

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL
COMMITTEE HELD AT THE COUNCIL OFFICES, WIGSTON ON
THURSDAY 26 JUNE 2014, COMMENCING AT 7.00 P.M.**

IN ATTENDANCE:

Councillor L A Bentley – Chair
Councillor Mrs L M Broadley – Vice Chair

Councillors: F S Broadley, D M Carter, M H Charlesworth, B Dave, D A Gamble, Mrs J M Gore, Mrs R C Kanabar, J Kaufman, Mrs L Kaufman, Mrs H E Loydall, R E R Morris

Officers in Attendance: K Garcha, A Court C Forrett, T Carey, A Thorpe, and G Richardson

Min Ref	Narrative	Officer Resp
10.	<u>APOLOGIES FOR ABSENCE</u> An apology for absence was received from Councillors G A Boulter and Mrs S B Morris, Mrs S Z Haq	GR
11.	<u>DECLARATIONS OF SUBSTITUTIONS</u> None.	
12.	<u>DECLARATIONS OF INTEREST</u> Councillor D A Gamble noted that he worked with residents 5 years ago with in objecting to an application relating to Gilbert Murray Hall, at a time when he was not on the Development Control Committee; however, he confirmed that he came to the meeting with an open mind. Councillor J M Gore noted that she had held a function at one of the University halls in the past but confirmed that she came to the meeting with an open mind. Councillor D M Carter commented that he knew one of the residents present at the meeting, but confirmed that he had not discussed the application with the resident and attended the meeting with an open mind.	
13.	<u>PETITIONS AND DEPUTATIONS</u> None.	GR

14.	<p><u>MINUTES</u></p> <p>RESOLVED: That the minutes of the previous meeting of the Committee held on 29 May 2014, be taken as read, confirmed and signed.</p>	GR
15.	<p><u>DRAFT STATEMENT OF COMMUNITY INVOLVEMENT</u></p> <p>The Planning Policy and Regeneration Manager outlined the report which set out the Draft Statement of Community Involvement. He noted that there had been a number of changes in the planning legislation which had impacted upon community engagement in the planning process and therefore the Council was required to update its Statement accordingly.</p> <p>A Member asked that in future, where there was a change to an existing policy, the changes to the former policy were marked in some way. The Planning Policy and Regeneration Manager suggested that a separate appendix could be included in future which set out the main changes.</p> <p>Members considered some of the methods of consultation that were available, as set out in the report.</p> <p>A Member noted that the report referred to “AgeUK” when it should instead refer to “AgeUK Oadby and Wigston”, as this was the branch that was associated with the Borough.</p> <p>The Planning Policy and Regeneration Manager confirmed that the Planning Policy and Regeneration team was responsible for preparing the annual monitoring report and that it would be reported to the Council’s Place Shaping Working Group. He also confirmed that the change in the Regulations meant that Members could now sign off their own consultation method.</p> <p>Councillor M H Charlesworth abstained from the vote</p> <p>RESOLVED: That Members noted the contents of the report and approved the Draft Statement of Community Involvement for a six week public consultation, running Wednesday 2 July 2014 through to Wednesday 13 August 2014.</p>	
16.	<p><u>TREE PRESERVATION ORDER TPO301 – REAR OF ALL SAINTS CHURCH ROOMS</u></p> <p>The Planning Control Manager confirmed that this provisional Order had been made in response to a notification to do works to a maple tree in a Conservation Area. The Arboriculturalist had advised that these works were not in the best interests of the tree and therefore the Order was imposed.</p>	

