



A SPECIAL MEETING OF THE
PLANNING COMMITTEE

Civic Suite, Parkside

2 October 2014

PRESENT:

PM Chandler (Chair), J Simpson (Vice Chair), P Baguley,
G Botterill, G Bush, P Cumbers, E Holmes,
J Illingworth

Solicitor to the Council (HG), Head of Regulatory Services (JW), Regulatory Services
Manager (PR) Applications and Advice Managers (JW and KM),
Planning Officer (DK)

D45. APOLOGIES FOR ABSENCE

Cllr Freer-Jones

D46. DECLARATIONS OF INTEREST

None

D47. **THE OLD BRICKYARD, SCALFORD**

The Head of Regulatory Services presented a report relating to 'The Old Brickyard', Scalford and to allow the land owners to address the Committee in accordance with the General (Development Management) Order 2010.

The Head of Regulatory Services stated that following an appeal on this site which was refused this report had been brought to Committee to fulfil the requirements of the landowners right to address the Committee. Reference was made to the information contained within the report, drawing attention to the supporting material and invited Members to consider the issues.

The Chair invited Mr Wakefield, on behalf of the landowner, to speak and he stated that:

- The resolution in February was to defer the decision pending the outcome of the appeal and for an informal hearing if unsuccessful. The decision was not to revoke or do nothing. Cllr Illingworth deferred to find a mechanism for testing the evidence.
- The options should be to take no further action or decide how to test the evidence.
- Prior to considering there should be a cold, hard assessment of the facts. The Certificate of Lawful Use followed a diligent approach and the Certificate was granted. This report is not in the papers. Fail to see how the Committee can reach a different decision without this evidence.
- The stir from local residents a year after the certificate granted should not be allowed to effect an objective decision.
- Need to weigh evidence against concerns of residents which are not substantiated by facts. No hard empirical evidence put forward with no statutory declaration put in front of the Members. Considers that the case for revocation very light.
- Further time and resources of the Council are suggested to be spent if carry forward the motion from February – to legally test the evidence from 2007.

The Chair invited questions and points for clarification from the Members.

Cllr Holmes asked if they were inferring that the people who wrote the letters had their minds impaired? Also sought clarification if it was the landowners decision to go to appeal?

Mr Wakefield stated that it was not the point he was making, just that recollecting from 40 years ago may be clouded by time. Small scale and low impact works took place which people may not have paid attention too. His point was that the Committee need to ensure that the evidence is robust and correct. If Members are mindful to revoke then evidence needs to be properly tested.

Cllr Holmes again asked for clarification as to whether they lost the appeal.

Mr Wakefield confirmed that was in relation to the planning application and not the Certificate of Lawfulness to which the Members are considering.

Cllr Holmes sought clarification as to whether they wanted to go to appeal.

Mr Wakefield responded by stating that at the February meeting and in the minutes it states that if appeal was allowed it would address the whole issue, if the appeal was refused would find ourselves back at Committee. It allowed Members to defer decisions whilst the appeal was pending as the consent would 'trump' the certificate.

Cllr Cumbers sought clarification over the letters mentioned by Mr Wakefield regarding those sworn in front of a Justice of the Peace and the implication that

these were not a statutory declaration.

Mr Wakefield confirmed that signing a letter in front of a Justice of the Peace is not a statutory declaration. He advised that this was raised at the previous meeting in February and those who wished to make a statutory declaration could have done so and stated it is up to the members to judge as to why this had not been done.

Cllr Cumbers asked if therefore Mr Wakefield was guessing.

Mr Wakefield stated that this point was raised in February and yet no one had chosen to do anything about it and therefore it was his reading of the situation. He also advised that the Council's solicitor highlighted this to you in February.

This concluded the questions and Mr Wakefield left the speakers chair.

The Chair asked the Solicitor to the Council what the landowner's options would be should members chose to revoke.

The Head of Regulatory Services stated that the details in the report are adequate and these have been available several times and Members should be aware of the content.

Mr Wakefield asked if he could assist and on invitation from the Chair advised that if members decided to revoke then S193 of the Town and Country Planning Act should be set out in the report. S193 requires you to test and weigh the evidence and therefore members need to see that evidence. Taking a view without seeing the evidence is not advisable.

The Head of Regulatory Services advised the evidence challenged by residents is on the bottom of page 2 of the report.

