



Appeals Panel 3

Date: Tuesday, 08 February 2022

Time: 10:00

Venue: Eden Room

Present: Councillor Mrs Elizabeth Mallinson
Councillor John Mallinson (for Councillor Mrs Ann McKerrell)

Also Present: Complainants x 2

Officers: Corporate Director of Economic Development
Head of Development Management
Planning Officer
Lead Senior Lawyer (Environment and Regulatory)

AP3.01/22 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Dr Tickner.

AP3.02/22 DECLARATIONS OF INTEREST

No declarations of interest were submitted.

AP3.03/22 PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Presser were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph 1 of Part 1 of Schedule 12A to the 1972 Local Government Act.

AP3.04/22 CORPORATE COMPLAINT - DEVELOPMENT MANAGEMENT

(Public and Press excluded by virtue of Paragraph 1)

The Chair introduced the Panel and set out the process for the meeting, she invited the Complainants to set out the complaint.

On the evening prior to the meeting the Complainants had submitted copies of correspondence from the Lead Local Flood Authority with a request that they be considered by the Panel, along with a copy of the latest report on the planning application to the Development Control Committee.

The Panel considered the request and agreed to consider the correspondence, but not the report on the basis that it had been withdrawn from discussion at the Development Control Committee and so had not been considered.

The Lead Lawyer advised the Panel's remit was to consider matters in relation to the Officer's behaviour and maladministration, it could not consider the merits of particular planning applications and associated planning matters.

The complaint related to a series of applications for planning permission to erect housing on a site in the vicinity of the Complainants' dwellings. The Complainants set out the following issues in relation to the planning process and the service they had received during.

Four separate applications had sought permission to develop the site, the first of which, 'Application A' had been granted Outline planning permission for 9 dwellings at the site by the Development Control Committee ('the Committee'). The remaining three applications were all allocated the same planning application reference. 'Application B', sought full planning permission to erect 17 dwellings at the site; and thirdly, 'Application C' which sought to vary Application B by reducing the number of properties to 14 and proposed new access arrangements and boundary treatment by the removal of the existing hedging on the southern and eastern boundaries of the site, was submitted to the Committee but at the meeting was withdrawn from discussion; Application D which reinstated the hedgerow and reorientated the dwellings.

Neither Complainant had objected to Application A and noted that the proposed number of dwellings was lower than the 10 indicated for the site in the Council's Local Plan, which had also been considered and agreed by the Planning Inspectorate as part of its adoption process. The report presented to the Committee on Application A contained a fair and balanced assessment of the proposal.

Application B was submitted to the Committee with a recommendation that the proposed scheme be approved, given the increase in the number of properties, the Complainants had anticipated that it would be recommended for refusal. Similarly, Application C was also submitted to the Committee with a recommendation for approval.

The Complainants felt that the Planning Officer, in assessing Applications B and C, had not taken a balanced view of the proposals and that the reports on each showed a pattern of bias towards the developer. The following areas were identified by the Complainants:

Heritage

The application site was in a settlement with a significant number of Listed Buildings, two of which were in close proximity to the site. In the assessment of Application B, and report to the Committee, the Planning Officer stated that the impact of the proposal would have less than substantial harm on the closest Listed Buildings. In coming to that view, the Planning Officer had relied upon Listing details from Historic England which were incorrect. One of the Listed Buildings in proximity to the application site was the residence of a Complainant who had contacted Historic England with a view to getting the Listing details amended. The Complainant had contacted the Planning Officer with evidence, a date stone, demonstrating the inaccuracy of those details, in response they had been advised that the Council was entitled to rely on the information provided by the Statutory Consultee. In covering the matter in the report to the Committee (page 136, paragraph 6.36 of the document pack), reference had been made to a third party questioning the findings and noted that different interpretations were dependent on the viewpoints of individuals. The Complainant considered the response to be dismissive and did not allow for the greater understanding of the matter as owner of the property.

Moreover a respected expert in the particular type of property owned by a Complainant, had conducted a study of the dwelling types in the settlement. Their findings were in accordance with the Complainant's, the Officer's report only made selective references to those findings and as such did not provide the Committee with a balanced view.

