

SPECIAL MEETING OF SELECT COMMITTEE ON ENVIRONMENT

Tuesday, 15th May, 2007 at 6 pm
in Committee Room 2, The Council House, Dudley

PRESENT:-

Councillor Mrs Cowell (Chairman)
Councillor Mrs Turner (Vice-Chairman)
Councillors Mrs Aston, Ms Craigie, Harley, Ms Harris, James, Kettle,
Lowe, Stanley and Tomkinson

Officers

Assistant Director of Housing (Strategy and Private Sector, Acting Lead Officer to the Committee), Assistant Director of Law and Property (Corporate Estate Services), Head of Policy (Executive and Support) (Directorate of the Urban Environment) and Mrs M Johal (Directorate of Law and Property).

Also in Attendance by Invitation

Councillor Mrs Martin (Cabinet Member for Personnel, Law and Property, Councillor Jackson (Chairman of Halesowen Area Committee) and Councillor Taylor (Halesowen South Ward Member)
Director of Law and Property,
Mr Mick Freer – Halesowen Abbey Trust
Mr Robert McNaughton – Applicant

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APOLOGY FOR ABSENCE

An apology for absence from the meeting was submitted on behalf of Councillor J Finch.

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APPOINTMENT OF SUBSTITUTE MEMBER

It was reported that Councillor Mrs Aston had been appointed as a substitute member for Councillor J Finch for this meeting of the Committee only.

57

DECLARATIONS OF INTEREST

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

58

MINUTES

RESOLVED

That the minutes of the meeting of the Committee held on 8th March, 2007, be approved as a correct record and signed.

59

CALL-IN OF DECISION RE VISIBILITY SPLAY AT LAND AT BROMSGROVE STREET, HALESOWEN

A report of the Acting Lead Officer to the Committee was submitted on a decision proposed by the Cabinet Member for Personnel, Law and Property to approve the application for a restrictive covenant on the land at Bromsgrove Street, Halesowen, which had been called in at the request of the Chairman of this Committee. A copy of the relevant decision sheet numbered LP/11/2007 was attached. Also attached as Appendices 1 to 4 were an attached plan of the proposed day nursery, reports to the Halesowen Area Committee and relevant minutes, questions to the Director of Law and Property and the Cabinet Member for Personnel, Law and Property and representations respectively.

Further documentation in the form of emails from Mr M Freer and a joint supplementary statement from the Director of Law and Property and the Cabinet Member for Personnel, Law and Property were also circulated at the meeting.

Arising from a brief presentation of the report the Cabinet Member for Personnel, Law and Property made an opening statement and explained that there was a lengthy and complex history to the matter in question. However, written responses and verbal replies would be made to the questions posed by the Committee as adequately as possible and that the Head of Policy (Executive and Support) would answer any questions relating to planning or Tree Preservation Orders.

The Director of Law and Property then responded to the questions that had been set out in Appendix 3 to the report as follows:-

“Question 1 – A critical issue raised by the Area Committee on the 14th March specifically was the concern about protected trees being removed to provide the visibility splay. Will this be the case?

Answer – No protected trees would be removed as a result of the need to provide a visibility splay and associated works.

Question 2 – Following on from that, have any protected trees been removed from the site in the period since the main site received planning permission back in 2001. If so, would you provide details that you may have?

Answer –

- (a) With regard to the triangular area of land, which is the subject of the Decision Sheet, we are not aware of the removal of any protected tree. However, it would appear that a protected tree (Horse Chestnut) near to the triangular area of land was removed, probably after 2000, by a person or persons unknown.
- (b) On the “main site” which has planning permission for a day nursery, there were a number of protected trees included in a blanket Tree Preservation Order made in 1978. The Directorate of the Urban Environment have some aerial photographs of the site. The 1999 photograph shows that all of the protected trees at the front of the site were still in place at that time, but it is possible that protected trees which may have been situated on other parts of the site may have been removed before that date.
- (c) The 2004 photograph shows that the protected trees at the front of the site had by that date been removed.
- (d) The question of the protected trees needs to be considered in the context of the planning history of the site. In 1997 planning permission was first granted for the development of a day nursery subject to a Section 106 Agreement on access issues, the report noting that “no significant trees will be affected on this part of the site” by the siting of the nursery building. The trees covered by the Tree Preservation Order were on land to the east of the proposed nursery adjacent to the Bromsgrove Street frontage. The Section 106 Agreement could not be achieved because of access difficulties and therefore, the application was refused on the 22nd May 2000. A fresh application for a day nursery with revised access arrangements off Bromsgrove Street was submitted as a consequence in 2000. The then Chief Planning Officer agreed to meet with the applicant to discuss the application. It was noted at the time that some of the protected trees had been removed. The report on this application submitted to the Chief Planning Officer and the Chairman of the Development Control Committee, under delegated powers, on the 23rd March 2001 makes the following references to the site and its trees:-

