

## ITEM 3(a)

Minutes of the meeting of the DEVELOPMENT CONTROL COMMITTEE held on THURSDAY 04 NOVEMBER 2021

**Present:** Councillors Alexander, Balazs (substituting for Cllr Taylor), Bowyer, Clarke (substituting for Cllr Reilly), Exon, A Geary, Legg, Marlow (substituting for Cllr Lancaster), McLean, Middleton (Substituting for Councillor Baume) and Wallis (substituting for Cllr Cryer-Whitehead).

**Officers:** J Palmer (Head of Planning), C Nash (Development Management Manager), P Keen (Development Management Team Leader), S Bryant (CASS ALLAN, Environmental Health Consultant), N Sainsbury (Head of Placemaking), P Van Geete (Tariff Programme Manager), E Gineikiene (Senior Solicitor Planning), D Imbimbo (Committee Manager).

**Apologies:** Councillors Baume, Cryer-Whitehead, Lancaster, Priestley, Reilly and Taylor.

### **DCC31 INTRODUCTION AND WELCOME**

The Chair welcomed members of the public and councillors, advising that the meeting was being held both at the Civic Offices and remotely and would be broadcast live on YouTube, further explaining the procedures to be adopted.

### **DCC32 DECLARATIONS OF INTEREST**

Councillor Alexander asked that it be noted that in respect of applications 21/02650/DISCON and 21/02698/DISCON, he was the Ward Member for the site of the applications to be considered at the meeting. The site had a long planning history and he had previously participated in debates in Committee in respect of various applications however he had not discussed the merits of the applications to be considered at this meeting nor had he expressed a view and would approach the determination of them with an open mind.

Councillor Balazs asked that it be noted that in respect of applications 21/02650/DISCON and 21/02698/DISCON, he was the Ward Member for the site of the applications to be considered at the meeting. The site had a long planning history and he had previously expressed a

view and held a position of pre-determination and would therefore not partake in the meeting when those matters were considered.

Councillor Middleton asked that it be noted that in respect of Item 7 – Consultation on the draft Development Brief for CMK Theatre Multi-Storey Car Park Site, he was the Cabinet member who initiated the consultation and would therefore step down from the Committee during consideration of the Item.

Councillor Wallis asked that it be noted that in respect of Item 7 – Consultation on the draft Development Brief for CMK Theatre Multi-Storey Car Park Site, she was the Ward member for the site and had previously expressed views in respect of the site and would therefore step down from the Committee during consideration of the Item.

### **DCC33                    MINUTES OF PREVIOUS MEETINGS**

RESOLVED –

That the minutes of the meetings of the Development Control Committee on 2 SEPTEMBER 2021 and the Development Control Panel held on 16 SEPTEMBER 2021 be agreed as an accurate record and signed as such by the Chair subject to the correction of the numbering of the minutes of 2 September where minute DCC26 was repeated, the second DCC26 therefore being amended to read DCC27 and all subsequent minute numbers increased by 1.

### **DCC34                    PUBLIC PARTICIPATION**

#### **Questions**

The Committee received the following question from Councillor Greenwood representing Campbell Park Parish Council.

‘Why did MK Council not take immediate enforcement action to the recently reported alleged breaches of planning conditions at 42 Portland Drive and 2 Linford Lane in Willen?’

Campbell Park Parish Council are keen to offer its support, where appropriate, to MK Council to ensure that our resident can be confident that when matters are raised they are dealt with in an acceptable timeframe.’

The Development Management Manager responded;

‘The taking of enforcement action is a discretionary power of the Council. When this power is exercised, it must be done both in the public interest and proportionately. Furthermore, the decision to take formal action must be expedient, taking into account the

development plan. There must also be a gathering of robust evidence if the Council is to take action and defend any challenge against it.

Planning practice guidance points local planning authorities towards achieving mutual resolutions, either through negotiation to remove all or some elements of the breach which offend planning policy, and seek to regularise those differences through the submission of a retrospective planning application where possible.

At the time the complaints were received on both of the sites concerned, works were underway but not as advanced as they appear to this day. Early investigations on the latter, for example, identified that breaches had not yet occurred in some respects.

When an enforcement notice is served, it cannot take immediate effect – there is a 28-day period for it to do so. There must also be a reasonable period allowed to comply with the steps to resolve the breach set out in the notice.

If an appeal is lodged, compliance period is suspended until an appeal decision is issued. The compliance period may be varied by the Inspector.

