

Minutes of the meeting of the **DEVELOPMENT CONTROL COMMITTEE** held on **THURSDAY 4 APRIL 2019** at 7.00 pm.

**Present:** Councillors: Alexander, Baines, Bint, Brown, Exon, A Geary, Legg McLean, Middleton (substituting for Councillor Williams), Morla and C Wilson

**Officers:** M Bracey (Chief Executive), P Simpson (Deputy Chief Executive), T Darke (Director Growth, Economy and Culture), E Verdegem (Senior Planning Officer), P Caves (Engineer - Development Management (Highways)), P Cummins (Head of Legal Services and Deputy Monitoring Officer). N Roy (Principal Solicitor) and D Imbimbo (Committee Manager).

**Apologies:** Councillor Williams

**Also Present:** Councillors Carr, D Hopkins, Miles, Morris and approximately 150 Members of the Public.

#### **DCC65 INTRODUCTION AND WELCOME**

The Chair welcomed members of the public and Councillors to the meeting and explained the procedures to be adopted.

#### **DCC66 MINUTES OF PREVIOUS MEETING**

RESOLVED;

That the minutes of the meeting of the Development Control Panel held on 28 FEBRUARY 2019 be agreed as an accurate record and signed by the Chair as such.

#### **DCC67 DECLARATION OF INTERESTS**

Councillor Middleton asked that it be noted that in respect of application 18/00834/FUL the application was within his ward and he had a predetermined position and would be speaking in objection to the application, he would therefore step down from the Committee during consideration of that application.

Councillor Alexander asked that it be noted that in respect of application 18/02341/FUL he was the Ward Councillor, he has had discussions with residents but would listen to the arguments and make a decision on the merits of the application.

Councillor Legg asked that it be noted that in respect of application 18/01304/REM he was a frequent user of the Stables who were objecting to the application and was a 'friend' of the Stables but would judge the application on its merits.

Councillors Bint and Legg asked that it be noted that in respect of application 18/00834/FUL they had received a large volume of

correspondence, as they believed other members of the committee had, but had not responded or formed an opinion and would be making a decision on the application on its merits after hearing the debate and representations.

Councillor McLean stated that he was aware that all members had been in receipt of the correspondence and that should any member of the committee feel that they are adversely prejudiced in light of that they should step down. No member declared a prejudicial interest.

**DCC67 PUBLIC PARTICIPATION**

No Questions, Petitions or Deputations had been received.

**DCC68 REPRESENTATIONS ON APPLICATIONS**

Mr S Hussey, Mr J Fernandez and Councillor Stabler (Great Linford Parish Council) spoke in objection to application 18/02341/FUL 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 Applicant's agent declined the right of reply.

Mr T Taylor, Mr I Revell, Mr M Leroy and Councillor D Hopkins (Ward Councillor and member of Wavendon Parish Council) spoke in objection to application 18/01304/REM Reserved matters application for internal access, appearance, landscaping, layout and scale for 134 units, 75-100 sqm of A1 (retail use) for the provision of a local convenience store with access from Ortensia Drive and the land north of the site, with associated landscaping, infrastructure and ancillary works at Land North and West of Wavendon Business Park, Ortensia Drive, Milton Keynes, Wavendon Gate.

The Applicant's agent Mr J Brindley exercised the right of reply.

Councillor Middleton spoke in objection to application 18/00834/FUL The erection of a Class A1 foodstore (1,916 sq m gross floor area) with associated access, car parking and landscaping at Herald Snooker Club, Mcconnell Drive, Wolverton, Milton Keynes.

The Applicant's agent Mr D Templeton exercised the right of reply.

Councillor Miles spoke in a neutral capacity in respect of the application.

**DCC69 REFERRAL FROM SCRUTINY MANAGEMENT COMMITTEE**

The Committee received a referral from the Scrutiny Management Committee meeting held on Wednesday 27 February 2019 requesting the Development Control Committee be recommended to encourage Developers, as part of the pre-application stage of submitting a planning application, to consult with parish and town councils.

The Director Growth, Economy and Culture confirmed that she would seek to include within the pre-application process an initiative to seek to encourage developers to undertake consultation but it should be noted that this was not something that they could be compelled to undertake.