“The site had been cleared of undergrowth, together with some trees near to the Bromsgrove Street frontage, and the ground is mainly bare, and in part strewn with rubble, and at present does not present a very tidy appearance. The Arboricultural Officer has commented that the removal of some trees without consent under the Tree Preservation Order Regulations has resulted in a matter for prosecution, and if successful, replanting of the site may be required. The proposals will result in the removal of most other trees on the site which are the subject of the Tree Preservation Order”.

(e) However the report concludes that:-

“... the retention of the existing trees will not be feasible. Bearing in mind that the principle of developing this site as a children’s day nursery has been agreed; the desirability of improving the appearance of the site; and the fact that the loss of existing trees was not a reason for refusal of the previous application, it is considered that the loss of the existing trees should be accepted and replacement tree planting achieved as part of the landscaping of the new development”.

(f) Planning permission was granted subject to a number of conditions including a landscaping scheme and a requirement for a visibility splay. This planning permission was renewed in similar terms in 2006.

(g) It would appear, therefore, that a prosecution for the loss of protected trees was contemplated in 2001 but not pursued for the reasons given in paragraph (e) above.

Question 3 – Alongside the issue of removal of trees, is the concern about the potential size of earth removal and the size of a retaining wall. Will the work to provide the visibility splay involve large amounts of earth removal and a massive retaining wall? If so, what are the details of the scale of both these issues and the enforcement powers of the Council in relation to them?

Answer – We have not yet received details from the applicant regarding the extent of the work required to provide a visibility splay. Accordingly, we have concluded that it would be prudent to defer a final decision on this application until the applicant has submitted a detailed scheme showing:-

- a full topographical survey of the land including the Council owned land;
- the effect on the existing boundary wall to Bromsgrove Street;
- the effect of the visibility splay on the Council owned land;
- any retaining feature, within the Council owned land;
- the stability of the retained bank;
- how the visibility splay will be maintained in the future including the cost.

This will then allow us to assess the impact of the work on the land owned by the Council.

This detailed scheme would also need the approval of the Council under the terms of the planning permission.

If the approved scheme for the visibility splay was not implemented to our satisfaction, the Council would take enforcement action as the local planning authority and we would consider enforcing our rights as the owner of the triangular area of land.

Question 4 – Having reviewed the above circumstances, do you consider that there are reasonable grounds for refusing this application?

Answer – As previously stated, we intend to delay a final decision on this matter until we have seen the detailed scheme from the applicant referred to in our answer to Question 3.”

The Director of Law and Property then made a supplementary statement relating to the history of the applicant’s land that is the land on which the applicant has planning permission for a day nursery and reported that the land was purchased by the Council from Lloyds Bank (the executors of the estate) in June 1975.

The Council sold the site in April 1982 with a covenant that the site be used as garden land and to maintain the woodland. The covenant was partially lifted in November 1989. The existence of the covenant for the remainder of the site had been pushed into the background in recent years when attention was focused upon the application for the visibility splay. Though the covenant was not strictly relevant to the application for a visibility splay, the request of the applicant to have the covenant on the land lifted would be reported to the Halesowen Area Committee in the usual way if the applicant wished to proceed with his development. In any event, the Council might have to consider the enforceability of the covenant in view of the fact that the woodland had been removed from the site and it was not being used as garden land.

