

## Minutes of a meeting of the Regulatory and Appeals Committee held Remotely on Thursday, 16 July 2020

Commenced 10.00 am  
Concluded 11.45 am

### Present – Councillors

LABOUR	CONSERVATIVE	LIBERAL DEMOCRAT AND INDEPENDENT GROUP
Warburton Wainwright Amran Watson	Brown Ellis	Reid

### Councillor Warburton in the Chair

#### 16. DISCLOSURES OF INTEREST

In the interest of transparency the following declarations were made:

- (i) Councillors Amran, Brown, Ellis, Warburton and Watson declared an interest in the item relating to the function hall on land at Dick Lane (Minute 19), as they were Members of this Committee when they determined the previous application on this site, however they stated that they would consider this application afresh.
- (ii) Councillor Ellis also disclosed that he was a member of a number of professional drainage bodies.

***ACTION: City Solicitor***

#### 17. INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no declarations of interest in matters under consideration.

**18. MEMBERSHIP OF SUB-COMMITTEES**

**Resolved –**

**That the appointment of Non-Voting Co-opted Members to the Corporate Parenting Panel for the 2020/21 municipal year be confirmed as set out below:**

- **Sue Lowndes to replace Yasmin Umarji**
- **Inspector Steven Greenbank to replace Inspector Kevin Taylor**
- **Jude MacDonald to replace Sue Thompson**
- **Chair of the Children in Care Council**

***ACTION: City Solicitor***

**19. RETROSPECTIVE PLANNING APPLICATION FOR THE CONSTRUCTION OF A FUNCTION HALL ON LAND AT DICK LANE, BRADFORD.**

The Assistant Director (Planning, Transportation and Highways) presented a report (**Document “L”**) which set out a retrospective application in relation to the construction of a function hall on land at Dick Lane, Bradford.

The Assistant Director gave a detailed overview of the planning application, showing plans, photographs of the proposed site, layout and construction activity to date. He also updated Members on an additional representation that had been received, objecting to the building in terms of its size, the impact on local residents and concerns regarding the use of fireworks.

The Assistant Director explained that although a previous application had been granted in respect of the proposed function hall, the applicant had failed to submit details on a number of pre-commencement conditions within the prescribed timescale following the commencement of the development. As a consequence these conditions were not discharged at the appropriate time thereby resulting in the development being unauthorised. In addition the building was also not being built in accordance with the approved plan with changes being made to the design of the building. The application had therefore been submitted to regularise the development through the submission of the appropriate information and drawings showing the revised design of the building.

The Assistant Director added that the information now submitted by the applicant was considered acceptable and met the requirements of the conditions and whilst the revised design of the building, was slightly higher than that previously approved, it had also been considered to be acceptable and would not have a detrimental impact on highway safety or residential and visual amenity. Subject to the imposition of the recommended conditions the application was therefore recommended for approval.

In response to a question regarding fireworks, the Assistant Director stated that the use of fireworks would not be conditioned and that it would be up to the management of the premises to ensure that no fireworks were let off late at night, and to impose an appropriate financial penalty in such instances. The applicant also clarified that he was happy to include the use of fireworks into the management plan for the function hall and enforce accordingly with users. He added that after 8pm there would be no fireworks let off, however he was aiming to have a blanket ban on the use of fireworks.

In response to a question on disability, it was confirmed that lifts would be installed to ensure access to the first floor, and as such the building would comply with regulations relating to disabled access.

In response to a question why no sanctions had been applied in relation to the discharge of the conditions and the change to the height of the building, it was explained that this application had now been submitted to rectify the breaches and it was only appropriate to determine the application before the Committee, as enforcement was not seen as a viable route to take.

The applicant was present at the meeting and stressed that this situation had been reached with the application as he had been furnished with poor advice from his architect and contractors in relation to the discharging of the conditions, which had created the impasse and he apologised for not discharging the conditions at the appropriate time. He had now personally taken responsibility for overseeing the project and he did not foresee any issues, subject to approval being granted by this Committee.

During the discussion Members expressed support for the application in light of the explanation and the assurances given by the applicant, and it was therefore:

**Resolved –**

**That the application be approved, subject to the conditions set out in Appendix 1 to Document “L”.**

***ACTION: Assistant Director Transportation, Design and Planning***

**20. FULL PLANNING APPLICATION FOR THE CONSTRUCTION OF A TWO STOREY DWELLING ON LAND AT 30 LONGACRE LANE, HAWORTH**

The Assistant Director (Planning, Transportation and Highways) presented a report (**Document “M”**) which set out a planning application for construction of a detached two storey dwelling with associated parking on land at 30 Longacre Lane Haworth Keighley.

The Assistant Director gave a detailed overview of the application, showing plans, photographs of the proposed site, layout and proposed house type and summarising the representations that had been received.

