

CONFIDENTIAL – Blakelands MK

Milton Keynes – a) Preliminary Comments and b) 1st Draft Scope for a MK DM Planning Review

For Tracy Darke

By Marc Dorfman – Town Planning Management Ltd

@ 10-3-19

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APPENDIX 1. Framework for “Broad” MK Review Proposal by MD – attached separately.

A. INTRODUCTORY MEETING & MD CAPACITY

1. Further to an introductory meeting on 7/3/19 at MK offices and after a site visit, Marc Dorfman (MD) agreed to provide Tracy Darke with initial comments and a draft scoping document for a potential MK DM Planning Review. The officers attending the meeting were:
 - Paul Simpson
 - Tracy Darke
 - Katrina Hulatt
 - Nazneen Roy
 - Paul Cummings (? Spelling – sorry I didn’t get this name)
 - G Singh (? Spelling – sorry I didn’t get this name)
 - (Apologies did not get all the titles either)
2. The introductory meeting was an interview to see if MD might be suitable for the job of carrying out a review.
3. MD said after the “scoping work” - if MK wanted to call it a day MD would simply charge for the work done and travel. If a full commission resulted, the initial work would be thrown in. MD did not say at the time – but MD rates are £600 a day + travel and any accommodation. MD said he would consider and set out a proposed Review timescale and resources and if anyone else would be needed to help. MD said to MK that they should be ruthless about what they wanted and he was happy to help or not -important that MK got what they wanted. MD said it would be sensible if the Review went over the election. MK agreed and

thought it would report in September/October. MD explained that he effectively had no time in March, 1-2 weeks in mid/late April; 1 week in May; 1 week in June – and was freer from July onwards.

B. KEY QUESTIONS STILL TO BE ANSWERED

4. In retrospect, after the meeting, MD felt he should have asked a number of key questions:
 - 4.1 Who is in charge in the Council of reviewing the key mistake (Decision Notice 16/03023/FUL being sent out with a) incorrect conditions, (Doc 2 nos 9 and 10) and b) the missing 14 conditions, (Doc 1 conditions 8 – 21) agreed by Planning Cttee? Has this been done? What is the answer?
 - 4.2 Is there a written time line of actions and documents from any scheme/site pre app to the 102 Order; the 102 Inquiry and MK Audit that is planned to start in March – setting out dates; documents and officer actions? If not why not?
 - 4.3 Have a number of simple things been done:
 - investigation of how and who made the mistake (s) of issuing the wrong DN and the time it took to recognise this?
 - Why a 102 Order was recommended instead of negotiation with applicant on relevant conditions and the obvious DN mistake?
 - Investigation into if the new development will be able to be successfully let/sold, (to John Lewis?) with all the 14 conditions missing?
 - Counsel advice on the issuing of the obviously incorrect DN?
 - Current position in the Council of 2 clear projects a) to fix the development mistake an b) fix the administrative mistake?
 - Has the scheme been built in accordance with the approved plans with reference to DN 17-1-18 – this is critical for the review?

C. MD REVIEW OF 8 DOCUMENTS SENT BY MK

5. MD was asked for his view on the 16/03023/FUL Blakelands officer report and on the scheme itself. MD said he thought the report was not very good and neither was the scheme. **On further reflection and on further reviewing the documents** – whilst MD still feels:
 - a) the scheme is poor,
 - b) the officer report contains a number of issues of “poor practice” and
 - c) that in MD’s view the officer recommended “planning balance” was not correct – **MD now thinks:**

- d) the officer recommendation is in fact sound, based on a professional assessment of material planning matters and that
- e) in principle would not be open to maladministration.

Again – please note, in hindsight, MD disagrees with the officer’s final planning balance. But MD concludes that the report is broadly administratively acceptable and reveals poor practices rather than errors. These are all set out below in detail. MD was sent 8 MK documents. These are attached in order and then reviewed below in paragraphs 10 to 44. MD has coloured the review comments:

- **RED – a critical preliminary conclusion**
- **BLUE – poor practice -something to be discussed/reviewed**
- **GREEN – need for further investigation**
- **BROWN – a clear error, wrong doing**

MD has to date found no **BROWNS apart from the issuing of the incorrect Decision Notice.**