RESOLVED –

That the referral and proposed action be noted.

**DCC70**

**PLANNING APPLICATIONS**

**18/02341/FUL 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 BLAKELANDS 1, YEOMANS DRIVE, BLAKELANDS, MILTON KEYNES FOR GUPI 6 LIMITED.**

The Director Growth, Economy and Culture introduced the application.

It was noted that the application had been previously determined by the Committee in November 2018, subject to a revocation order included within the s106 agreement in respect of the original application which had been granted but the decision notice issued in error with numerous conditions missing, however at that time the developer had declined to sign the s106 agreement and therefore the application had remained 'not granted'.

The Committee was reminded that the original application having been issued in error with numerous conditions missing from the decision notice, the application when considered in November, had sought to reinstate those omissions. Since that time an 'out of time' Judicial Review (JR) had been instigated by the local residents, which was presently on hold, and in addition, the Council had sought to apply lighting conditions using the s102 procedure.

The applicant had since asked that the November application be reconsidered by the Committee and has entered into an Unilateral Agreement in respect of the s106 obligations, agreeing not to rely on the original erroneous permission. This was considered by the Council to be a reasonable means to provide the necessary protection for

resident's amenity that would have been afforded had the original application been issued correctly.

The Committee heard that late representations had been received from Great Linford Parish Council in respect of lighting and therefore a revised condition was recommended to replace that published in the update report to read:

'Prior to the installation of any external lighting, details of external lighting including security lighting shall be submitted to and approved in writing by the local planning authority. The plans shall show lighting proposed in accordance with BS5489 standards. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development does not detract from residential amenity and appearance of the locality.'

It was further noted that to make a new determination in respect of the same application it would be necessary for the Committee to rescind the decision taken in November.

It was recommended that the Committee rescind the decision taken in November and grant the application subject to the conditions as detailed in the Committee report, update report and to include the revised condition as above.

The Committee heard from objectors and the representative of Great Linford Parish Council who raised the following issues;

- Speakers did not wish to comment on the recommendation to rescind the decision taken in November and comments were directed solely in respect of the recommendation to grant the application.
- The existing original permission despite the omitted conditions does include a condition restricting hours of operation for the warehouse which was in many respects the most important of all, that condition cannot now be appealed as the time to lodge an appeal has elapsed, however, if the application before the Committee is granted the same condition will now be eligible for

appeal and it is considered by the residents too great a risk to afford that facility to the applicant.

- Local residents believe that if the new application is granted that condition of operating hours will be appealed.
- It was acknowledged that the previous decisions made by the committee were planning considerations however there was case law that supported not granting an application as members still retain a discretion.
- The restrictions on lighting may not be sufficient to protect the amenity of neighbouring residents, in the event that the operating hours are successfully appealed the lighting would be required 24/7.

The Director Growth, Economy and Culture acknowledged that approving the application would enable the applicant to appeal all conditions, however, the JR being pursued by the residents sought, if accepted, to quash the original decision issued without all the conditions and replace it with a new decision notice to include the conditions that had been missed off, however that would then be eligible for appeal, therefore outcome of the decision being taken at this meeting would achieve the same outcome, the difference however was that the applicants had undertaken to enter into the Unilateral Undertaking not to continue development with the original permission.

Councillor McLean proposed, seconded by Councillor Exon, that the officer recommendations be agreed.

Members sought clarity in respect of the potential outcomes of the various proceedings that were being undertaken and any implications that making a decision on the application may have on them. It was reaffirmed that the outcome of those actions would be unlikely to be any different to the outcome that was being sought by virtue of the application before the Committee. It was confirmed by the Solicitor that none of the proceedings that had been initiated would result in the removal of

the development but this was believed to be the most effective way to seek to protect the amenity of the residents as much as was possible in the circumstances. It was further noted that the Council had initiated an internal investigation (conducted by an independent reviewer) to examine the entire planning process as it had been applied to the original application and seek to understand why it had been put to committee and approved, it was commented by the Director Growth, Economy and Culture that the determination of the application had not been delayed awaiting the outcome of that investigation as it was considered more important to put in place mitigation to protect the residents as soon as practicable, likewise despite concerns that granting a new application would open the option to appeal conditions, the outcome of the Judicial Review, if successful, would have the same effect, the Council would however fight any such appeal.