The Complainants accepted that the Council was entitled to give weight to the information from Heritage England, however, given that evidence had been submitted demonstrating its inaccuracy, they felt the presentation of the matter in the report was misleading and may leave the Council open to legal challenge. Furthermore, the Complainants felt it evidenced the Planning Officer's support for the developer and the recommendation to approve the scheme by the downplaying of information that contradicted that view.

The Council's Heritage Officer's response to Application B set out at paragraph 6.46, page 138 opposed the application on the basis on the proposed scheme's adverse impact on the site. The Complainants noted that the Heritage Officer was an expert and not a self interested party.

Density

The Complainants felt that the increased density of Application B was too great for the site. The Planning Officer's report stated that the density of the proposed scheme was less than that of some existing dwellings in the settlement. One of the Complainants had raised this matter when making verbal representations on the application at the Committee meeting.

Education Provision

A Complainant read an extract from page 140 of the document pack that contained an extract from the report on Application B which considered education provision which stated that the closest primary and secondary schools were already at capacity and that the next two closest primary schools were not on a safe walking route. Moreover, when taking into account other permitted development in the area, those schools would be over capacity. The Local Education Authority had advised that the schools were full, despite which the Planning Officer stated that the application remained acceptable as the developer may make a contribution towards education provision by means of a Section 106 Legal Agreement.

Drainage

Surface water drainage was an existing issue at the settlement where the application site was located. The Consent issued in respect of Application A contained a pre-commencement condition relating to surface water which required the developer to submit to the Local Planning Authority for approval details of the surface water drainage system. The Complainants expected the condition to effectively address the issue.

Application B recommended the same pre-commencement condition. The Complainants noted that, in their consideration of the report a number of members of the Committee questioned the appropriateness of the pre-commencement condition and asked who would be responsible for paying the bill in the event that the system was not effective. The Committee deferred determination of the application on the grounds of concerns relating to the drainage proposals.

The report on application C made no reference to the concerns expressed by Members regarding the earlier application, the Complainants felt that the omission of that information was a deliberate suppression of information and was disrespectful to the Committee.

Infiltration testing had been carried out at the site as part of Application C, they indicated that the use of a soakaway, the developer's preferred method to manage surface water drainage,

was not feasible. Instead, the proposal was amended to include surface water discharge into a nearby watercourse, but no revised drainage plan was included in the report on the application. The Council's Local Plan, in relation to the application site, stated that consideration would need to be given to the means of discharge of surface water and noted that it would be difficult to find a suitable point for discharge. Furthermore, the Planning Officer was likely to be aware that the Committee would be alarmed by a proposal to discharge into a watercourse.

Further to the publication of the report on Application C, a Complainant contacted the Planning Officer to ascertain why they had not done what the Committee had requested. The Complainant contended that the Planning Officer's response was to note that membership of the Committee would have changed which was understood to mean they may not have as much luck when the application was considered.

Following the withdrawal from discussion of Application C, an Officer from the Lead Local Flood Authority (LLFA) had visited the application site with a view to identifying the location of an existing culvert. The Complainants were of the view that there was not a culvert at the site and considered it was the responsibility of the Officers to prove its existence. Subsequently, trenches were dug at the site which confirmed there was no culvert present.

The LLFA then wrote to the Planning Officer stating that it could not approve the proposed surface water drainage nor the planning application. The Planning Officer continued to recommend approval of the application and advised the Complainants that the LLFA and developer were in discussions to identify appropriate conditions to permit the development, despite the Committee having stated it was not happy with such a scenario. The situation led the Complainants to doubt the independence and impartiality of the Planning Officer.

In relation to Application D, a communication had been posted on the Council's Planning Portal from the LLFA which stated it would not permit any future outfall from the site and that it would not consent to the development on the grounds of flood risk related to the main drain.

One of the Complainants had emailed the Corporate Director to ask whether Application D would be presented to the Committee. In response the Corporate Director advised that Officers from her team, the LLFA and the developer were in discussions. A Complainant noted that Members may consider such an approach acceptable, but asked how members of the public would view it?

The Chair advised that the issues raised in relation to surface water drainage would be more appropriately presented to the Committee, however, it would be included in the summary of the complaint.

