

Minutes of the meeting of the EXECUTIVE SCRUTINY COMMITTEE held on
MONDAY 5 DECEMBER 2016 at 6.30 pm

Present: Councillor Eastman (Chair)
Councillors Bint, Clifton, Ferrans (substitute for Councillor
Alexander), A Geary, Morris (Vice Chair), Petchey, Walker and
Wales.

Officers: D Sharkey (Corporate Director - Place), S Bridglingsingh (Service
Director [Legal and Democratic Services]), J Kealey (Head of Legal
Services [Procurement, Planning and Property]) and S Muir
(Committee Manager).

Apologies: Councillors Alexander and Miles

Also Present: Councillors M Bradburn, R Bradburn, Exon, Gifford, McDonald and
28 members of the public.

ES06 DISCLOSURES OF INTEREST

Councillor A Geary advised that he had taken a previous Delegated
Decision relating to the matter in February 2013 when he was
Leader of the Council.

Councillor A Geary (Chair of Development Control Committee) and
Councillors Bint, Clifton, Eastman, Ferrans and Petchey advised that
they were Members of the Development Control Committee and that
Community Assets were a material consideration for that
Committee, but they were not fettering their position should the
property be the subject of any future planning application.

**ES07 CALL-IN OF DELEGATED DECISION 15 NOVEMBER 2016:
COMMUNITY RIGHT TO BID – THE NOMINATION OF THE
SUFFOLK PUNCH**

The Committee considered the decision made by the Cabinet
member on 15 November relating to the Community Right to Bid and
the nomination of the Suffolk Punch Public House.

It was noted that on 15 November 2016 Councillor Gifford, the
Cabinet member for Place had decided:

‘That the nomination to List the Suffolk Punch Public House as an
Asset of Community Value be rejected’.

It was reported that the decision had been called-in by Bradwell
Ward Councillors R Bradburn and Exon for the following reasons:

- “1. The Portfolio Holder and Decision maker failed to disclose a
personal interest in the matter being the subject matter of the
Delegated Decision - namely that she has been a member of

the Board of Trustees for Milton Keynes Parks Trust for 19 years and that she chaired the Board up until November 2014. During this time she would have been party to discussions as to very site being dealt with as a Nomination as an Asset of Community Value. Namely the Suffolk Punch, Heelands.

If a disclosure had been made it would have been possible that a request be made for the matter to have been passed to another Member of the Cabinet.

The precedent for this was set as the same site when being nominated in 2013, the Portfolio Holder Decision maker was Councillor Peter Geary and he stood aside due to his association with the Parks Trust and the Leader of the Council Councillor Andrew Geary made the decision to list the site.

2. The Officer report was wrong in law as it stated that the Council could ask for further evidence of the Nominator above and beyond that laid down by the Localism Act 2011 and stated case law. There was no stated statute or case law mentioned in the report to support such a claim and general guidance provided by the Nominator as to what was required was ignored.
3. The Officer report was flawed as it had a section set out at section 3.23 of the report on Compensation with an amount mentioned - this is not a fact that should have been in the report as it should not form part of the decision making process. As it was there it cannot discount the possibility of an influence on the decision.
4. Despite over 30 members of the public (residents) attending and providing the very evidence that was required by the Officer report and the objectors to the listing (the solicitors for the Parks Trust and the Developers) such evidence was disregarding when making the decision.
5. Not all residents were able to speak as the Portfolio Holder decision maker said that the meeting was constrained by a following meeting which stopped further evidence being presented of a local business willing to invest in the site.
6. The Decision maker, Officer Report and the objectors incorrectly throughout the process treated the site as though it was a development site and therefore of a value that could not be ignored by the Parks Trust despite no planning application being decided as yet. The site is that of a Public house and car park and the value for the purpose of this decision should be based on that and that alone.
7. The Decision maker in her concluding remarks also made an incorrect statement in that she stated that as this was the

second Nomination of the site the test had to be set higher. This is incorrect in law as all Nominations must be dealt with under the Localism Act and the merits of the case not the number of times a Nomination is made”.

The Committee heard from Councillors R Bradburn and Exon who presented the call-in, together with a response from Councillor Gifford (the responsible Cabinet Member). The Committee also heard from two witnesses called by Councillors R Bradburn and Exon, officers of the Council and a witness called by the responsible Cabinet member.