For a breach of condition notice to be used, there must be absolute certainty that the condition has effect – that the development concerned has been carried out as approved and that the breach has occurred subsequent to the condition ‘biting’.

For a temporary stop notice, or full stop notice to occur, the degree of harm arising must be exceptional and causing serious environmental harm. Such powers attract a serious risk of compensation if planning permission is later granted for the development, either by the LPA or an Inspector.

For the avoidance of doubt, enforcement action cannot be pre-emptive except in the most serious of cases. For this, an injunction would be required from the Courts for which a very high evidential bar exists.

Moving forward, the Planning Service has and continues to take proactive steps towards improving the enforcement function. This includes the recruitment of a senior enforcement officer to increase resource, a new team leader who brings considerable experience around improvements to such a function, and continuing work towards improving processes through the Planning Improvement Board.

The current Enforcement Plan sets out the expectations on officers in undertaking an initial investigation of a complaint, and improved monitoring of complaints is helping to ensure resolutions are being reached in a timely and proportionate fashion.'

As a supplementary question Councillor Greenwood asked if the Planning Service was willing to work with the Parish Council to progress any enforcement action in a timely fashion.

The Development Management Manager confirmed that was the intention whenever practical to do so.

#### **DCC35 REPRESENTATIONS ON APPLICATIONS**

Mr D Stabler and Mrs D Scholefield spoke in objection to application 21/02698/DISCON, Details submitted for approval pursuant to condition 17 (noise management plan) of permission ref. 18/02341/FUL, relating to demolition of existing B8 storage and distribution warehouse and erection of a new B8 storage and distribution warehouse with ancillary B1 floorspace and associated works at Blakelands 1, Yeomans Drive, Blakelands, Milton Keynes.

The Applicants Agent Mr N Harris exercised the right of reply.

#### **DCC36 CORRECTION OF DEVELOPMENT CONTROL COMMITTEE MINUTES OF 8 OCTOBER 2020**

The Chair told the Committee that he had agreed to reorder the agenda to take this Item early as the Head of Democratic Services, who would present it, had another later appointment.

The Head of Democratic Services introduced the report. The Committee heard that following a review of Committee decisions it had been established that the minutes of the Development Control Committee of 8 October 2020, had an incomplete minute at DCC42.

The circumstances being that the published late paper had referred to additional s106 contributions but therein it stated the exact figures would be reported verbally at the meeting, these figures had been reported but not detailed in the minute.

At the meeting, the Case Officer's presentation had also highlighted an updated s106 financial contribution and the agreement of a Heads of Terms, which would be required by a legal agreement accompanying the approval of the application. These were agreed by the Committee. The meeting had been recorded and was available to review on YouTube.

The minutes were approved and signed by the Chair as a correct

record on 5 November 2020, a resolution of the Committee is now required to correct the position and enable the additional contribution to be included in the minute and in turn the s106 agreement.

The Committee was told that it was evident from the recording that it was clearly cognisant of the additional s106 contribution by way of the officer update. The amendment did not seek to change the original resolution, which reflected the additional conditions and contributions in the update paper of which the committee was further updated by way of the case officer presentation. Instead, the amendment was to make clear that the figures for the education contribution, which was marked 'TBC' in the update paper that was referred to in the minute, was communicated to the committee.

The Chair, seconded by Councillor McLean, proposed that minute DCC42 of the Development Control Committee of 8 October 2020, approved and signed by the Chairman at the meeting of 5th November 2020 be amended, in order to correct an inaccuracy subsequently discovered, and,

That the words 'During the presentation the Committee were apprised in respect of the update paper and specifically:

- of the agreed s106 contribution for education of £2,800,000.00; and,
- that a s106 Head of Terms had been agreed between the applicant and the Council.'

be added at the end of paragraph 11 of minute DCC42.

The proposal was carried by acclamation.

RESOLVED –

1. That the minute DCC42 of the Development Control Committee of 8 October 2020, approved and signed by the Chairman at the meeting of 5th November 2020 be amended, in order to correct an inaccuracy subsequently discovered.
2. That the words 'During the presentation the Committee were apprised in respect of the update paper and specifically:
  - of the agreed s106 contribution for education of £2,800,000.00; and
  - that a s106 Head of Terms had been agreed between the applicant and the Council.'

be added at the end of paragraph 11 of minute DCC42.

