

Minutes of meeting held via MS Teams, as part of the Herefordshire Council formal complaints procedure regarding planning and enforcement activity associated with the development of 10 new homes on Church Road, Brampton Abbots.

Meeting Date : Tuesday 3rd December 2024 14.00 hrs

Present : Kelly Gibbons - Development Management Service Manager (KG)
Cllr. David Teague – Parish Council Vice Chair (DT)
Cllr. Mike Cunningham – Parish Councillor (MC)
Annabelle Jones – Parish Council Clerk (AJ)

It was noted that AJ would prepare some minutes for the meeting and share with all parties and parish councillors.

Herefordshire Council Local Plan / Brampton Abbots and Foy NDP

DT Referred to the current Local Plan, BA&F targeted 11 houses to be built in the parish and advised that more had been given planning permission as a result of the appeal process, including the 10 house development on Church Road. He stated that the PC and HC were, and had been broadly aligned and that the overturning of these positions on appeal had been unfortunate. The current parish NDP noted that the parish was close to communications but that development should reflect local character and deal with well know local drainage issues with flooding specifically highlighted. It also highlighted the need for the storm water flooding issues to be accounted for in any new development.

Q (DT) What is the situation with HC's current new draft Local Plan?

A (KG) The new Local Plan is currently on hold pending the results of the central government consultation on their proposed new National Planning Policy Framework and resulting new housing targets. This new document targets Herefordshire to build a further 11.5 thousand new homes in addition to the 16.5 thousand already allocated in the current NPF over the same time period. The results of that consultation are due before Christmas and only then will HC know whether their current draft plan can be progressed, or if they will need to start from scratch. She confirmed that HC were not far enough forward with their plan (currently at Regulation 18) to be classed as being "in transition".

DT Noted that the current draft Local Plan categorized BA&F as being "open countryside" and that this was appropriate given the amount of development that had already taken place recently. The PC hoped that this categorization would remain in any future plan. He also noted that most, if not all, appeal permissions had been predicated on the lack of 5 year housing land supply at the time.

KG Rural areas tend to suffer more from development where the "10 houses or less" results in no new infrastructure requirements.

MC There is very little additional infrastructure even for larger developments – no new schools, GPs etc and the planning process doesn't seem to deal with this.

10 House Development, Church Road, Brampton Abbots and associated formal complaint

DT The PC, from the outset (first planning application) flagged up two primary concerns, firstly, the need to ensure that any development respected and complimented the existing character of the parish and secondly, that surface water drainage was a major issue within the site and the area surrounding it. The appeal decision agreed on both these points and included conditions accordingly, especially with regard to drainage, with no development to take place until a suitable drainage plan had been approved. It seems that the importance of this plan / document was not fully recognised by HC and the PC and residents feel that they have been disregarded and seen merely as an inconvenience. Whereas the PC appreciates that there is no legal obligation for HC to consult when dealing with reserved matters, the PC has the local knowledge that is key when considering these matters. As a result, parishioners and the PC have lost respect for, and confidence in, the planning office and enforcement team, and to a certain extent in BBLP also.

With reference to the letter of complaint dated 6th June 2024, the PC needs to understand why the planning and enforcement offices made the decisions, and took the actions that they did. The letter referred to flooding caused by the developer's actions, ongoing surface water issues and the effect on the local landscape.

The site took a long time to sell and was therefore close to the 3 year deadline for implementation in accordance with the planning permission. HCC agreed that the developer could put in an entrance on the basis that this would not count as implementation. They later stated that it did count as implementation, and therefore the permission remained valid, however the PC remains of the opinion that because an agreed drainage scheme was so fundamental to the decision,

no “commencement” should have been allowed on site until a drainage scheme had been approved and feels strongly that this view would be supported if they had progressed the matter legally. By allowing a start on site, the planning officer was immediately on the back foot and the developer simply continued to build from that point onwards, despite not having the drainage scheme approved.