The Assistant Director stated that the application site was part of the curtilage of 30 Longacre Lane which was a modern detached house on a residential estate in the Cross Roads/Lees area of Haworth. The estate was built under planning permission in the late 1990's and no. 30 was one of 5 houses grouped around a mews court de-sac. A number of objections (12 in total) had been received which were set out and addressed in the appendix of the report, including 12 representations in support. An additional 5 objections had been received which had been circulated by email in advance of the meeting, which included representations from a Ward Councillor urging refusal on the grounds of overdevelopment and that it would set a precedent for similar applications in the ward. Although the site was not developed when the rest of the estate was built, the plot is not protected from development by any open space or recreation designation. It is understood from objectors that trees once occupied the site, but these have now been lawfully removed and there are no planning conditions which would require replanting of trees. The proposed house would form an infill within the built up area and officers consider that the loss of the garden would not significantly affect the overall spatial qualities of the neighbourhood. The proposed design and scale of the proposed dwelling closely reflect the surrounding houses and it has been sited and designed so that no adverse effects on the amenity of adjoining neighbours would be caused. The house makes adequate provision for on-site car parking and existing vehicular access and turning facilities are unaffected. Subject to the suggested conditions set out in the report, the application was recommended for approval.

In response to a question regarding habitable rooms, the Assistant Director clarified that there would be four bedrooms and an integral garage, with two parking spaces. A Member suggested that if the Committee was minded to grant planning permission, that it conditioned that the garage not be converted into a habitable room in the future.

In response to a question regarding the context of the current site, it was explained that the land in question was currently a private garden with a boundary wall, and that it had always been maintained as such.

A representative of the objectors was present at the meeting and during his submission made the following points:

Express concerns to the lack of due process given to the proposal and to the lack of considered regard to the objections the council had received. No more than a cursory mention has been given to most aspects of the build. The weighting afforded to the supporters was equal to the real and justified concerns of those objecting. Not one of those supporting would be adversely impacted by this proposal.

That comments relating to NPPF and the key planning legislation had been ignored. In favour of the broad objectives of the various policies which will here not be delivered or met.

Contest the thinking of the council in relation to the condition placed on the original development relating to the trees. There can be no time limit on the condition. It was applied to restrict further development and whilst I agree that the council cannot enforce replacement tree planting it can and should enforce the

retention of this condition. Not doing so will make an absolute mockery of the planning system.

The land was not left as described by the council as incidental landscaping and it was not left as infill land. A s106 agreement was put in place to secure the trees and their retention was ordered by way of a condition. Granting permission now, no matter how long after the condition was made will open the flood gates for all those on the estate including number 18 Longacre Lane to remove their trees. Ignoring the reason why this plot was left without development is unacceptable and it will send the completely wrong message to anyone being similarly restricted in the future. This issue cannot simply be ignored or brushed aside.

Disagree with the councils rationale with respect to trees which suggests that it is lawful to remove trees without the protection of a TPO This is totally incorrect and if consented in this manner will open the floodgates for all on the estate and further a field to remove any trees that they see as a slight nuisance or annoyance.

That officers do not agree that the proposal could not be described as overdevelopment. Skipton properties crammed 5 houses into what became the smallest and most densely housed cul-de-sac on the estate. Number 24 has no frontage out into the space. The officers do not live here and with respect have no idea of the problems encountered with parking, manoeuvring and or the problems we have with normal access and exit. The situation is dangerous and will become even more dangerous with the loss of the visitor parking spaces of which there are currently two. These will be lost to the resident, replaced by 2 private parking spaces within the plot. How can the officers blatantly disregard this in their assessment?

In relation to highway safety The council have grossly failed to understand the implications of the build on traffic, access, parking and particularly the combined effects of these on child safety. A full impartial traffic assessment must be carried out by the applicant prior to granting approval for this development. Without this the council will ultimately remain responsible for accidents or issues arising.

That no regard has been given to parking and the increased risks the increased risks to child safety. Just like the supporters the local authority does not recognise these risks but the residents will be forced to live with them. The council must refuse this development on the grounds of increased child safety risks.

That the council have failed to adequately consider flood risk and drainage issues. Several of the objections received relate to the direct problems faced with flooding. To brush this off as is being done is a gross failure of the council's democratic duties.

That a full drainage and flood risk assessment must be carried out using a recognised impartial consultant before any work commences on this build.

We live in a period of unpredictable weather How can the drainage officers be so categoric in stating that a separate drain will be sufficient. What assessments have been undertaken I suspect none unlike my objection whereupon calculations of increased run off are offered. The drain will capture some of the water but

where will this new drain connect with the existing? The existing drains do become overwhelmed during heavy downpours and the council have raised the road elevation when resurfacing leaving little height to the kerb. As a result, numbers 24 22 and 18 have been flooded on 3 and 4 occasions in the past. The council must take full responsibility for flood episodes to these and possible other properties if consented. Further more my calculations are based on regular storm events of 30mm we are even this year seeing storms releasing 125mm which will massively elevate the flood risk and drainage issues.