The Solicitor to the Council confirmed that under S193 that the evidence of the application has been available to Members and they have had the opportunity to read.

The Head of Regulatory Services, in response to the speaker, agreed the Committee are not bound by the two options in the report. Members could defer if felt necessary. He then explained that the Certificate of Lawfulness took two and a half years as this included exchanges with landowners/agents and delays with the fire and recovering evidence. The issue is whether it is lawful. On the issue of sworn statements versus statutory declaration the Head of Regulatory Services stated it is about less weight not none at all. At the February meeting the residents were made aware of this but no statutory declarations have come in and so we are required to adjudicate what we have.

The Solicitor to the Council stated that it is about adding/assessing the weighting of a true affi davit and if false is a contempt of court.

Cllr Holmes considered the letters to hold weight and people do see and remember things.

Cllr Illingworth stated that the point raised in February regarding an assessment of the evidence was supported and carried. It was deferred pending the appeal and then it would be revisited to retest the evidence. If Members go with one of the two options on the paper tonight then have not acted on the motion in February.

The Head of Regulatory Services requested an adjournment to discuss with the Solicitor to the Council.

Meeting adjourned 19:05
Meeting reconvened 19:12

The Solicitor to the Council advised that the minutes state the mechanism is what was proposed and dealing with this. Councillors to debate how the decision should be made; status quo, test the evidence or defer.

Cllr Illingworth asked for the words of the February motion, in the interest of clarity, to be read out.

The Head of Regulatory Services read the motion verbatim “ to defer the matter pending the outcome of the Appeal – then Members to reconvene to consider an appropriate mechanism for dealing with the matter, by way of some sort of informal hearing, at that time, should the Appeal be unsuccessful.”

Cllr Illingworth clarified he understood and that tonight is to consider the mechanism of dealing with the matter and not testing evidence. Therefore it should reconvene and decide how to determine the facts and how evidence has been tested. He declared that an informal hearing or expert should test the evidence. He did not considered qualified to test or the power to test the evidence. He was concerned that this is not in the spirit of the proposal of the meeting in February.

The Solicitor to the Council advised that clarification/testing of the evidence could be done by the Solicitor to the Council or Bar. The decision is up to Members, the advice from the solicitor is advice on strength or weight of evidence.

Cllr Illingworth states that the evidence should be tested.

Cllr Simpson states that the evidence tested should not just be recent evidence but needs to go back to 2007 and there should be a proper review of all of the evidence.

Cllr Holmes stated that the people who live next to the site can remember what went on and cannot understand how the Certificate of Lawfulness was given.

The Head of Regulatory Services advised that Appendix 3, 4 and 5 of the report is the evidence and rationale.

Cllr Bush stated that need to start from the beginning 1972-1977 and there is not a lot of evidence from this period. It might be difficult to recollect, not degrading what people have said but need to concentrate on this period. Need the review to look at this period and the applicant to prove what has happened.

The Solicitor to the Council advised that it is not for Committee to confirm the Certificate of Lawfulness but to either rescind or continue as suggested.

Cllr Bush suggested deferment for legal to evaluate as not enough evidence. He proposed deferment to look at the application evidence properly.

The Head of Regulatory Services advised that it is about evidence sufficient to extinguish not to get the Certificate of Lawfulness, it is about evidence to challenge the Certificate.

Cllr Bush removed his motion.

Cllr Holmes proposed to revoke the Certificate of Lawfulness. The people who have given evidence can remember and took care with their evidence.

Cllr Baguley seconded the proposal.

Cllr Botterill supported Cllr Holmes.

Cllr Cumbers stated that the decision is difficult and expresses sympathy for the landowners. The Certificate of Lawfulness has been granted, evidence submitted since then counters evidence. The statements which are fairly recent and people do remember so inclined to support revocation.

Cllr Illingworth proposed an amendment that the proposition in February be implemented.

Cllr Bush seconded the amendment.

The Chair proposed a vote to be taken according to Cllr Holmes proposal to revoke the Certificate of Lawfulness. A vote was taken and 6 members voted in favour for revocation. The Chair confirmed that the Certificate of Lawfulness had been revoked.

DETERMINATION: That the Certificate of Lawfulness is revoked on the basis that a statement was made which was false in a material particular, in respect of the statement that the access road was completed within 5 years of the grant of planning permission.

Cllr Cumbers requested that her vote be recorded.

The meeting was closed at 7:32