KG It is not entirely unusual for development to be allowed without all the conditions being discharged. It does come down to whether the condition is considered to “go to the heart” of the permission, this is a judgement call. A conversation would usually take place between the officer and their line manager (Mark Tinsley in this instance) as to whether it is expedient to allow the permission to lapse or allow the commencement to take place. Access *is* a material item and does constitute “commencement” on site. KG agreed that, to an extent, this decision to confirm implementation did put them (HCC) on the back foot.

DT Why wasn't a stop notice put on the site as soon as HC realised that the developer was doing more than just putting in the access without any drainage scheme being submitted for approval?

KG If a Stop Notice is issued, this is for 28 days, after which HC would need to decide what next steps to take. The legislative process for enforcement action encourages negotiation rather than formal action. Additionally, formal action could take up to a year. Joel (BBLP drainage officer) stood firm on the details that he required, despite complaints being received from the developer's side about him being unreasonable. It was acknowledged that if implementation had not been allowed, HC's position would have been stronger.

DT If the same circumstances were to be repeated, given what has happened, would HC act differently?

KG Cannot honestly say, given the legislative guidelines and restrictions within which they work.

Local Flooding – Barcombe Grange

The road at Barcombe Grange represents the only access to that part of the parish. For many, many years water from this area drained by way of a pipe into the site and then subsequently into Ross Road drainage system (although this section had stopped working some time ago). The developer simply blocked off this pipe, resulting in severe and extended flooding that prevented access on foot and occasionally even for low level vehicles. This was reported to the enforcement team on various occasions, and the response was that no action was considered necessary as “no harm” had been caused by the developer's actions. The “harm” was clear, with photographic evidence sent to HCC. The situation went on for months. The PC believe that the developer had no right to block the pipe. This issue also affected the rest of the drainage system, as this water has subsequently been piped all around the outside of the site, resulting in the removal of the wall and hedge in its entirety. If the drainage scheme had been agreed before the development had started then the flooding would not have taken place and there would have been an opportunity to save the boundary hedge and wall which has been removed to allow the installation of the alternate section of pipe for Barcombe Grange storm water.

KG Enforcement did report the issue to BBLP.

DT But it was an enforcement matter, and the “no harm” response shows a clear lack of understanding of the seriousness of a part of the parish being cut off. You can imagine how this makes local residents feel.

MC If a Stop Notice had been put on the site at this time, the developer would have been forced to reopen the drain before he could do anything else.

KG Again, it comes down to expediency and judgement at the time, her understanding was that the severity of the harm was not considered sufficient to take action. She accepted that this required further explanation from the PC's perspective and that they were disappointed that the Enforcement Officer had not provided this. She also admitted that some developers are difficult to deal with.

Progress / Activity Since the Complaint was Raised.

It was jointly acknowledged that the planning condition relating to the Landscape Plan had now been discharge following the approval of the Landscape and Ecology Management Plan (LEMP), and DT reiterated the concerns of the PC that their position regarding the wall / hedging and planting had been disregarded.

KG Although the latest planning application (P241753/XA2) and the associated (amended) LEMP had been approved, the landscape plan had not been changed and the plan and drawing number are as per the original appeal decision notice. This plan includes retention of the section of wall on the corner and the removal and reinstatement of

the remaining wall along the new visibility splay. The original condition requires that this work be completed by the end of the first planting season after completion – effectively this winter (by end of March 2025). The PC and the HC Landscape Officer were broadly in agreement and KG had also viewed the site.

The enforcement case remains open and in place, and the site will now be monitored. There are obviously concerns that the developer will not construct the wall and that (in the case of the section on the corner that was removed to accommodate the new drainage scheme) it may be tricky to enforce, but he would not have any excuse / reason for failing to provide the remaining section of replacement wall.

It was agreed by all that the section of wall on the corner could simply be rebuilt further back so as not to damage the newly installed drainage, and that this is the result that HC will aim to achieve.

Q (DT) Can the houses be occupied even though the landscaping scheme has not been completed?

A (KG) Yes, because they have until end of March before they would be deemed to be in breach of condition.

Q (AJ) Appreciating that the “planting” needs to be done during the planting season (winter) the construction of the wall is not planting, so surely this should be done now?