In relation to being overlooked and overshadowed, I am shocked to see how readily the council has glossed over the issues around visual impact. Overlooking and overshadowing. Stating in their report that these issues will not occur. I ask that you request a detailed visual impact assessment again carried out using experienced impartial consultants to address these issues fully and correctly.

This property will be 8.5 m higher than most and as pointed out 1.5m lower than number 2 and no.4 Fowlers Garth. I agree that the roof of these properties will receive sunlight and surrounding households from a distance may see their roof tiles but it is completely erroneous to suggest that there will be no issues arising to these and other properties as a result of this build.

In relation to the publicity notice, the council disregarding this important issue will leave them open to judicial review. It is incumbent on the council to inform and allow objections that must be then fully considered by the governance panel. This has again significant relevance when considering child safety. Many of the residents to be impacted by the development will be unaware of the build or upon the issues that will impact on their child's safety whilst at play.

If this development is consented with out due assessment and process the council cannot boast "local democracy" as is their strapline. I do also hope it is not a reflection of our "Modern Gov". The recommendation to approve this development will show a lack of regard due process assessment and considered evaluation.

In response to the issues raised by the objector, the Assistant Director stressed that these objections had been fully assessed and that the impact of the application on the character of the area had also been looked at, and it was felt that the application would not significantly affect the amenity nor the character of the area, and that the design was in keeping with the existing houses in the vicinity.

In addition the issues of drainage would be covered by way of condition; that visitor parking was considered acceptable and that publicity of the application was in accordance with the normal notification guidelines. The Assistant Director also stressed that in terms of the historical issues raised about the site and its intended use, it was clear that the proposed site was a part of a residential curtilage and never intended as a public open space. He added that the development was sympathetic to its location, with the hedge and boundary wall being retained.

The Assistant Director also stated that, in law, there was no requirement for

publicity by site notice for this type of development and that publicity by neighbour letters was appropriate and sufficient, given the number of responses received from local residents, showed that near neighbours were well aware of the application.

In response to the highways issues raised by the objectors, the Senior Highways officer stated that he was not concerned about the highway capacity issue, resulting from one additional property, and that visitor parking was also considered acceptable.

The applicants' agent was also present at the meeting and stated that officers had covered the majority of the issues raised by the application and the concerns raised by the objectors. He stressed that the proposed house would be in keeping with the area and its impact on the street scene would be limited. That concerns raised by the objectors in relation to highway safety, parking and drainage were not founded and that drainage pertaining to the site would be covered by condition in any case.

During the discussion Members expressed broad support for the application, however they were keen to ensure that permitted development rights be removed relating to the future conversion of the proposed integral garage, and it was therefore:

**Resolved –**

**That the application be approved subject to the conditions set out in appendix 1 to Document “M”, and also subject to an additional condition removing permitted development rights relating to the future conversion of the proposed integral garage.**

***ACTION: Assistant Director Transportation Design and Planning***

**21. FULL PLANNING APPLICATION REQUESTING PERMISSION FOR THE CHANGE OF USE OF THE GROUND FLOOR AT 33 LILYCROFT ROAD**

The Committee was asked to consider **Document “N”** which outlined a full planning application requesting permission for the change of use of the ground floor at 33 Lilycroft Road from a betting shop (sui generis) to hot food takeaway (use class A5) with the installation of extraction duct and jet cowl to the rear.

The Assistant Director gave a detailed overview of the planning application, showing plans, photographs of the proposed site, layout and proposed arrangements in relation to the storage of the bins and summarising the representations that had been received. One letter of objection had been received citing that there were already too many takeaway establishments in the vicinity, resulting in parking and litter issues. Concerns were also expressed in relation to its proximity to Lilycroft Primary School.

That Assistant Director added that the site was located in close proximity to schools and youth facilities and proposed a use that raised a number of health concerns. The location was not within a designated centre and was contrary to principle 2 of the Council's adopted Hot Food Takeaway SPD which sought to minimise the negative impacts of hot food takeaways on childhood health.

The proposed use would have a detrimental impact on the amenity of residents in the unit above the proposed takeaway and it was likely to result in additional noise, waste and general disturbance which are generally related to uses such as that proposed here. This is contrary to Policies DS5 and EN8 of the Core Strategy Development Plan Document and principle 4 of the Hot Food Takeaway Supplementary Planning Document

Waste storage facilities for the proposed use are inadequate and fail to demonstrate how they can be stored safely and securely within the curtilage of the site, and clear of a public highway causing harm to highway safety and would impact on the ability of vehicles to move freely on the highway, which is contrary to Policies DS4 and DS5 of the Core Strategy Development Plan Document. The application was therefore recommended for refusal.