	<p>He confirmed that no representations had been received and that it was still expedient to have the Order, therefore it was recommended for confirmation.</p> <p>RESOLVED: That the Borough Council of Oadby and Wigston (TPO/0301 – Land to the rear of All Saints Church Rooms, Bushloe End, Wigston) Tree Preservation Order 2014, which was made provisionally on 13 February 2014, be confirmed.</p>	
17.	<p><u>TREE PRESERVATION ORDER TPO280 – 1 MOORES CLOSE</u></p> <p>The Planning Control Manager noted that this Order was made provisionally following a request from a member of the public and a Member. He noted that the representations that had been received in support of the Order had been summarised in the report.</p> <p>The Planning Control Manager considered the comments of the Arboriculturalist which noted that on balance, although the tree had some merits, it was not worthy of protection and there was no immediate risk to the health of the tree. It was therefore recommended that the Order should not be confirmed.</p> <p>Several Members disagreed with the recommendation. They felt that the tree was on the cusp of warranting protection and therefore there was no harm in confirming the Order. It was suggested that if the Order was not confirmed then there would be an immediate danger of it being removed or harmful works being carried out to it.</p> <p>Members felt that the tree was a beautiful shape, that it enhanced the street scene and that it was a young tree with potential to develop further in the future. On this basis, there was a formal motion to confirm the Order contrary to Officer recommendation.</p> <p>RESOLVED: That the Borough Council of Oadby and Wigston (TPO/0280 – Land at 1 Moores Close, South Wigston) Tree Preservation Order 2014, which was made provisionally on 30 January 2014, be confirmed.</p>	
18.	<p><u>TREE PRESERVATION ORDER TPO279 – HM YOUNG OFFENDERS INSTITUTE</u></p> <p>The Planning Control Manager confirmed that Members had resolved to make this Order at a previous meeting of the Committee and, as there had been no changes, he recommended it for approval.</p>	

Members asked about the 2001 Order that was intended to be formally withdrawn and the Planning Control Manager explained that it covered largely the same trees as the current Order, thereby replicating it and rendering it superfluous. He explained that the original Order had remained dormant owing to the principle of Crown Immunity, but this no longer existed therefore Members could confirm the new Order

RESOLVED: That:

- (1) The Borough Council of Oadby and Wigston (TPO/0279 – Land adjacent to HM Young Offenders Institute, Glen Parva) Tree Preservation Order 2014, which was made provisionally on 30 January 2014, be confirmed and
- (2) The Borough Council of Oadby & Wigston (TPO/0265 – Land East of H.M. Young Offenders Institution, Glen Parva) Tree Preservation Order 2001 be formally withdrawn as the trees worthy of preservation are now protected by the Order TPO/0279.

19. REPORT OF THE DEVELOPMENT CONTROL MANAGER

1. 12/00435/CLE – Certificate of lawful use for halls of residence together with day & residential conferences (Beaumont Hall, Stoughton Drive South, Oadby, Leicester LE2 2NA)

Mr Piatt spoke on behalf of the applicant. He noted that this application was a certificate of lawfulness of existing use rather than a planning application. This meant that planning policy considerations and other matters were not relevant to the decision and the only issue was whether or not the use was lawful. He advised Members that this was a question of fact and that the burden of proof was the balance of probabilities.

Mr Piatt then proceeded to set out the evidence that the applicant had supplied in support of their application, which he suggested did demonstrate a continuous use of the site for at least 10 years. As there was no evidence to the contrary, he felt that Members should follow Officer recommendation and grant the certificate of lawfulness.

Mr Gasztowiz spoke on behalf of the objectors to the University applications. He questioned the accuracy of the evidence supplied, which only gave dates of conferences held and not the number of attendees nor the duration of those conferences. He therefore contended that the use as a conference centre

was secondary diminutive use, rather than primary use, and the certificate of lawfulness should be refused on this basis.

He was extremely disappointed that the University had withdrawn from the proposed Unilateral Undertaking just two hours before the Committee despite having previously agreed to enter into it, which he felt had undermined each of the five University applications that were being presented to Members. He suggested that the Unilateral Undertaking had alleviated many of residents concerns, which consequently resulted in less objections being made, but that many more residents would have objected had the University refused to enter into the Unilateral Undertaking from the outset.

Overall, Mr Gasztowiz contended that the strict legal position was such that the applications should be refused therefore he urged Members not to grant this certificate of lawfulness.

