

## **APPEALS PANEL 3**

**WEDNESDAY 21 APRIL 2021 AT 11.00AM**

**PRESENT:** Councillors Dr Davison, J Mallinson, Miss Sherriff (as substitute for Councillor Dr Tickner).

**ALSO**

**PRESENT:** Complainant x 2

**OFFICERS:** Assistant Solicitor

### **AP3.01/21 APOLOGIES FOR ABSENCE**

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

### **AP3.02/21 DECLARATIONS OF INTEREST**

In accordance with the Council's Code of Conduct Councillor Dr Davison declared an interest in respect of item B.1. The interest related to her knowing one of the complainants. Councillor Davison indicated that the interest was not prejudicial and that she would take part in the item.

### **AP3.03/21 PUBLIC AND PRESS**

**RESOLVED** - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press 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 Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

### **AP3.04/21 COMPLAINT AGAINST DEVELOPMENT MANAGEMENT**

The Chair introduced the Panel and the Officers present in the meeting, she invited the Complainants to summarise their complaint.

The Complainants set out in some detail the reason for the complaint which related to the granting of planning permission at a site adjacent to their property.

The Complainants set out the principal aspects of the complaint as follows:

An application for a Change Of Use (Meadow to Hardstanding and Land and Buildings from a riding centre to horticultural use) had been granted planning permission in 2013 (Application A).

The Complainants had submitted their initial complaint to the Council in June 2019 regarding activities taking place on the site adjacent to the Complainants' property that were not permitted by Permission A. The activities related to the use of the site for industrial purposes related to another business in the ownership of the landowner. Subsequently, an application for planning permission was submitted in November 2019 which was largely retrospective (Application B). The Complainants stated that the industrial operation at the site had not been declared to the Council, and in an effect to conceal those activities had recently removed stickers displaying the other business's logo from the machinery stored at the site.

In the Complainants initial contact with the Planning Officer (prior to the submission of Application B) he had asserted that they should have had restrictions added to the planning permission granted in respect of Application A. The Complainants considered such a response to be inappropriate as they had not been aware that they were able to impose restrictions, nor were they able to anticipate the unauthorised industrial use of the site.

The Planning Officer had visited the Complainants' property, a Ward Member had also been present at the time. The Planning Officer had stated that he had not seen an issue with the parking of industrial vehicles within the application site alongside their boundary. The Ward Member had subsequently contacted the Corporate Director of Economic Development about the Officer's handling of the application, and the Complainants had escalated their complaint to the next stage in the process as they felt their concerns were being ignored.

Application B had been considered twice by the Council's Development Control Committee. At its first presentation Members had expressed concerns about the impact of the proposed development on the Complainants and their property and had deferred determining the application in order that the conditions of the proposed planning permission be strengthened. The Complainants had been satisfied with the Committee's response believing that it would lead to appropriate safeguards being included in the permission to protect them and their property.

Responses to the consultation on Application B had been submitted by the Council's Environmental Health team and the local parish Council. Environmental Health had requested the imposition of a number of conditions: limiting hours of work; the restriction of noisy activities and in particular wood chipping activities in proximity to the Complainants' property (requested that chipping be restricted to a location furthest away from their property), and the non-permitting of the burning of waste at any time. The purpose of those conditions was to prevent a Statutory Nuisance from occurring. They had been included in the first report on the application to the Development Control Committee but were not contained in the second report which was approved. The Parish Council had also requested that an area surfaced with hardstanding be returned to its former state.

Furthermore, the landowner's agent had contacted the Planning Officer regarding some conditions relating to the permission for Application B which the Officer had accepted without change. As a result, the Complainants had no confidence in the integrity of the Planning Officer.

Following the first Development Control Committee meeting, the Complainants had contacted the Development Manager to ascertain progress on the deferred application. The Development Manager responded that work was ongoing regarding the conditions and therefore Application B would not be re-presented to the Committee at its next scheduled meeting. The Complainants had been reassured as they understood the response to indicate that care was being taken to ensure appropriate safeguards to protect themselves and their property were being worked up.