Mr McNaughton, the applicant was then invited to make comments and, in doing so, he explained that he had purchased the land in 1998 and entered into negotiations with the Council for two years regarding the nursery build. Planning permission for the nursery was granted in 2001 but then opposed by the education section. He said that an application to remove the covenant on the land was made in 2001 and all details, including a topographical survey had been submitted to the Council, which was subsequently agreed. He refuted the comments made about the amount of earth that had to be removed as part of the development and regarding the trees that had been taken down prior to planning permission he explained that this had been due to the trees being dangerous. He also indicated that he had co-operated with the Council in all aspects including allowing them to put pipes through his land.

However, several years had now passed but the development had still not progressed. The Head of Policy (Executive and Support) was unable to confirm approval for the survey or the removal of the trees from the information available to him.

A question and answer session then followed and in responding to a particular question, Mr McNaughton replied that he did not remove the Horse Chestnut Tree and that it had been authorised by the Council as part of the same process for removing the other trees that had been marked. However, he also informed the Committee that it was removed by the same contractor he had used for the removal of his trees. A Member later asked if it could be followed up with the contractor to confirm who had paid him for the removal of that particular tree.

Mr Freer, Halesowen Abbey Trust, then made comments and referred to the information submitted in the emails he had previously sent. He also circulated photographs of the trees being taken down on 12th May, 2002, which included the Horse Chestnut Tree. He indicated that the evidence was sufficient to prove that the Council had not authorised the removal of the trees and he pointed out that the photographic evidence had been submitted to officers of the Council. He further commented that a lot of land and trees would have to be removed to accommodate the visibility splay.

During the ensuing discussion and debate Members commented that there was a lot of paperwork circulated at the meeting and that it was difficult to absorb the whole of the information. It was also indicated that further background information should have been made available prior to the meeting and that a site visit to include all Members of the Committee should have taken place to enable them to gain a fuller understanding and appreciation of the issue.

The Chairman of Halesowen Area Committee commented that the area in question did not appear to be very large on the map according to the measurements given but the size of it could only be appreciated by visiting the site. He had, along with relevant Officers, undertaken a site visit of the area in question and in assessing the situation he was of the view that vast amounts of earth and vegetation had to be removed to accommodate the application. The matter had been submitted to the Area Committee on a number of occasions and at their meeting held in March Members were satisfied that the application should be refused.

The Director of Law and Property pointed out that there was no clear or visible reason for the recommendation recorded in the minutes of the meeting of the Area Committee held in March or at previous meetings to indicate the concerns of the Committee and why refusal was recommended. However, it was noted that the minutes of the meeting held in March had not yet been approved by the Halesowen Area Committee as the timing of events meant that they had not yet had another meeting.

A Member further commented that there were proposals to remove the bus lane on Bromsgrove Street and, upon doing so, it would lead to problems with speeding vehicles, which was unsafe as there was a bend around the area in question.

Following further discussion it was agreed that Mr McNaughton and the Head of Policy (Executive and Support) would meet to consider the information that each of them had relating to the topographical survey and any approvals, which would then enable the Director of Law and Property to provide further information to the Committee regarding the detail of the scheme in question and that a subsequent site visit be arranged. It was requested that an appropriate highway engineer also be in attendance at the site visit to assess the safe access and egress of the area, particularly following removal of the bus lanes. It was noted that at Annual Council on 17th May, 2007, there may be changes to the membership of the Committee and Members may wish to make substitute arrangements to enable continuity of members for scrutinising this particular issue. It was also agreed that the site visit would follow the format used for Development Control site visits in that the applicant and objector would not be present at the site visit.

RESOLVED

- (1) That the information contained in the report, and Appendices attached to the report, submitted on the decision set out in decision sheet LP/11/2007 with regard to the land at Bromsgrove, Street, Halesowen, be noted.
- (2) That, following submission of a detailed scheme from the applicant, a site visit be arranged for Members of the Committee and Halesowen South Ward Members.
- (3) That a recommendation to the Cabinet Member for Personnel, Law and Property in respect of decision sheet LP/11/2007 be deferred pending the site visit and a further special meeting of this Committee at a date and time to be arranged.

The meeting ended at 7.45 pm.

CHAIRMAN