Boundary Treatment

The application site was bordered by an existing hedgerow: in Applications A and B, the Planning Officer strongly supported the retention of the hedge as a mechanism for screening the development in mitigating the impact of the proposed scheme on the visual amenity of the settlement and in protecting the setting of the nearby Listed Buildings. In Application C, the developer had proposed its removal and replacement by fencing as well as the provision of two 'affordable' properties within the scheme. Paragraph 6.73 of the Officer's report (page 235) stated that the provision of affordable housing outweighed the ecological loss the roadside hedgerow.

Regarding the maintenance of the hedge, both the Parish Council and the Highway Authority had asked the developer to carry out works to cut it back as it was encroaching on to the

footway: the developer had taken no action. A local Ward Councillor and one of the Complainants had made efforts to clear the undergrowth away, and in doing so had revealed an additional tract of footway which made it demonstrably safe for pedestrian use.

The Complainants viewed the change in position as demonstrating bias towards the developer, creating a lack of trust in the Officer's integrity and was trigger for the submission of the complaint. A representation was made to the Planning Officer setting out how the stance in relation to the removal of the hedgerow was unsustainable.

The proposed removal of the hedge was not in accordance with Carlisle District Local Plan policy GI 6 which stipulated any application to remove hedgerows would be resisted unless it was able to demonstrate that it was both reasonable and justified. The Complainants considered that amounted to a legal test; the Planning Officer stated that it was a balancing exercise. The matter was not covered in the report to the Committee which put Members in the invidious position of not having been provided with competent advice, the Complainants further noted that the Planning Officer was not an ecological expert.

The developer subsequently submitted an application to remove the hedgerow from the site which was refused.

Material development

The planning consent issued in respect of Application A had expired in October 2021 as no material development had taken place at the site; the only works the Complainants were aware of related to the investigations regarding a culvert at the site. The Planning Officer's position, as cited in reports to the Committee, was that material development had taken place, such a stance demonstrated bias towards the developer as it would benefit them by allowing for the full implementation of the permission.

A pre-commencement condition had been included in the permission granted in respect of Application A requiring an archaeological survey to be carried out at the site, without which no development was permitted to take place. The Complainants were of the view that the survey had not been undertaken, therefore no material development could have taken place at the site.

A Freedom of Information request had been submitted on the matter which remained a live issue. The Complainants had raised the issue with the Council's Complaints team who had advised that as it was not included in the originally submitted complaint, it could not be included at this stage.

Nepotism

The Complainants noted that the agent for the developer was a former employee of the Council in the Development Management team, and that their spouse was an existing employee in the same department. Whilst not alleging any malign intent or corruption, the Complainants felt that in such circumstances an additional layer of management scrutiny was necessary to ensure objectivity.

The meeting adjourned at 11:44am and reconvened at 11:50am

In response to questions from the Panel and the Lead Lawyer, the Complainants confirmed:

- Information regarding education provision was set out in the Officer's report, it was not known whether it had been provided by the Local Education Authority;
- The existing boundary hedge was made up from a mixture of species and in some part was approximately eight foot wide, though it was thinner on the eastern aspect adjacent to the main road in the settlement;

- Application A had proposed a single access point to the development on the eastern boundary.

The Chair summed up the complaint as follows:

There was a lack of management and scrutiny in the Development Management team which had led to a series of inconsistent and inaccurate reports being submitted to the Development Control Committee in relation to a number of matters:

- The incomplete submission of information from a property owner and separately an expert which contradicted the view of English Heritage;
- The proposals relating to education provision;
- The change of position in relation to the removal of the existing hedgerow which was not compliant with Local Plan policy GI 6 and the later refusal of an application for its removal;
- Material development at the site had not taken place at the site as the pre-commencement condition for an archaeological survey had not been carried out, whereas the Officer was of the view that the permission had not expired;
- The Planning Officer's continued recommendation to approve development at the site despite the LLFA advising that it would not consent the surface water drainage proposals on the grounds of increased flood risk.

The Complainants agreed the summary.

The Complainants left the meeting at 12:15pm

Consideration was given by Members as to which Officers they wished to speak to as part of their investigation of the complaint.

The Corporate Director of Economic Development, the Head of Development Management and the Planning Officer were invited to attend the meeting at 12:20pm.

The Chair outlined the complaint.