On being put to the vote the proposal to rescind the decision made in November 2018 was carried.

On being put to the vote the proposal to grant the application, subject to the conditions as detailed in the committee report, with the additional condition as detailed above was carried.

**RESOLVED –**

1. That the resolution made at the 8th November 2018 Development Control Committee (DCC) to grant planning permission subject to conditions and a s.106 agreement (to require revocation of the original planning permission) be rescinded.
2. That planning permission be granted, subject to the conditions recommended at section 9.0 of the Committee report amended as detailed above and a s106 unilateral undertaking

**18/01304/REM**

**RESERVED MATTERS APPLICATION FOR INTERNAL ACCESS, APPEARANCE, LANDSCAPING, LAYOUT AND SCALE FOR 134 UNITS, 75-100 SQM OF A1 (RETAIL USE) FOR THE PROVISION OF A LOCAL CONVENIENCE STORE WITH ACCESS FROM ORTENSIA**

**DRIVE AND THE LAND NORTH OF THE SITE, WITH ASSOCIATED LANDSCAPING, INFRASTRUCTURE AND ANCILLARY WORKS AT LAND NORTH AND WEST OF WAVENDON BUSINESS PARK, ORTENSIA DRIVE, MILTON KEYNES, WAVENDON GATE FOR ABBEY DEVELOPMENT LTD.**

The Senior Planning Officer introduced the application with a presentation.

The Committee heard that an update paper had been published detailing updated conditions and had been made publicly available.

It was noted that the determination of the application had been deferred at the previous meeting to allow additional discussion between the objectors and developers with a view to establishing whether the developer was willing to seek a deed of easement to avoid concerns that future occupants of the properties would complain in respect of noise nuisance from the music venue adjacent to the site. Since that time the developer had agreed to install high specification glazing on additional units on the eastern third of the site to ensure that there is additional mitigation to noise concerns, in addition to other measures that have been taken over and above those suggested by Council's acoustic consultants. It was further noted that a late submission from the objectors had not been fully assessed due to the timing of the submission, however the environment health officers were satisfied by the measures taken. It was further commented that there were existing properties closer to the music venue that did not have the same mitigation for noise as that proposed for the new dwellings, therefore the recommendation remained to grant the application subject to the conditions detailed in the committee report amended as detailed in the published update paper.

The Committee heard representations from objectors who raised the following concerns;

- It had been anticipated that the application would have returned for determination in June and therefore submissions had been made late.
- The site had originally been designated for

office and commercial development which would have been more compatible with the existing adjacent live music venue.

- There remained concern that there would be future conflicts in respect of noise between residents and the music venue.
- Full noise mitigation arrangements should be addressed at this stage of the application process.
- None of the acoustic reports had satisfactorily addressed the issue of low frequency base noise, particularly that which travelled through the ground.
- The objectors had invited the developers to enter into a deed of easement to ensure that future occupants would not make complaints in respect of noise, the developers had sought to have the determination before opportunity to have discussions in respect of this matter.
- The absence of a deed of easement put at risk an important asset for Milton Keynes, the stables being both nationally and internationally seen as one of the foremost important music venues.
- A deed of easement is a lawful planning mechanism and should be required by condition.

The applicant's agent told the committee that the developer had taken measures over and beyond those recommended or required by environment health to mitigate any risk of noise pollution.

All measures asked for by the objectors including a buffer zone, acoustic fence landscaping etc. has been provided for, despite this the objectors have now made late requests for additional mitigating measures.

The developer does not believe that a deed of easement is either necessary or reasonable given the amount of acoustic mitigation provided.

The Committee heard that the developer had submitted an acoustic report that had been assessed independently and confirmed that the measures being taken were deemed beyond what

was required.

Councillor McLean, seconded by Councillor Legg, proposed that the officer recommendation to grant the application subject to the conditions as detailed in the report and the published update report.

