticises the decision of councillors, accusing them of:

- Being unable to grasp the extent of their jurisdiction in respect to the application
- Lacking the expertise to make this decision
- Wrongly placing considerable weight on the comments of the Marine & Coastguard Agency(MCA)
- Failing to understand their jurisdiction did not relate to the areas seaward of the mean low water mark

We wish to note that:

1. Comments made by the Planning Committee about the complexity of this case do not mean that they were unable to make a suitable decision.

It is fair to say that councillors being asked to judge the efficacy of a beach safety assessment is unusual and as such is fair for councillors to acknowledge that publicly. The majority of decisions made by planning committee relate to applications on land and to development which can only be opposed on the grounds of material planning considerations. The National Policy Planning framework has only 9 references to risk assessment across its 75 pages and 8 of these relate to flood risk assessment for which technical guidance exists.

The government guidance on determining a planning application outlines the reasons a planning application can be refused, but in situations where guidance isn't appropriate, notes that councils must have "clear and convincing reasons for doing so".

In this circumstance, the record shows that councillors showed that their position was 'defendable' by seeking legal counsel and using this (and not previous comments) as the basis for the recorded vote. The committee also removed members who could be predisposed on a matter (Cllr Kenny) from the chamber.

2. The Planning Committee do not have to have expertise in marine safety to make this decisions

Whilst many councillors are very experienced in dealing with planning applications they do not need to be experts or hold qualifications. Councillors aren't expected to have built a house to be able to judge its architectural merit. Whilst the public speakers may have questioned the qualification of the assessments author, councillors did not and the specificity of their questions shows evidence that they read and digested the reports given.

The opinion that the Beach Safety assessment is somewhat unchallengeable because it was created by Captain Brian McJury is confusing as his name only appears on the third iteration of the assessment circulated between parties. Two earlier copies (dated 05/04/22) were prepared by Claire Goldthorp whose credentials are not listed and, on whose work, much of the final submission seems to be based.

That the Planning Inspector required the beach safety assessment to be put before council infers that they wanted a constructive challenge and local knowledge to be used in the decision making. This decision implies that they were happy for the decision to be made by councillors without maritime qualifications.

Councillors questioned the efficacy of the assessment based on their own understanding of risk assessment as a process whose principles exist across different jurisdictions. The process of risk assessment (published by government through the [Orange Book](#)) acknowledges that there are some underlying principles behind assessment in all fields. It also lists 35 questions all people should be asking to assess the efficacy of a risk assessment and which reflect many of the questions asked by councillors.

3. Councillors were right to give weight to the opinions of the MCA

The MCA is an executive agency of the Department for Transport and the only government body to produce government guidance on beach safety assessments. The MMO (part of the MCA) have operational jurisdiction seaward of the Mean High Water Springs (MHWS) mark, whilst the local planning authorities jurisdiction is landward up to the Mean Low Water Springs (MLWS) mark – in short their jurisdictions cross. The MMO's expertise is acknowledged by the Appellant in their reference and incorporation of the 2019's Navigational Risk Assessment (compiled by MARICO).

Even if the MCA were not to have jurisdiction, the Council's [Member Code of Conduct](#) expects councillors to abide by the Seven Principles of Public Life as set out by [Sir Anthony Nolan](#), including that of objectivity in taking decisions impartially, fairly and on merit. Objectivity requires decisions to be made without partiality and through a scientific method in which people seek out evidence, form and test a hypothesis – such exercises often require people to seek criteria.

In this case councillors referring to the MMO guidance on writing safety assessments ([Managing Beach Safety](#)) was suitable as it establishes a criteria. The MMO guidance states that an effective policy should:

- create an affective policy, consultation with both internal stakeholders and the wider community
- take into account near neighbours i.e. the RNLI/Yacht Club and the risk they face (particularly when access may involve travel across land managed by multiple organisations)
- be reviewed on a regular basis to take account of changes in work practice, technological advances and on the ground conditions...learning and insights from networks and peers may also prompt a review
- be transparent with regard to how proportional risk mitigation activities are considered and assessed

All four of these points were highlighted as not being met by public stakeholders when referring to the assessment. I believe the [MCA's comments](#) on this appeal dated 28th April 2023 clearly list their objections to the beach safety assessment.

4. Councillors were aware of their jurisdiction

Throughout the transcript councillors are reminded at numerous points that their decision relates onto the land on the seaward side of the Mean Low Tide Mark – however the appellants own beach safety assessment highlights it as important to consider how an individual enters the regulated area and by what means. Comments by Cllr Baldock were appropriate because access to the site from the seaward site is both possible and dangerous.

Whilst the comments from the Marine & Coastguard Agency were cited by many councillors, we believe it is defensible that councillors, would seek guidance from the only government body who has published guidance on how to complete safety assessments of this sort (even if their jurisdiction is in deeper water). The officers report makes it clear that the MCA are not a statutory consultee.

If you have any additional questions on our submission please submit these via email to chris.cornell@councillor.canterbury.gov.uk. The opinions above are ours only and not the opinion of Canterbury City Council.