In response to questions from Members, Officers confirmed:

Heritage

Historic England was a Statutory Consultee and therefore the Council was obliged to consult it on planning applications as it was the holder of the definitive record. It was known that the Complainant had contacted the body directly on the matter of the Listing details associated with their dwelling being incorrect.

Officers had also contacted Historic England to request that it consider issuing a Statement of Significance and a re-Listing of the Complainant's property. As yet no response had been received, any decision to alter the Listing was a matter for that body and only it could verify the matters raised by the Complainant in relation to their property.

The developer's agent, following being notified of the incorrect Listing information, had submitted a revised Heritage Statement which acknowledged the views of the property type expert on the Complainant's dwelling. As the matter was a material consideration, Officers had acknowledged this position in the report to Committee.

The most recent report to Committee (Application D) had set out the current position, acknowledging the information provided by the Complainant thus giving it material weight. It was a matter for the Committee to determine the issue which it had not yet done due to the report being withdrawn.

Regarding the provision of response when the matter was raised by a Complainant, Members were advised that it was Council protocol to not respond directly to every objection received as there was not sufficient resource to allow for that. However, all issues raised in the consultation on an application were set out in reports submitted to the Committee for determination.

In relation to points raised by objectors not being personally attributed to them in reports to Committee, all submissions were anonymised for data protection reasons.

The Council's Heritage Officer was also a consultee for planning application and therefore was invited to give an opinion on a proposal and/or offer advice. Their response to the applications had been included in the Planning Officer's report. In assessing an application all Planning Officers had to consider the balance of many issues to come to an overall view on the appropriateness of a proposal.

Officers acknowledged the preponderance of Listed Buildings existing within the settlement. In assessing the applications' potential impact on Listed Buildings and their settings, this had been considered in the context of those closest to the application site. The majority of Listed Buildings were sited at the opposite end of the settlement, a view supported by the Parish Council's Design Guide, and therefore would not be impacted by the proposal.

Material development

The pre-commencement condition on Application A had been discharged as its first stage was the submission of a desktop assessment which had been carried out; the second stage would involve on-site investigations. In addition, works had been undertaken within the site relating to the formation of the vehicular access point and it was expected that work would continue. Therefore, material development was deemed to have taken place and the permission was extant.

Drainage

The LLFA had given consent to the surface water drainage proposals for Application A and that remained in force. In considering the additional dwellings proposed in the later applications it was thought that the flooding in the settlement was attributable to a broken drain in the ownership of United Utilities; that issue had been fixed, but the problem of flooding remained.

The investigation of the application site by the LLFA confirmed there was no culvert present. Officers gave an overview of current position in respect of the current application and drainage matters.

Boundary Treatment

The Planning Officer advised that it was her role to consider applications as submitted and on their own merits. Application C had been assessed in accordance with the relevant planning policies and there was no material justification to refuse the proposal to remove the hedge. The approving of the removal may have appeared to be a change of view on the Officer's part: it was in fact an assessment of a revised proposal of a new application. An overview was given of the process to remove the hedge from the site and its subsequent refusal, which had not been related to the proposal for developing the application site.

Education Provision

The number of pupils generated by a development was calculated by Cumbria County Council as Local Education Authority. Given the scale of the application a contribution to education provision was not required under planning policy, therefore it was not reasonable to include a condition covering the matter. Cumbria County Council was responsible for the

provision of education places and assessed school rolls over a five year period, it had advised that there were sufficient school places to provide for the predicted number of children the development would generate.

Nepotism

Officers set out when the now planning agent left the employ of the Council. In relation to their spouse, the Panel was advised that their role was entirely administrative/technical with no decision making responsibility.

The Officers left the meeting at 13:27

The Panel then considered all the evidence presented to it prior to and during the meeting and:

RESOLVED - That the complaint not be upheld as:

1. The Panel were satisfied that Officers had applied their professional judgement and interpretation in their assessment of the planning applications and had applied the relevant planning polices (local and national) accordingly. No evidence of bias was substantiated.
2. The Panel determined that the Officers reports and recommendations to the Development Control Committee had not contained misinformation or misleading information, neither did it find evidence of actions constituting maladministration.
3. The Panel considered the Officers' response to the complaint to have been objective and diligent.

The Meeting ended at: 13:44