Members of the committee shared concerns in respect of the risk of complaints being made by future residents despite all the additional mitigation provided by the developer, Councillor A Geary further stated that he was aware of situations where despite long established practice, such as the ringing of church bells, occupants of new developments had made complaints in respect of noise and the resultant costs and disruption to all parties are significant, this was something that could potentially be negated by the entering of a deed of easement. The application was considered in all other respects acceptable.

Councillor A Geary proposed, seconded by Councillor Baines, that, in light of the risk a condition be added to require that a deed of easement be entered into in respect of the relevant dwellings, and that the final wording be delegated to the Director Growth, Economy and Culture in consultation with the Chair and Vice Chairs of the Committee.

The Director, Growth, Economy and Culture confirmed that should this be agreed it would be appropriate to use it to replace condition 13 as listed within the committee report.

On being put to the vote the motion for a condition to require the developer to enter a deed of easement with The Stables in respect of the relevant properties was carried.

On being put to the vote the motion to grant the application subject to the conditions as detailed in the Committee report and the published update report with condition 13 replaced by a condition requiring the developer to enter into a deed of easement with The Stables in respect of the relevant properties was carried unanimously.

**RESOLVED –**

That the application be granted subject to the conditions as detailed in the Committee report and the published update report with condition 13

replaced by a condition requiring the developer to enter into a deed of easement with the stables in respect of the relevant properties.

**18/00834/FUL**

**THE ERECTION OF A CLASS A1 FOODSTORE (1,916 SQ M GROSS FLOOR AREA) WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING AT HERALD SNOOKER CLUB, MCCONNELL DRIVE, WOLVERTON, MILTON KEYNES FOR ALDI STORES LIMITED.**

Councillor Middleton stepped down from the Committee during consideration of this application but spoke in objection.

The Senior Planning Officer introduced the application with a presentation.

The Committee heard that further objections had been received following the publication of the update paper in respect of the proposed 'toucan crossing', however matters raised are addressed in the committee report.

It was confirmed that the recommendation remained to refuse the application for the reasons stated in the Committee report.

Councillor Middleton told the Committee that he held the following concerns;

- The proposal was contrary to the Plan:MK and the Neighbourhood Plan.
- The proposal was also in breach of policy within the NPPF.
- The Agora Centre in Wolverton Town Centre had been recently purchased and was due to be developed in the near future; a total of £25m was proposed to be invested in Wolverton Town Centre.
- The proposal for this development failed in terms of the retail impact assessment as it was likely to have a serious negative impact on small business in the area.

The applicant's agent told the Committee that the applicant had undertaken extensive stakeholder consultation prior to the submission of the application, including the Ward Councillors, there was also overwhelming support for the application from residents in the area.

It was also commented that despite some

objections on the grounds of access, the Council's Highways Officers had made no objection to the negotiated scheme.

The Committee also heard from Councillor Miles (Ward Councillor) who provided the Committee with background information but raised no objection to the scheme.

The Director Growth, Economy and Culture explained the process of the sequential testing undertaken as part of the Retail Impact Assessment and confirmed that the finding strongly supported the view that the development of an Aldi Store at this location would have a serious detrimental impact on Wolverton Town Centre should it be agreed.

Councillor McLean proposed that the officer recommendation to refuse the application for the reasons as detailed in the committee report be agreed, this was seconded by Councillor Legg.

Councillor Baines, as a HGV delivery driver, expressed concerns in respect of the layout of the car park and delivery arrangements which would require delivery vehicles to drive through the customer car parks and reverse into delivery bays in conflict with both pedestrians and other vehicles.

Furthermore, Councillor Baines asked that the Committee supported the notion that a review into such applications be conducted to ensure that no further applications for commercial properties came forward where there was conflict between delivery vehicles and customers by virtue of the parking arrangements.

Some members took a view that the site should not be classified as being within Wolverton but would instead serve estates such as Stacey Bushes Bancroft and Bluebridge, and therefore the finding of the retail assessment should not preclude provision of retail facilities for estates on the periphery of Wolverton Town. It was however a concern that the parking and delivery arrangements were such that they amounted to a reason to refuse the application in its current form, whereas the stated reasons for refusal based on the retail impact assessments were not necessarily relevant to this application unless they took account of the requirements of other local estates which did not seem to be the case.