**DCC37**

**PLANNING APPLICATIONS**

**21/02650/DISCON**

**DETAILS SUBMITTED FOR APPROVAL PURSUANT TO CONDITION 18 (TRAFFIC MANAGEMENT) OF PERMISSION REF. 18/02341/FUL, RELATING TO DEMOLITION OF EXISTING B8 STORAGE AND DISTRIBUTION WAREHOUSE AND ERECTION OF A NEW B8 STORAGE AND DISTRIBUTION WAREHOUSE WITH ANCILLARY B1 FLOORSPACE AND ASSOCIATED WORKS AT BLAKELANDS 1, YEOMANS DRIVE, BLAKELANDS, MILTON KEYNES FOR GUPI 6 LTD.**

Councillor Balazs, having declared an interest, stood down from the Committee during consideration of the application.

The Committee noted that an additional update paper had been published earlier in the day and to ensure and enable those members of the Committee who had not had opportunity to read it to do so the Committee took a short recess.

On resuming the meeting, at the invitation of the Chair, the Development Management Team Leader introduced applications 21/02650/DISCON and 21/02698/DISCON together.

The Committee heard an explanation of what the application sought and that it was a requirement of a condition applied to planning application 18/02341/FUL, therefore the Committee was not able to add an additional condition but rather accept the submitted details as being adequate to fulfil the original condition or reject the submitted details as not fulfilling the condition.

The Committee was told that there was no further update and that the recommendation in respect of both

applications was to approve the submitted details.

Following a recess to consider options and seek advice in respect of application 21/02698/DISCON, the Chair, seconded by Councillor McLean, proposed the Officer recommendation to approve the details submitted pursuant to condition 18 (traffic management) of planning permission ref. 18/02341/FUL.

On being put to the vote the motion was carried unanimously.

RESOLVED –

That the details submitted pursuant to condition 18 (traffic management) of planning permission ref. 18/02341/FUL be approved.

#### **21/02698/DISCON**

**DETAILS SUBMITTED FOR APPROVAL PURSUANT TO CONDITION 17 (NOISE MANAGEMENT PLAN) OF PERMISSION REF. 18/02341/FUL, RELATING TO DEMOLITION OF EXISTING B8 STORAGE AND DISTRIBUTION WAREHOUSE AND ERECTION OF A NEW B8 STORAGE AND DISTRIBUTION WAREHOUSE WITH ANCILLARY B1 FLOORSPACE AND ASSOCIATED WORKS AT BLAKELANDS 1, YEOMANS DRIVE, BLAKELANDS, MILTON KEYNES FOR GUPI 6 LTD.**

Councillor Balazs, having declared an interest, stood down from the Committee during consideration of the application.

The Committee noted the introduction of the application as minuted for application 21/02650/DISCON.

The Committee heard from objectors who raised concerns in respect of the Noise Management Plan

The Committee was told that the Noise

Management Plan stated that there must be an appointed noise manager, it further stated that there was a complaints process and that the noise manager was responsible for dealing and responding to complaints, however it failed to include a requirement on the operator to inform the residents who the noise manager was or how they can be contacted. Objectors dismissed the arguments put forward by the Planning Officers in the published update papers for not placing a requirement on the operator to provide the details of the noise manager. It was also commented that minor noise issues would not necessarily amount a planning breach but it should be possible for the residents to report such issues directly to the noise manager to resolve.

Objectors acknowledged that the recommendation from Officers was to include an informative with the decision notice, however, an informative did not have any legal standing and the actions recommended did not to be carried out and therefore did not provide adequate protection for residents.

It was further commented that the Council has not had an out of hours noise reporting facility since 2017 and not having a contact point at the warehouse would mean nothing could be dealt with for several days at weekends.

The Applicant's agent told the Committee that he believed that the Officers assessment was accurate and fair, it was commented that the building had been empty 2 years since completion and these were the last two conditions that required approval, the noise management plan had been significantly revised to take account of earlier representations by members of the public and Officers and their advisors; and the

proposed occupants of the building wanted to establish themselves as 'good neighbours'.

The Applicant's agent further stated that the Officer explanation of why it was not considered appropriate to have residents contact the site directly with noise complaints, but rather to report noise issues to the Council to ensure that appropriate action can be taken was in keeping with best practice for enforcement action to taken if required.

Members of the Committee sought further clarification in respect of what options were available to the Committee to apply additional conditions, it was explained that further conditions could not be applied to what would be the original application decision made in 2018.

In response to a question the Development Management Manager explained that the Committee had the alternative options to reject the submitted details or defer and seek an amendment, however, should the Committee defer the decision pending a possible amendment to the Noise Management Plan, and a decision was not made by the determination date, the provisions within the legislation for a deemed discharge may be applied and the Applicant could benefit from that, the date in question was imminent and there remained a significant risk in that respect.

