



A SPECIAL MEETING OF THE
PLANNING COMMITTEE

Civic Suite, Parkside

13 February 2014

PRESENT:

P.M. Chandler (Chair)
P. Baguley, G.E. Botterill, G. Bush, P. Cumbers,
A Freer-Jones, E. Holmes, J. Illingworth,
J. Simpson and J. Wyatt

Head of Regulatory Services
Planning Officer (DK)
Solicitor to the Council (VW), Administrative Assistant (SC)

D68. APOLOGIES FOR ABSENCE

None

D69. DECLARATIONS OF INTEREST

None

At this point, the Solicitor to the Council reminded Members that they must have an open mind and no perception of bias. If they felt that they couldn't consider the matters before them in a fair open manner, it may be best if they considered whether to take part.

D70. SCHEDULE OF APPLICATIONS

THE OLD BRICKYARD, SCALFORD:

The Head of Regulatory Services to present a report relating to 'The Old Brickyard', Scalford and to allow the land owners to address the Committee.

The Chair stated that it has been brought to her attention that not all relevant persons had received the letters of this meeting (although they had been sent out). She asked Members to consider whether this meeting should still go ahead, or be deferred to a later date.

Cllr Wyatt **proposed that the meeting go ahead.** Cllr Bush **seconded the proposal.**

A vote was taken: 7 in favour of the meeting going ahead and 3 against.

The Head of Regulatory Services introduced the report and drew the Committee's attention to the stage in proceeding to which it related, i.e. that it was the second part of a two stage process, the first being the Committee's decision to be 'minded to revoke' the Certificate at its meeting in December 2011, this meeting being to fulfil the legal obligation to hear the applicant before a final determination was made.

He proceeded to remind the Committee that the length of time that had passed was a result of dealing with the planning application, which the Committee had recently refused.

He guided Members through the papers reminding them of the evidence that had been submitted that had lead the Committee to the 2011 resolution and highlighted the landowners submissions that formed the appendices.

The Solicitor to the Council further stated that the matter to be judged on the evidence before you only. The task before the Committee was not to cast any judgement over the desirability or otherwise of the development of the site, but to assess the quality and reliability of the evidence in regard to proving that the development had not started by the date claimed in 1977.

The Chair invited Mr Wakefield to speak and he stated that:

- He was a Solicitor from Marrons Shakespeares. He briefly introduced himself, detailing his qualifications and experience relating to planning matters.
- He stated that this was a legally complicated issue – It is a question in terms of revocation that must be decided on very narrow grounds. It is a matter for Members to conclude one way, or the other, whether they believe a statement was made or a document used which was false in a material particular, or any material information was withheld, when the application for the Certificate of Lawfulness was made.
- In relation to the information subsequently received (letters from the public), none of this was submitted at the time of application, or the two and half years that followed whilst the application sat with MBC for determination, or immediately after the granting of the Certificate. It only came to light much much later.

- He questioned the accuracy of the letters, referring to events 40 years ago – as this case hinges on recollection in the absence of any ‘hard evidence’ such as photographs.
- It is very difficult to reach a judgement of what happened at that time.
- He suggested MBC employ an Inspector or an independent Barrister – to hear the evidence under oath and advice and recommend the Council accordingly.
- None of the letters constituted Statutory Declarations under the Statutory Declarations Act and therefore do not have that legal weight. It is just an assertion from people recollecting things from 30-40 years ago.
- If Members do decide to go ahead, based on the letters received, they will not have afforded his client an opportunity to test that evidence and have it challenged properly. This meeting is not the forum to be doing that and therefore this is not the correct way to proceed.
- He referred to the recent planning application which was refused a few weeks ago – and stated that an appeal had been submitted. The appeal, pending a decision by the Planning Inspector, may present a route through this complicated legal issue, as an Inspector may decide to grant his client planning permission for the application which is sought. If that application is granted, his client is prepared to provide a unilateral undertaking, effectively forsaking all rights granted under the Certificate of Lawfulness. That again presents an opportunity to have somebody else make a decision on this case and if an Inspector grants the application on appeal, then that again provides a cleaner solution than the legal mire that going through the revocation process for the Certificate of Lawfulness places on everybody, not just the Council. This is a very complicated process which requires evidence to be properly tested and properly considered before any decisions are made.

The Chair asked the Solicitor to the Council if she wished to pick up on any of the matters mentioned.

The Solicitor to the Council stated:

- That an Appeal has been submitted.
- It is an option, if Members wished to defer the matter until the appeal.
- In respect of the weight of the letters recollecting the past events, these can still be sworn in, following a legal procedure to swear a Statutory Declaration (under the 1835 Act) – It is sworn before either a Commissioner for Oaths, Solicitor, or Justice of the Peace – it is set out in a legally specific way and it is sworn to state the contents are true.