D. MD – INTERIM CONCLUSIONS & REVIEW PROPOSALS

6. The following interim conclusions are put forward to MK for consideration:

- MK initially has not sent MD a strong and clear time line with all relevant documents and actions and linked officers. MD is concerned that this has not already been done. Most of the documents sent to MD so far have no dates. No information about 18/02341/FUL.
- MD would like to see the answers to questions set out in 4 above before going forward.
- In the light of paragraph 5 above, 2 types of Review are proposed to MK:
 - a) **A Simple and Tight Review** around paragraphs 10 to 44below, (after the questions in 4 are answered), the Cttee report and its assessment and procedures. Effectively I have drafted the Review Issues in paragraphs 10 to 44 below. The headings would simply be:
 - Consultations and Representations on Application 16/03023/FUL
 - Consultation and key Planning Application Procedures
 - Report Introduction
 - Considerations
 - Design
 - Visual Impact
 - Impact on Residential Amenity
 - Dominance and Visual Intrusion
 - Highways and Parking
 - Pollution
 - Noise
 - Air Pollution

Light Pollution
Contamination
Landscaping and Trees
Flood Risk
Ecology
S106 Contributions
Report Conclusions
Conditions

b) A Broader Review, (again depending on the answers to 4 and “further investigation” issues below). A Framework for a Broader Review is set out at Appendix 1. This is not fully formed or worked through – but hopefully it is sufficient to give MK an idea. **It takes as its base the PAS DM Challenge document.**

7. Either review should take until Sept/October. Both should involve:

- Consultation with stakeholders on the scope of the review March/April
- Publish final scope in June
- Review July - September
- Publish draft Review for comment in Sept
- Publish Final Review and go to Planning Cttee with comments and action plan Oct - Nov

8. Simple Review: 2/3 days a month – 3-12 days

9. Broad Review: 2-3 weeks - 10-20 days

E. DOCUMENT REVIEW

Doc 16/03023/FUL Cttee Report (date? Sometime in 2017?)

10. Consultations and Representations on Application 16/03023/FUL

10.1 All Consultations and Representations are in an appendix at the rear. Officer comments in response simply involve reference to a paragraph in the report where they are supposed to be addressed. This is not very helpful. The DM officer skill should include both reference to the body of the report and a succinct but accurate and diplomatic answer to the comment/objection. Poor practice

11. Consultation and key Planning Application Procedures

11.1 What is MK “Scheme of Community Involvement” – how does this compare to what was done on this application and on applications in general?

- 11.2 Check if any pre application and what said
- 11.3 Check if service felt under any pressure on this application
- 11.4 Check allocation and sign off procedures – normal and on this application in particular
- 11.5 Check reasons for “switching officers” and if this did happen
- 11.6 Check assessment and report quality control procedures
- 11.7 Check Planning Admin Process at each stage and of course final decision notice production/clearance and posting
- 11.8 Cttee meeting minutes check – both applications
- 11.9 18/02341 compared to 16/03023 check – whole process
- 11.10 Get list of complaints by all stakeholders and consider. Interview.

12. Introduction

- 12.1 No clear reason for referral to Planning Cttee. It simply says there are objections. What does scheme of delegation and constitution say? Reports should be clear about this.
- 12.2 Good that the report points out the “bugalows to the north”. This should signal in both officer and cttee member minds a “high design bar” for the application to cross, because of the sun path to the south.
- 12.3 Para 1.5 is critical. The proposed scheme is some 11mts closer to the bungalows and nearly double the height.
- 12.4 This section should be clearer about the difference between existing and proposed -parking numbers, trip movements, day operation or 24 hr movements. Poor practice.
- 12.5 It would be sensible to summarise here the nature of all the objections and representations
- 12.6 MK should consider an overall “summary” page at the beginning that allows the reader to understand the overall picture and officer recommendation.

13. Considerations

- 13.1 Para 5.3 is a good description of the planning balance that must be achieved.

14. Design

- 14.1 Para 5.6 “scale of proposed development would be in keeping”. I disagree with this. The scheme seems to be much higher/bigger than other developments. Nor does it fit into the traditional “well landscaped character” of traditional MK development. However this is poor practise and not a failure of assessment and not in my view maladministration
- 14.2 Para 5.8 does not address or leave open the issue of scale. Reports should in principle leave a concluding planning balance assessment to the end of the report, or it should go into a rounded summary at the beginning. Poor practise.
- 14.3 Where in this section does the officer address design/scale objections? Poor practice.