The Committee was reminded that there was also an option to delegate the decision to discharge the condition to Officers subject to amendments being agreed.

The Chair invited the Officers to discuss with the Applicant whether there was scope to agree an amendment to the Noise Management Plan.

The Chair adjourned the meeting to allow Officers to consider the views of the Committee and make a recommendation as to the way forward.

On resuming the meeting, the Chair, seconded by Councillor McLean, proposed that proposed that approval of application 21/02698/DISCON be delegated to the Head of Planning in consultation with the Chair and Vice Chairs of the Committee subject to the applicant including the following wording in a revised Noise Management Plan;

‘The Applicant/future occupiers of the site provide the contact details of the appointed site manager (and any changes to that appointed person) at each entrance/exit to the site’

In the event that the amendment is not received within 5 working days the details as submitted be refused.

Councillor A Geary stated that the reason being that due to the failure to provide suitable contact details for local residents to report noise complaints to the operator, it is considered that the submitted Noise Management Plan would not provide adequate means in which to ensure noise complaints are adequately raised and subsequently responded to. The Local Planning Authority is therefore not satisfied that the submitted Noise Management Plan would suitably meet the requirements of Condition 17 of planning permission 18/02341/FUL, in the interests of protecting the amenity of adjoining and nearby residents, and in turn conflicting with policy NE6 of Plan:MK and policy GLPC N13 (parts (c) and (e)) of the Great Linford Parish Neighbourhood Development Plan North.

On being put to the vote the proposal was carried unanimously.

RESOLVED –

That Approval of Application 21/02698/DISCON be delegated to the Head of Planning in consultation with the Chair and Vice Chairs of the Committee, subject to the applicant including the following wording in a revised Noise Management Plan;

‘The Applicant/future occupiers of the site provide the contact details of the appointed site manager (and any changes to that appointed person) at each entrance/exit to the site’

In the event that the amendment is not received within 5 working days the details as submitted be refused because due to the failure to provide suitable contact details for local residents to report noise complaints to the operator, it is considered that the submitted Noise Management Plan would not provide adequate means in which to ensure noise complaints are adequately raised and subsequently responded to. The Local Planning Authority is therefore not satisfied that the submitted Noise Management Plan would suitably meet the requirements of Condition 17 of planning permission 18/02341/FUL, in the interests of protecting the amenity of adjoining and nearby residents, and in turn conflicting with policy NE6 of Plan:MK and policy GLPC N13 (parts (c) and (e)) of the Great Linford Parish Neighbourhood Development Plan North.

**DCC38                    CONSULTATION ON THE DRAFT DEVELOPMENT BRIEF FOR THE CMK THEATRE MULTI-STOREY CAR PARK SITE**

Councillor Balazs re-joined the meeting. Councillors Middleton and Wallis having declared an interest, stood down from the Committee during consideration of the item.

The Committee considered a report, introduced by the Head of Placemaking. The Committee was reminded that the Council had agreed a protocol in respect of the process to be adopted prior to a

Development Brief being agreed by the relevant Cabinet member, this included the Development Control Committee being presented the draft document as a formal consultee. The Head of Placemaking gave an overview of the of the Development Brief, its purpose and the focus of this brief in particular and invited comment.

The Committee heard from Councillor P Murphy, (CMK Town Council), who told the Committee that the Town Council was not opposed to the redevelopment of the site, however in respect of the uses being proposed held a view that the site was to be considered as a community asset and should be used to meet the planning aspirations of Central Milton Keynes as set out in the Neighbourhood Plan and Plan:MK. The Town Council would suggest that it was a suitable site for such uses as facilities to boost the night-time economy. Therefore, the Town Council believe that the main emphasis of the brief should be to create a leisure and entertainment complex, to be a draw for visitors and to increase both education and employment opportunities. The site should not be used as a residentially led development which will not deliver on those aspirations. The nature of facility that the centre could include are a music venue, workshops and studio space for small businesses and education space where dance, theatre, film and digital technology can be taught. In general, the Town Council supported the brief, recognising that a placemaking scheme was needed with a mix of use and 24/7 pedestrian access.

Councillor Murphy was invited to feed any comments into the consultation process.

Councillor McLean commented that the brief was welcome as it should encourage the development of facilities much needed in Central Milton Keynes.

RESOLVED –

That the report and comments be noted.

THE CHAIR CLOSED THE MEETING AT 8:42 PM