The Head of Regulatory Services spoke regarding the letters in 2011. He pointed out that it was suggested, at that time, that the public might want to make them Statutory Declarations, for the reasons Mr Wakefield mentioned, but no one did.

The Chair invited Mr Wakefield to speak and he stated that:

- He didn't want to get into a debate about the evidence.

Cllr Holmes, Ward Councillor, was invited to speak and directed her comments to Mr Wakefield:

- She questioned his opinion that the evidence is quite weak.
- She stated that people in villages usually remember things very well (as opposed to people living in a town).
- She pointed out that the letters were signed in front of a Justice of the Peace.

The Chair invited Mr Wakefield to respond and he stated that:

- In the past the Certificate of Lawfulness was previously granted and it took two and half years to make that decision. During that time, there were no objection letters from the public.
- He pointed out that the letters are not Statutory Declarations, prepared in accordance with the Statutory Declarations Act of 1835 and therefore cannot be afforded that weight.

Councillor Simpson asked Mr Wakefield:

- In respect of the letters, as they are, what does he consider is this Committee's responsibility this evening, should they choose to proceed with the Certificate of Lawfulness, or the revocation of it.
- Could there be some more information forthcoming, should the Councillors decide to defer?

The Chair invited Mr Wakefield to respond and he stated that the first question should be answered by the Council's Solicitor.

The Solicitor to the Council stated that:

- Members are reminded that they must not consider the planning application – they are only to look at evidence.
- Two alternative approaches have been suggested - (i) a deferral pending the outcome of the appeal; and (ii) for the evidence to be looked at by a third party with legal experience, who could then advise the council accordingly.

Cllr Simpson further asked Mr Wakefield:

- If this matter is deferred will there be further information and evidence forthcoming?

Mr Wakefield suggested that if MBC sought further information, he would need to talk to his client.

Cllr Wyatt asked Mr Wakefield what will be his client's position if the Inspector turns the application down.

The Chair invited Mr Wakefield to respond and he stated that:

- If his client loses the appeal, he would decide at that time how to take the matter forward.
- He believes his client would look at different options for the site.
- He again reiterated that Members did not have to make this decision that night – there is no need to rush.

The Solicitor to the Council clarified that if the matter is deferred, pending the outcome of the appeal then :

- If the appeal is won, planning permission is granted and a unilateral undertaking given to rescind the Certificate – that's the end of the matter.
- If it is refused – then Members would come back to this matter and reconsider at that point.
- She reiterated Mr Wakefield's suggestion in delaying any decision pending the outcome of the appeal.

Cllr Illingworth stated the need for common sense regarding revocation – pointing out there are only 2 basis for a revocation. He continued by stating:

- He believed that if the Committee cannot prove that a document or statement was made was false
- It goes back 42 years to the original application and the appropriate thing to do now is to defer until after the application appeal is decided.

He proposed that the matter be deferred until after the application appeal is heard and, if that refusal is upheld, then the Council consider the option of going to an Inspector to take formal evidence and then come back to this Committee with a recommendation.

Cllr Botterill **seconded the proposal.**

Cllr Cumbers questioned the legal weight of letters sworn in front of a Justice of the Peace, as opposed to a Statutory Declaration.

The Solicitor to the Council briefly explained the legality stating:

- The 1835 Act means that if you make a Statutory Declaration, you are swearing that the information contained within that document is a true and accurate recollection. It gives more weight to that statement, than if it is written down in a letter form.

The Chair invited Mr Wakefield to speak and he stated that:

- The Statutory Declaration Act – uses a prescribed method. There are set words and set procedures to be followed.
- In this case, these procedures were not followed.

The Chair asked if any Members wished to make any further comments, regarding the recommendation to defer.

The Head of Regulatory Services reminded the Chair that the proposal was more than just to defer. He stated that if the matter was deferred, and the Council was faced with revisiting this issue, following the appeal, then MBC would need to hold its own event along the lines of a local inquiry.

Mr Wakefield pointed out that all parties would need to know the mechanism of any enquiry.

The Head of Regulatory Services confirmed that if it got to that stage, the Council would inform all interested parties in advance, in order that everybody understood the procedures to be followed and their purpose.

It was suggested that the proposal be reworded.

Cllr Illingworth proposed the motion 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 Botterill seconded the proposal.

Cllr Simpson asked if we reconvene who would fund such an event – would it be the Council?

It was confirmed that it would be the Council.

On being put to the vote the proposal was unanimous.

RESOLVED: The matter to be deferred pending the outcome of the Appeal.

The meeting which commenced at 6.08 p.m. closed at 6.50 p.m.

Chair