The landowner's agent had submitted a Management Plan which had been published a short time before the Development Control Committee's second consideration of Application B. The Complainants had been advised that they were not permitted to make any further representations to the Committee and as such were prevented from making legitimate objections. Both the Complainants and their architect had contacted the members of the Development Control Committee directly to raise concerns relating to the Plan.

The Complainants were not satisfied with the Development Control Committee's second consideration of Application B. They felt that few questions were asked and that none of the safeguards the Complainants had hoped to secure were contained in the report. The issue of the strengthening of conditions was not addressed, other than by a question from the Chair relating to the conditions suggested by Environmental Health which the Planning Officer dismissed. The Complainants were of the view that the Committee had predetermined the matter.

After the Application B had been granted planning permission, the Complainants had contacted the Development Manager to seek clarity on what had been approved, a response was received ten weeks later.

The conditions contained in the planning permission did not afford adequate protection to the Complainants and they were not confident of securing a suitable resolution. The landowner continued with undeclared industrial operations at the site and had already breached a number of planning conditions: the Complainants had advised the Corporate Director and Development Manager of those issues in October 2021.

The Complainants were not clear whether the permissions granted at the site related to the business or the land, as there were differences between the Committee's discussion and the Decision Notice. Officers had not provided a clear response on the matter.

As an outcome of the Appeals Panel, the Complainants stated they wished to see:

- The area of hardstanding returned to greenfield meadow;
- The conditions on Application B firmed up;
- Clarity on whether the planning permissions related to the land or the business;
- The submitted Management Plan contained reference to a temporary drop off area: the term temporary needed definition;
- The wood chipping and log storage uses to be relocated away from their boundary;

In response to questions from the Panel, the Complainants confirmed:

- The landowner had removed logos from industrial machinery to make it anonymous;
- The Planning Officer's response and manner gave them the impression that he was not impartial or fair, they had always felt that he had sided with the landowner. In addition, he had accepted the landowner's agent's conditions without question;
- They felt Application A had not been properly dealt with and that the Council was attempting to cover the matter up;
- The Planning Officer had told them they could not impose any conditions on Application B;
- A digger from the landowner's site had breached their garden wall;
- Following the granting of permission for Application B, wood chipping had taken place on the landowner's site. They had contacted the Environmental Health Officer, who had not been able to undertake a visit at the time, but had subsequently written to the landowner;
- The Environmental Health Officer had advised that a diary of events should be kept, and the Complainant's had submitted video evidence to him;
- Wood chipping and the burning of waste continued to occur at the site on a random frequency;
- It was not clear whether the granted permission referred to the land or the business;
- The Development Manager had been contacted in relation to outstanding conditions regarding: landscaping plan and installation of a crash barrier, no response had been received;
- The landscaping implemented at the site was not sufficient.

The Chair thanked the Complainants for their submission and summed up the main points from the complaint as follows:

- The handling of Application B was not satisfactory as the Planning Officer had not been fair and impartial;
- The use of the land in respect of Application A was not as per the permission granted;
- Why was Application B approved despite objections being received from Ward Members, the local Parish Council and Environmental Health;
- The inclusion/re-wording of conditions at the request of the landowner's agent;
- The Development Manager took too long to respond to correspondence;

- The late publication of the Management Plan and refusal to permit further representations at the Development Control Committee had prevented the submission of legitimate objections;
- The Development Control Committee had predetermined Application B prior to its second consideration of the matter;
- Non-disclosed industrial operations continued at the site.

The Complainants agreed the summary.

The Assistant Solicitor advised that the Panel's role was to consider the complaint in terms of Officer handling and response times etc, it did not have the power to overturn the Development Control Committee's decision.

The Chair thanked the Complainants for their input and advised that they would be informed by letter within 20 working days of the Panel's decision.

Consideration was given by the Panel as to which Officers they wished to speak to in order to clarify any issues relating to the complaint. Due to prior commitments a Member was unable to continue the meeting, as a result the Panel adjourned the meeting.