The Planning Control Manager explained that the only reason this application for a certificate of lawfulness of existing use was brought before Members was to give them the whole picture in relation to the University site, in particular with regards the application for the Gilbert Murray Hall. He noted that this present application was for a mixed use rather than a principal use and that Counsel had been consulted to give a legal opinion on the application; that being to grant the certificate of lawfulness.

He added that he would later be recommending the deferral of the Gilbert Murray application owing to the University's withdrawal from the Unilateral Undertaking, but asked that Members consider this application, which was basically a legal decision, on its merits.

The Area Planning Officer explained that the application was for a certificate of lawfulness of existing use. She noted that the applicant was required to supply evidence that proved, on the balance of probabilities, that the use had subsisted for at least 10 years and in this case Counsel opinion was that sufficient evidence had been supplied to demonstrate this.

A Member thanked Officers for their work on this application, owing to the volume of evidence that had been supplied by the University in support of this application.

Some Members expressed that although they were dissatisfied with the way in which this application had been brought and the unhelpful and obstructive actions of the University in withdrawing from the Unilateral Undertaking, they appreciated that this was a legal decision and they therefore had no option

but to approve the grant of the certificate of lawfulness. A motion to permit in accordance with Officer recommendations was moved and seconded accordingly.

Other Members were concerned that the consultation had been flawed owing to the University withdrawing from the Unilateral Undertaking, in that residents had refrained from making representations on the basis that the unilateral Undertaking would be in place. On the basis of the complete lack of good faith shown by the University, some Members suggested that the application should therefore be deferred to allow for further consultation

The Planning Control Manager reminded Members that there was no statutory requirement to undertake public consultation in relation to an application for a certificate of lawfulness of existing use; however, the Council had taken the decision to do so on this occasion given that there were several applications that were all connected. On this basis he did not feel that a deferral could be justified on the basis of re-consultation.

A Member felt that the impact of the proposal on the Conservation Area was sufficient to warrant refusal of the application and this motion was moved but was not seconded.

Members asked whether there would be any protection so as to ensure that conferencing did not become the primary use of the site and the Planning Control Manager explained that if the conferencing became the primary use then this would represent a material change that would require separate planning permission.

A vote was held and the motion to defer the application for further consultation was defeated by majority. The motion to permit in accordance with Officer recommendations was also defeated by majority.

The Planning Control Manager explained that Members had now resolved to do nothing with the application, as the motion to refuse had not been carried forward and the motions to permit and to defer for further consultation respectively had been defeated. Following consultation with the Head of Corporate Resources and Monitoring Officer he therefore recommended that the application be deferred for further legal advice and consultation with the University, such that it could be brought back to a future meeting of the Development Control Committee.

Some Members felt that the Committee had acted irresponsibly in making no decision and had given the University solid

grounds for a successful appeal of the decision. They were disappointed that other Members had ignored the evidence in support of the application, which should have essentially been a legal decision. They questioned whether the Council's Constitution allowed for deferral of the application to be re-considered since Members had already resolved not to permit, refuse or defer the application. The Planning Control Manager and the Monitoring Officer advised that this was now the only pragmatic option since Members had resolved not to make any other decision.

Members asked for confirmation of this process from a Legal Officer and the Head of Corporate Resources explained that as it had been resolved not to permit the grant of a certificate of lawful use, it would appear that the application was just left in abeyance. Therefore, in practical terms, as there was not a refusal, just a resolution not to permit, she endorsed the suggestion of the Planning Control Manager and the Monitoring Officer that the application be deferred for further consultation with the University such that it could be brought back to a future meeting of the Development Control Committee.

Some Members expressed their concern about this approach and the democratic process, as a decision to do nothing had already been made by Members, albeit that this decision was highly unsatisfactory.

The Chair noted that the recommendation of the Planning Control Manager and the Monitoring Officer which had been endorsed by the Head of Corporate Resources was now the only way to proceed and conclude this application. A motion to defer for further consultation with the University was therefore moved and seconded accordingly.

Councillors M H Charlesworth and Mrs H E Loydall abstained from the vote.