In addition to the reasons submitted as part of the call-in request Councillors R Bradburn and Exon also suggested:

- (a) the community was interested in a community facility or a public house to act as a focal point for the Heelands community.
- (b) the Suffolk Punch had been boarded up since December 2014, therefore the building's status moved to a different section of the Localism Act, although the same information was received for both nominations.
- (c) the amended legislation (Localism Act 2015) seemed to strengthen the second nomination in 2016.
- (d) a bid in excess of £900k had been received by the Parks Trust.
- (e) the values indicated in the report that informed the Delegated Decision on 15 November 2016 should not have been included.
- (f) under the Localism Act, a business case was not required to be submitted; and
- (g) That the Council's website guidelines listed the criteria for the nomination for an Asset of Community Value.

Councillor Gifford indicated that she had resigned from the Parks Trust when she was elected as a Milton Keynes Councillor in May 2014.

Council officers and the solicitor acting for the Council outlined:

- (a) That all Councillors had received training on their responsibilities to declare personal and pecuniary interests as part of the Council's induction process, but ultimately it was a Councillor's responsibility to declare a personal or pecuniary interest.
- (b) That listing as an Asset of Community Value did not give any community group preferential status as a potential purchaser and the owner could not be compelled to sell to any particular bidder.

- (c) That the Parks Trust had marketed the Suffolk Punch, and an independent charity had bid for it, but the bid had been rejected by the Parks Trust.

The Committee heard one representation read out by the Chair and from 10 members of the public, during consideration of the matter.

Councillor A Geary moved the following motion which was seconded by Councillor Bint:

'That this Committee resolved to refer this item back to the relevant Cabinet member for the following reasons:

1. (a) That the Cabinet Member had taken the Delegated Decision based on a lack of evidence from the local community and on information that is of little relevance to the Localism Act 2011(Amended 2015).
- (b) That the Cabinet Member has misunderstood the process of listing as an Asset of Community Value as indicated in her closing remarks outlined in the following bullet points of the Call In from Councillors R Bradburn and Exon:
 - '3. The Officer report was flawed as it had a section set out at section 3.23 of the report on Compensation with an amount mentioned - this is not a fact that should have been in the report as it should not form part of the decision making process. As it was there it cannot discount the possibility of an influence on the decision.
 4. Despite over 30 members of the public (residents) attending and providing the very evidence that was required by the Officer report and the objectors to the listing (the solicitors for the Parks Trust and the Developers) such evidence was disregarded when making the decision.
 5. Not all residents were able to speak as the Decision maker said that the meeting was constrained by a following meeting which stopped further evidence being presented of a local business willing to invest in the site.
 7. The Decision maker in her concluding remarks also made an incorrect statement in that she stated that as this was the second Nomination of the site the test had to be set higher. This is incorrect in law as all Nominations must be dealt with under the Localism Act and the merits of the case not the number of times a Nomination is made."



On being put to the vote the motion was declared carried, with 6 councillors voting in favour, 3 councillors voting against and 0 councillors abstaining from voting.

Councillor Eastman moved the following additional motion which was seconded by Councillor Bint:

"That the Cabinet Member be requested to engage with the Leader of the Council to consider whether, for the good reputation of the Council and indeed that of his Cabinet colleague to be upheld, that it may be more appropriate for either himself or another Member of the Cabinet to take any future decision."

On being put to the vote the motion was declared carried, with 5 councillors voting in favour, 3 councillors voting against and 1 councillor abstaining from voting.

RESOLVED -

1. (a) That the Cabinet Member had taken the Delegated Decision based on a lack of evidence from the local community and on information that is of little relevance to the Localism Act 2011(Amended 2015).
- (b) That the Cabinet Member has misunderstood the process of listing as an Asset of Community Value as indicated in her closing remarks outlined in the following bullet points of the Call In from Councillors R Bradburn and Exon:
 3. The Officer report was flawed as it had a section set out at section 3.23 of the report on Compensation with an amount mentioned - this is not a fact that should have been in the report as it should not form part of the decision making process. As it was there it cannot discount the possibility of an influence on the decision.
 4. Despite over 30 members of the public (residents) attending and providing the very evidence that was required by the Officer report and the objectors to the listing (the solicitors for the Parks Trust and the Developers) such evidence was disregarding when making the decision.
 5. Not all residents were able to speak as the Decision maker said that the meeting was constrained by a following meeting which stopped further evidence being presented of a local business willing to invest in the site.
 7. The Decision maker in her concluding remarks also made an incorrect statement in that she stated that as this was the second Nomination

of the site the test had to be set higher. This is incorrect in law as all Nominations must be dealt with under the Localism Act and the merits of the case not the number of times a Nomination is made.'

2. That the Leader of the Council be asked to consider whether, for the good reputation of the Council and indeed that of his Cabinet colleague to be upheld, that it may be more appropriate for either himself or another Member of the Cabinet to take any future decision

THE CHAIR CLOSED THE MEETING AT 9.40 PM