*The Panel adjourned from 12:30pm on 21 April 2021 and reconvened at 4:00pm on 5 May 2021*

### **APPEALS PANEL 3**

**WEDNESDAY 5 MAY 2021 AT 4.00pm**

**PRESENT:** Councillors J Mallinson, Miss Sherriff (as substitute for Councillor Dr Tickner).

**OFFICERS:** Assistant Solicitor  
Corporate Director of Economic Development  
Development Manager  
Planning Officer  
Environmental Health Officer

#### **AP3.05/21 APPOINTMENT OF CHAIR**

The Chair of Appeals Panel 3 had been unable to attend the reconvened meeting due to illness. Following discussion, it was:

**RESOLVED** – That Councillor Miss Sherriff would Chair the meeting.

#### **AP3.06/21 COMPLAINT AGAINST DEVELOPMENT MANAGEMENT**

The Corporate Director of Economic Development, the Development Manager, the Planning Officer and the Environmental Health Officer were invited to attend the meeting. The Chair outlined the complaint and invited Officers to respond.

The Development Manager detailed the planning application for the site and confirmed that the Complainants' property was the only residential property impacted by the application. As a result of this Planning Services worked closely with the Complainants through Teams to engage them in the planning process. As a result of advice given by the Planning Officers the Complainants put forward their objections and the planning application was referred to the Council's Development Control Committee. Had the objection not been submitted the application would have been dealt with by officers through delegated powers.

During the process the Planning Officers dealt with a number of planning and non-planning issues which had been raised by the Complainants and Ward Councillors. The inclusion of the non-planning issue exacerbated the time taken to address the planning issues. The Development Manager clarified that Officers only dealt with planning matters and were obliged to deal with the applicant, however, there was opportunity for individuals to engage in the planning process and make objections. In addition, planning applications had to be dealt with within eight weeks.

The Corporate Director of Economic Development informed the Panel that the Development Control Committee had concerns regarding adequacy of the conditions to protect the residential amenity and deferred the application to allow a review of the suggested planning conditions and to await a further report at a future meeting. The review resulted in the production of the Management Plan to help address some of the issues on site.

The Development Manager detailed the areas of the Management Plan that went over and above the usual requirements placed on applicants.

With regard to the wood chipping which had taken place near the Complainants' property the Development Manager explained that the wood chipping was part of the process to provide fuel for a biomass boiler. The Applicant had planning permission for the biomass boiler and planning permission was not needed for the wood chipping.

The Environmental Health Officer explained that he had received a complaint from the Complainants regarding the woodchipper in October 2019 whilst the planning application was being considered. For the complaint to be considered under the Environmental Protection Act there needed to be evidence of the frequency of the nuisance, the noise, the time of day and the impact. The Environmental Health Officer had provided the Complainants with a diary so they could record the activity, however, this had not yet been returned. In accordance with the submitted Management Plan, the wood chipping activity was restricted to only two days per year, the Environmental Health Officer had not been able to visit the premises whilst this was taking place. He would continue to investigate the matter if the completed noise diary was returned and indicated that there was a potential noise nuisance.

The Planning Officer set out the work he had undertaken with the objector including virtual meetings, virtual site visit and video.

The Corporate Director of Economic Development acknowledged the Complainants' issues, however, she felt strongly that the Officers had been robust in addressing the Complainants' concerns within planning legislation.

In response to questions from the Panel, the Officers confirmed:

- referring to the application in question, non-planning issues included questions regarding ownership of the site and land management issues which were not part of the application;
- it was usual for conditions to change between Development Control Committee meetings as a result of ongoing dialogue with applicants and agents;
- it was common for conditions proposed by applicants or agents to be added to applications once they went through the due process, they were not just used without ensuring they fulfilled all of the required criteria;
- there were no further powers under planning legislation to provide the applicants with any more support with regard to the planning application;
- there were no outstanding planning enforcement issues on site, however, Environmental Health would continue to investigate under their legislation, if necessary.

Officers left the meeting at 5.13pm.

The Panel then considered all the evidence presented to them prior to and during the hearing and:

RESOLVED – That the complaint against Development Management Services not be upheld.

(The meeting closed at 5.25pm)