A (KG) It's a fair point, but her opinion was that because it's all on the landscape plan, it's the plan in its entirety that must be completed by the end of the planting season.

KG then reviewed the original appeal decision and permission / conditions and the completion of the landscaping as per the drawing referenced was included within the conditions that needed to be completed “prior to occupation”.

The Church Road Site – moving forward

KG the option available to HC if the wall is not built, would be serving a Breach of Condition” this is a relatively simple process and requires the matter to be put right by the developer within a given timeframe. The next stage, should they fail to do so, is court action but it is important to keep in mind that fines are set by the court and don't always reflect the seriousness of the impact felt locally. A breach of condition cannot be issued until after 31st March.

The planning obligations pass to the new owners of the properties, so it is likely that if prospective purchasers have good conveyancing representation, this will make it difficult to sell the houses as the Breach of Planning Condition would be a matter of public record and would show up on any searches.

DT The PC has been informed that a sale recently fell through and that the developer is now looking to rent the properties.

KG Herefordshire Council is in a slightly unusual position because BBLP are their local drainage consultant and also the lead local flooding authority. This means that Joel effectively wears two hats. Given that there is potential liability if an agreed drainage plan causes issues, and BBLP deal with both sides, he tends to be very thorough.

DT There is ongoing flooding, especially on Ross Road where there is a suspected collapse, this needs to be resolved and BBLP are aware. Although the PC understands that BBLP will have inspected and signed off the works associated with the approved drainage plan, the PC has recently discovered that the developer has connected an additional pipe from the site to Ross Road, which was not authorised and the PC is passing this to BBLP for action.

KG not aware of this and would raise with BBLP at her end also.

DT HC Enforcement needs to show its teeth, at least occasionally, so that developers don't think that they are a push over.

MC It appears that enforcement action is never taken.

KG Actually, HC have taken enforcement action over recent years, and this has proved successful, though not necessarily highly advertised. Additionally, HC now have a new lead lawyer who is more inclined to take action when it is deemed appropriate.

Future Working between HC and PC

DT Keeping the PC informed is essential

KG It has been a turbulent 18 months within HC Planning Department including staff leaving, interim leadership and a slightly rudderless operation. However, they are now fully staffed in terms of planning officers (other than maternity leave) and have new management in place and the situation is much improved. It's the first time in 2 years that they have been fully staffed. They also have two consultants who are helping to clear the backlog. They do still have vacancies (3) in the tech support roles (validation work etc.) and they have recently interviewed for these roles so hope that they will be filled soon. Staff restructuring has seen the removal of the Major Applications Team (no longer considered necessary) and those senior, experienced staff have been allocated to the South and North planning teams.

DT Given the common objectives, it is essential that the local knowledge and expertise available locally within parish councils is not undervalued by HC.

MC The PC has previously asked for the planning department to attend a parish council meeting to help understanding locally but this has always been refused because the PC meetings are in the evening.

KG She would be willing to attend a meeting in future and has attended other PC meetings over the years, but it needs to be kept in mind that a lot of the planning team don't live locally. Simon Withers remains the PC's main contact and he is excellent and will respond / help when he can.

Q (DT) Where are we with regard to the Draft Local Plan and planning appeals?

A (KG) At the moment, HC does have a 5 year land supply in place and not currently out of date and both the HC Plan and PC NDPs are being given full weight in planning application considerations. However, this could change after the conclusion of the central government planning framework consultation. If the current government proposals are pushed forward unchanged, then almost every authority in the country would be deemed not to have a 5 year land supply and you would have a planning free-for-all, so that seems an unlikely outcome but we can only wait and see.

DT Asked that KG specifically find out why the enforcement team took the approach that they did, despite the evidence put to them, and exactly how they came to their decisions, and report back to the PC. KG agreed to do this.

To sum up DT & MC agreed that the meeting had been positive and that they had learned a lot that they had not previously been aware of. It was agreed by all that communication would be key in maintaining a positive and successful working relationship between the respective councils.

Minutes prepared by Annabelle Jones (Clerk & RFO to the Parish Council)