15. Visual Impact

- 15.1 Whilst I would, (albeit with hindsight) personally disagree with the conclusions in the section an come to a different recommended planning balance. However, it is clear that the officer via a Landscape Value Assessment has assessed the scheme and setting and come to a professional and reasonable conclusion. She has done this in the proper way and this is set out at Para 5.19 and 5.20..."no unacceptable harm" to the visual impact on Bessemer Court. This is her recommendation and it is for the Planning Cttee to then consider and decide.
- 15.2 Where in this section does the officer address visual impact objections? Poor practice.

16. Impact on Residential Amenity

- 16.1 Access to light, sunlight and daylight Paras 5.25-5.37. Para 5.26 – here the officer notes neighbour objections.
- 16.2 NPPF asks all development to improve the planning situation and schemes must be assessed on their individual merits. It is not correct for the officer to assess the scheme on only the "additional elements". In any case these are very significant as to be in fact a completely different scheme – particularly where Bessemer Court is concerned. I am concerned that the officer in Para 5.27 only says the scheme needs to be assessed on its "additions". However even though the officer has said this, in examining the Cttee report and summary plans I conclude the officer has in fact assessed the whole scheme. So this issue is one of "poor practice", not potential maladministration.
- 16.3 I do not have access to the detailed calculations and drawings set out in the officer's report Para 5.25-5.37. These should be checked in detail. On site the new building looks very intrusive and I would be interested to see the detail of shadow assessments. It may also be that the scheme has not been built in accordance with the approved drawings. Further investigation.
- 16.4 Overall the officer assessment is reasonable – however experience by her or her supervisor should have triggered a concern on this particular issue. Poor practice.

17. Dominance and Visual Intrusion

- 17.1 Para 5.33 makes no sense. There should be a better explanation about the difference between "private view and visual intrusion". Poor practice
- 17.2 Neighbour concerns are recognised – good
- 17.3 Para 5.35 – 5.37 are critical.
- 17.4 Para 5.35 carries out a relevant professional assessment. The officer has demonstrated she has taken a correct range of issues into account. I don't see any maladministration here. She has been guided by a "25 degree line of sight"; she has taken into account a landscaping buffer and the opportunity to impose a detailed landscaping condition; she has addressed what could potentially be seen from above the tree canopy and sets out a "bulk reduction" method. And on this basis the

officer has come to a professional and balanced conclusion that the scheme is acceptable.

17.5 However, I with hindsight, would disagree. The scheme fails to keep a substantial landscaping buffer between to different land uses and the proposal particularly impacts on a “bungalow” height. The proposal’s increased proximity and increased height is made more severe because it is due south of the bungalows in Bessemer Court. In general terms I, with hindsight, view the whole scheme as out of keeping with MK design, development and landscaping values and assess it as in fact unusual on the existing estate. In both design and amenity terms I feel this proposal is unacceptable.

17.6 Notwithstanding my own view, I conclude that the case officer has assessed the scheme on this important criteria in an appropriate way and is entitled to her “balanced” view. In my view this demonstrates the need and importance of ongoing training and case reviews as part of service and officer development – but one cannot say the officer recommendation on this crucial matter was unprofessional or was not assessed.

17.7 At Para 5.36 I believe the officer’s comments on how the proposed design... “helps lower the height of the proposed warehouse” are misjudged. The “help” is very marginal.

17.8 At 5.37 The case officer’s view here – “no unacceptable visual intrusion” is appropriately argued in the report. Whilst I would disagree and give the assessment a different balance – it is clear the officer has considered matters of planning relevance and importance and is entitled to draw this balanced conclusion. I see no grounds for maladministration.

18. Highways and Parking

18.1 No comments

19. Pollution

19.1 Objector comments noted – good

20. Noise

20.1 Para 5.50 suggests there could be mitigation of noise impact of a 24 hour operation – but then the questionable Decision Notice DN (17-1-18) imposes restrictions on HGV delivery times, (condition 10) – a condition not in the Cttee Report I have been given. Need to check minutes of the Cttee meeting in order to understand how such a condition got into the DN

20.2 Para 5.51 Noise – it is not good practice to say “no objections have been raised” and then go on to impose conditions.