RESOLVED: That the application be deferred for further consultation with the applicant and brought back to a future meeting of the Development Control Committee following such further consultation.

2. 12/00437/CLE – Certificate of lawful use for halls of residence together with day & residential conferences (Stamford Hall, Stoughton Drive South, Oadby, Leicester LE2 2NG)

The Planning Control Manager suggested that, owing to the outcome of the previous application, all applications on the agenda which related to University sites should be deferred such that they could be considered collectively at a later date, as many of the issues that arose with the first application were likely to arise subsequently on the remaining applications.

A motion to defer all remaining applications relating to the University site was moved and seconded.

Councillor Charlesworth abstained from the vote.

RESOLVED: That the application be deferred for further consultation with the applicant and brought back to a future meeting of the Development Control Committee following such further consultation.

3. 12/00436/CLE – Certificate of lawful use for halls of residence together with day & residential conferences (John Foster Hall, 15 Manor Road, Oadby, Leicester LE2 2LG)

RESOLVED: That the application be deferred for further consultation with the applicant and brought back to a future meeting of the Development Control Committee following such further consultation.

4. 09/00254/FUL – Continued use of building as an all year round conference facility plus student facilities, extensions to conference hall including new roof and associated car parking (Gilbert Murray Hall, 18 Manor Road, Oadby, Leicester LE2 2LH)

RESOLVED: That the application be deferred for further consultation with the applicant and brought back to a future meeting of the Development Control Committee following such further consultation.

5. 09/00253/CON – Retention of demolition of part of Gilbert Murray Hall (Gilbert Murray Hall, 18 Manor Road, Oadby, Leicester LE2 2LH)

RESOLVED: That the application be deferred for further consultation with the applicant and brought back to a future meeting of the Development Control Committee following such further consultation.

6. 14/00143/FUL – Demolition of existing bungalow and detached garage and erection of two storey building containing 5No. contained flats with associated parking and landscaping and altered access (Rev B) (52 Park Road, Wigston, Leicestershire LE18 4QD)

Ms Botting spoke in objection to the application. She set out several concerns with the proposal, including light being blocked to neighbouring properties, invasion of privacy and overlooking, noise disturbance, issues with on street parking and vehicle safety and a change of character of the street scene. She therefore objected to the proposal and asked Members to refuse it.

The Area Planning Officer outlined the application. She noted that the existing bungalow was an anomaly in this area that was comprised mainly of two and three storey properties. She discussed the height and design of the property in relation to other properties in the surrounding area and therefore suggested that the impact on the street scene was minimal.

She noted that the proposal complied with the supplementary planning documents as set out in the report. There were no highways objections and a Unilateral Undertaking had been agreed to secure a play and open space contribution. Overall there was no significant impact on the amenity of neighbouring properties, therefore the application was recommended for approval.

The Area Planning Officer confirmed that highways considered there to be sufficient parking proposed in the development and advised that residents do not have a legal right to a view over a neighbour's property.

Members asked about the height of the property and were advised that it was in keeping with the surrounding area albeit that it was slightly higher than the immediate neighbouring properties.

Members were also concerned about the lack of parking and the risk of more on street parking suggesting that the area of

landscaping could have been used to incorporate more parking; however they were reminded that the highways authority had no objected on this grounds and that they should consider the application on its merits as submitted.

The Area Planning Officer confirmed that there was to be no window in the side elevation, which minimised the risk of overlooking. Members asked whether they could prevent a future application which proposed a minor amendment to include a window in the side elevation and the Area Planning Officer confirmed that this could not be prevented, but that any subsequent application would be considered on its merits.

Members discussed the materials that would be used on the development and the Area Planning Officer confirmed that these were acceptable.

Members asked that Officers discuss with the applicant whether some ornamental brick work could be incorporated into the side elevation as there would be no windows.

RESOLVED: That, for the reasons set out in the report, to Permit the application subject to the conditions contained within the report.

The Meeting Closed at 8.30 p.m.