The Highways Officer confirmed that he held some concerns in respect of the parking and delivery arrangements but recognised that the impact was not severe enough to sustain a reason for refusal but would welcome a revision of arrangements should the application be granted.

It was also commented that the Council having recently adopted Plan:MK, it would be improper to allow an application which was so clearly in conflict with policies to protect Town Centres.

On being put to the vote the application was refused for the reasons stated in the committee report with 5 members voting in favour of refusal and 4 against and one member abstaining.

RESOLVED –

That the application be refused for the following reasons;

1. The proposed development of this out of centre site would have a detrimental impact on the vitality and viability of Wolverton town centre. Local planning policies provide a framework for the regeneration of Wolverton town centre, and in particular the Agora, which is a priority redevelopment site. The proposed development has the potential to harm the vitality and viability of Wolverton town centre and undermine the regeneration policies. Therefore, the proposals would be contrary to the Retail Hierarchy set out in Policy ER10 of Plan:MK as it would be harmful to the vitality and viability of existing town, district and local centres. The application would therefore be unacceptable and would fail to accord with Strategic Objective 8 of Plan:MK, Policy ER10 of Plan:MK and Policy W1 of the Wolverton Town Centre Neighbourhood Development Plan.
2. The proposed retail use is contrary to the existing Community land use allocation Policy L2 of the adopted Plan:MK 2016 - 2031 with regard to the current land designation. Insufficient information has been submitted to demonstrate that there is no longer a need for the community facility and land associated with it or that an

alternative facility would be provided elsewhere. The proposed development is therefore considered to result in the loss of a community facility, which is unacceptable and that would be contrary to Policy L2 of the adopted Plan:MK 2016 - 2031.

3. In the absence of necessary planning obligations being secured by a s106 agreement, the applicant has failed to demonstrate that the proposed development would not lead to a burden on or have an adverse impact on existing local social and sustainable infrastructure, education and leisure facilities. The proposal is therefore contrary to the guidance within Supplementary Planning Documents (SPDs) for Social Infrastructure SPD (2005), and Sustainable Construction SPD (2007) which support Policy INF1 and Policy SC1 of Plan:MK and the aims of the National Planning Policy Framework (NPPF).

**19/00327/DISCON DETAILS SUBMITTED PURSUANT TO THE DISCHARGE OF CONDITION 5 (DESIGN CODE) ATTACHED TO PLANNING PERMISSION 15/01074/OUT AT INTU, MIDSUMMER PLACE, CENTRAL MILTON KEYNES FOR INTU MILTON KEYNES LTD.**

The Senior Planning Officer introduced the application with a presentation.

It was noted that as the outline planning permission had been granted by the Secretary of State following a call in, the Committee was now asked to approve the design code and discharge the relevant condition.

The Committee heard that there was no update on the Committee report and that the recommendation remained to approve the condition.

Councillor McLean proposed that the Officer recommendation be agreed, this was seconded by Councillor Exon.

It was noted that a small piece of land within the red line area was not in the control of the applicant but was part of the adopted highway, this was not seen as being detrimental to the design code proposed as the design code should cover all of the

area within the red line of the outline permission, and any issues would be dealt with in the reserved matters application. It was commented that having this section as part of the landscaping scheme could be seen as beneficial.

On being put to the vote the proposal to approve the design code and discharge the condition was carried with 10 members voting in favour and one abstaining.

RESOLVED –

That the design code be approved and the relevant condition be discharged.

#### **DCC71 CURRENT APPEALS**

The Committee considered a list of current appeals and their status and was invited to submit any comments as to what additional information members would want to see in a report to the Senior Planning Officer.

As information Item, the Director Growth Economy and Culture told the Committee that work was being undertaken to revise neighbour notification letters and other correspondence sent to interested parties in advance of Committee considering applications to reduce the bureaucracy of the current system and cut risk of errors.

RESOLVED –

That the report be noted

THE CHAIR CLOSED THE MEETING AT 21:30 PM