21. Air Pollution

21.1 Para 5.54 says consultation responses show a concern for diesel fumes and health impact. Para 5.55 does not explain why there would be no impact – not good practice.

22. Light Pollution

22.1 Paras 5.59 to 5.62 deal with Light Pollution – the report deals with this through a proposed condition. Appropriate. However Para 5.62 says the scheme will “not generate harmful light pollution” and then goes on to impose a condition – therefore it does impose harm – this is poor drafting by the case officer.

23. Contamination

23.1 Para 5.62-65 Site Contamination – again poor practice as with paras 5.54 to .62

24. Landscaping and Trees

24.1 Para 5.71 Landscaping and Trees – again poor practice – contradictory statement...” no objection/harm” – and yet a condition is imposed.

25. Flood Risk

25.1 Para 5.74 Flood Risk and Surface Water – again poorly written paragraph and contradictory.

26. Ecology

26.1 Para 5.80 Ecology – again contradictory paragraph...”no objection – but then mitigation is proposed”. Poor practice.

27. S106 Contributions

27.1 Para 5.82 -86 S106 Contributions. It would be good practice to know if the s106 headings have been agreed by the applicant.

28. Conclusions

28.1 Generally poor and generally overly pro development. Conclusion does not strike a fair planning balance. But it does, in a roundabout way, refer to a planning balance. It would be sensible to develop a better custom and practice here for Cttee reports. This would help both objectors see their concerns have been taken into account and help Cttee members better challenge officer conclusion.

29. Conditions

29.1 Where is the condition relating to ..”compliance with the following plans”? If it is common not to put on at Cttee stage it is very serious. Urgent further investigation.

- 29.2 Where is a “materials” condition. Further investigation
- 29.3 Review standard conditions and check the appropriate ones applied. Further investigation.

Doc 2. 16/03023/FUL Decision Notice DN

- 30. Conditions 9 and 10 – how did they get to go into the DN? Not referred to in Cttee report. Further investigation – check meeting minutes
- 31. How was this DN issued? It is almost completely wrong? Further investigation.
- 32. How and when did the DN mistake get picked up? Why not just send out a new one properly reflecting the Cttee decision and negotiate to get the applicant to agree. What does case law say about the issuing of a plainly incorrect DN – legal opinion?

Doc 3. 16/03023/FUL Missing conditions

- 33. How was this produced? It does not deal with DN conditions 9 and 10? Why not? Check.

Doc 4. 18/02341/FUL – Assessment by Case 16/ Case Officer

- 34. How was this produced? What is this document? It is surely not public - and not a Cttee report? It was produced by S Taylor the original case officer – who is now a “Senior Officer”. Further investigation.
- 35. MK to provide all the details on 18/02341. Did this go back to Cttee? Did Cttee vote it through yet again – despite all the objections? Same number of objections? Further investigation.

Doc 5. 16/03023 – Possible Cttee/Delegated Report on a Section 102 Order

- 36. How, when and who authorised this report? Who written by? Is it public? Was it cleared by legal? Is the legal advice sound and supported by counsel opinion? Was the counsel brief wide enough so that the MK got comprehensive advice?
- 37. Why does this not assess the value deficit to the development of “not having the full set of conditions” -i.e. will an occupier rent or purchase knowing none of these conditions are in place and the possibility of LPA action and EPA action?
- 38. Noise – para 9 – it is wrong that there were “no objections” - otherwise why would conditions have been originally imposed?
- 39. Landscaping – para 10 – is this correct? Check the “build in compliance with plans” condition – does this show landscaping? Check case law?
- 40. Para 11 – does this negotiation on 18/02341 show that the applicant acknowledges the missing conditions? If the scheme is for John Lewis – cannot such a nationally know social enterprise be persuaded outside Planning matters to comply?

Doc 6. 16/03023 – Update (short) on application/102

41. What is this document? public?

Doc 7. 16/03023 – Update (long) on application/102 and assessment of condition compensation estimates

42. How was this produced? When? Public? What is position on 102? And Appeal? And on Audit report?

43. Why is it wrong? 14 conditions left out not 13 – how can such a mistake be made? Why not address the strange condition nos 9 in DN – no explanation?

Doc 8. 16/03023 – Update on an “informal meeting” – no date of report - again. Request for a “review to be undertaken in respect of the decision making of the planning app”

44. No comments