In response to a question regarding storage and maintenance to the rear of the property, it was explained that currently the rear access was unadopted and that bin storage did not form part of this application proposal, nor had the applicant demonstrated that it was within in his ownership.

The applicants agent was present at the meeting and stated the following points during his submission:

That 33 Lilycroft Road was vacated by a bookmaker in February, it is part of an established commercial row and it is important that it is brought back into use, with viable options being limited by the health of the retail sector.

The recommended reasons for refusal concern:

1. proximity to schools and conflict with the Hot Food Takeaways SPD;
2. impact on the residential amenity of those occupying the first floor flat; and,
3. in adequate bin storage facilities.

I will address each issue in order.

#### 1. Conflict with the hot food takeaways SPD

National Planning Practice Guidance states:

*“Supplementary planning documents should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies...”*

The recommended reason for refusal implies that controls over the locations of new takeaways are supplementary to Core Strategy policy DS5. However, this policy makes no reference to health, wellbeing, food or takeaways. In my opinion, the SPD clearly seeks to introduce new and draconian planning policy, contrary to government requirements. In my opinion, it should therefore be applied with caution and afforded limited weight in the decision-making process.

Even where SPD's clearly support adopted planning policy, it is important to remember that their content is not policy but advice or guidance on the

implementation of policy. Guidance set out in SPD's must therefore be applied with regard to the wording and objectives of the policy it supports. As the SPD does not clearly support any adopted local planning policy such a judgement cannot be made, which is problematic. However, we can consider the objectives underpinning principle 2 of the SPD, which is to limit the availability of takeaway food to school children.

I respectfully suggest that pupils of the nearby junior schools are unlikely to frequent the takeaway on a regular basis. And that the aim underpinning principle 2 could be upheld by a planning condition that does not allow food sales before 5 pm, preventing school children from purchasing food during lunch-times and after school.

Furthermore, the Applicant has identified an occupant who is to specialise in grilled food and fruit juices, thereby providing a healthier option. It is too simple to classify all takeaway food as being nutritionally poor and detrimental to health, with health-conscious takeaways, often offering extensive vegetarian or vegan options, set to become more popular.

## 2. Residential amenity of those occupying the first floor flat

The planning application makes clear that the property would be let as a whole and that the flat, which is within the same ownership, would only be occupied by employees or management of the business. This is a common and clearly acceptable arrangement that can and should be ensured by planning condition.

## 3. Inadequate bin storage

It is agreed that existing on-street bin storage arrangements are unsatisfactory. For this reason, the Applicant has proposed an amended red line application boundary and that bins are stored within the rear yard of 35 Lilycroft Road, which is attached to number 33 and also within their ownership. The rear yard would essentially become shared. However, your Officer's have refused to accept this amendment. The amended plan should be on file, the arrangements are clearly acceptable, and I urge members to determine the application on this basis.

In conclusion the property is vacant, part of an established commercial row and there are no public objections to the application that is supported by a Ward Councillor.

I respectfully urge the committee exercise their own judgement and approve the application, subject to conditions including:

1. a 5 pm opening time to prevent school children frequenting the premises during lunch-times and after school;
2. an occupancy restriction linking the ground floor takeaway with the first floor flat, which is within the same ownership; and,
3. the storage of bins off-street within the rear yard of 35 Lilycroft Road, which is also within the same ownership.

In response to the issues raised by the applicant's agent, the Assistant Director stressed that he had not seen any details submitted in advance of today's meeting in relation to bin storage, flat occupancy and opening times that would

make him change his recommendations for refusal on the grounds stated in the report.

In relation to the Supplementary Planning Design guidance, it was stressed by the Council's legal representative that it was a material planning consideration and that Members should therefore give it due weight in determining the application before them. In addition Members would have to be satisfied regarding the assertion made by the applicants' agent pertaining to ownership and tenancy arrangements. In any case any tenancy could not be conditioned to those employed by the takeaway.

A Member suggested that the application should be deferred to allow the issues raised by the applicant's agent to be clarified; however the majority of Members were minded to refuse the application in line with the officers recommendation, and it was therefore:

**Resolved –**

**That the application be refused for the reasons set out in the report of the Assistant Director Transportation Design and Planning.**

***ACTION: Assistant Director Transportation Design and Planning***

## **22. MISCELLANEOUS ITEMS**

Members were asked to note the decision made by the Secretary of State as set out in **Document "O"**

**Resolved –**

**That the decisions made by the Secretary of State as set out in Document "O" be noted.**

***ACTION: No Action***

Chair

**Note: These minutes are subject to approval as a correct record at the next meeting of the Regulatory and Appeals Committee.**