

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL
COMMITTEE HELD AT THE COUNCIL OFFICES, WIGSTON ON
WEDNESDAY 23 JULY 2014, COMMENCING AT 7.00 P.M.**

IN ATTENDANCE:

Councillor L A Bentley – Chair
Councillor D M Carter – Vice Chair

Councillors: G A Boulter, M H Charlesworth, R F Eaton, J M Gore, S Z Haq, R C Kanabar, J Kaufman, L Kaufman, H E Loydall, R E R Morris, S B Morris

Officers in Attendance: K Garcha, A Court, C Forrett, S Booth, and I Dobson

Others in Attendance: Mrs P McConnell (University of Leicester), Mr S Gasztowiz (Objector)

Min Ref	Narrative	Officer Resp
20.	<u>APOLOGIES FOR ABSENCE</u> F S Broadley, L M Broadley	GR
21.	<u>DECLARATIONS OF SUBSTITUTIONS</u> None.	
22.	<u>DECLARATIONS OF INTEREST</u> Councillor J M Gore declared that she knew some people in attendance in the public gallery but maintained an open mind about the business to be transacted. Councillors G A Boulter, J M Gore and J Kaufman declared that they had attended functions at the University of Leicester in various capacities, but all stated that they maintained an open mind about the business to be transacted.	
23.	<u>PETITIONS AND DEPUTATIONS</u> None.	GR
24.	<u>MINUTES</u> RESOLVED: That the minutes of the previous meeting of the Committee held on 26 June 2014, be taken as read, confirmed and signed.	

	<p>Councillor R F Eaton stated that he had sent his apologies by email for the previous meeting but that they had not been recorded.</p> <p>Councillor D A Gamble stated that the interest declared at the previous meeting related to the Local Plan and not Gilbert Murray Hall and that the time period was 7 years ago and not 5 years ago.</p>	
<p>25.</p>	<p><u>REPORT OF THE DEVELOPMENT CONTROL MANAGER</u></p> <p>The Planning Control Manager summarised what Members were able to consider in determining the certificate of lawful development agenda items. Members heard that they must apply a legal test in relation to the use of the buildings over a ten year period, based on evidence that the applicant has supplied in support of the certificate. He went on to say that the test required Members to consider whether on the balance of probabilities the use of the building is lawful. Members were reminded that planning merits were irrelevant in these cases. It was confirmed that both Counsel and the Planning Control Manager had provided clear advice in each case.</p> <p>1. 12/00435/CLE Beaumont Hall, Stoughton Drive South, Oadby – Certificate of lawful use for halls of residence together with day & residential conferences.</p> <p>Mrs Penny McConnell addressed the Committee on behalf of the applicant. She 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. She advised Members that this was a question of fact and that the burden of proof was the balance of probabilities.</p> <p>Mrs McConnell then proceeded to set out the evidence that the applicant had supplied in support of their application, which she suggested did demonstrate a continuous use of the site for at least 10 years. As there was no evidence to the contrary, she felt that Members should follow Officer recommendation and grant the certificate of lawfulness.</p> <p>Mr Gasztowiz spoke on behalf of the objectors to the University applications. He stated that he had looked carefully at the legal position since the last meeting and emphasised that the decision was to be made by Members based on the evidence before them. He stated that legal advice received was there to assist Members but they must make the decision. 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 went on to</p>	

read a quote from University literature which stated that the building is primarily used as a halls of residence. He therefore contended that the use as a conference centre was secondary diminutive use, rather than continuous primary use, and the certificate of lawfulness should be refused on this basis.

A Member commented that he wished to abstain from the application based on the process that had been followed at the previous meeting, which was described as wholly inappropriate and not in accordance with the Council's constitution. He went on to say that the applications being brought to this meeting so soon after the last meeting could be perceived as attempting to get a particular resolution.

The Monitoring Officer acknowledged that the situation at the last meeting was unusual in that Members had effectively resolved to do nothing with the applications. She went on to say that the Planning Control Manager had suggested a further vote as a pragmatic and common sense response to the situation. She confirmed that subsequent legal advice had been taken from Counsel in this respect which stated that the Council had acted reasonably. In response to the comment about the timing of the applications, she stated that resolution of this matter quickly was important in preventing a challenge from the University.

The Monitoring Officer commented that Counsel had examined the applicant's evidence and advised as set out in the report. She went on to say that the alternative to accepting the advice is for Members to examine the evidence themselves.

The Committee debated the issue with some Members emphasising that the report provided professional advice from Officers and Counsel which is the best basis for making a decision. It was accepted that Members must place the appropriate weight upon the oral accounts of the speakers.

A Member wanted clarification on the data contained within the report which indicated the number of conferences that had occurred throughout the ten year period. He was concerned around the threshold between primary use and secondary diminutive use.

The Chairman and Vice-Chairman made the point that advice from Counsel and Officers is that on the balance of probabilities the entirety of the data provided amounted to mixed use and that it was not the responsibility of the committee to provide evidence to the contrary.

Upon being put to the vote, the motion to permit was carried.

RESOLVED: That, for the reasons set out in the report, the Certificate of Lawful Development for mixed use for student halls of residence, meeting rooms and conference use, such meeting room and conference use being limited to a non-residential use except during University vacations be granted.

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

Mrs Penny McConnell addressed the Committee on behalf of the applicant. She informed Members 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. She advised Members that this was a question of fact and that the burden of proof was the balance of probabilities.

Mrs McConnell then proceeded to set out the evidence that the applicant had supplied in support of their application, which she suggested did demonstrate a continuous use of the site for at least 10 years. As there was no evidence to the contrary, she submitted 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 responded to an earlier point made by a Member that contrary to what was perceived although he was a lawyer he was speaking as a resident and did not benefit from any payment for any of the time spent upon this matter. Mr Gasztowiz suggested that the figures contained within the report did not show year round mixed use. Further, he revealed from research that he had undertaken using schedules supplied by the applicant that 7 days out of 201 term time dates during 2006 had been used for conferencing which he suggested did not amount to year round continuous use. He therefore contended that the use as a conference centre was secondary diminutive use, rather than continuous primary use, and the certificate of lawfulness should be refused on this basis.

The Planning Control Manager stated that Counsel advice indicated that on the balance of probabilities the evidence demonstrates a 10 year period of mixed use.

Some Members expressed concern that it appeared to them that there may have been a period where the use of the

building did not amount to mixed continuous use.

A Motion was proposed to refuse the application.

A Member requested an opinion from the Planning Control Manager as to whether 7 conferences during term time suggested continuous mixed use.

The meeting adjourned at 20:19 to allow for the Planning Control Manager to examine schedules relating to the intensity of use during 2006.

The meeting reconvened at 20:36.

The Planning Control Manager stated that he had examined some of the evidence in relation to use of the building in 2006 and his view, supported by the advice of Counsel was that on the balance of probabilities the 10 year period demonstrated continuous mixed use.

In response to a request from a Member, the Head of Corporate Resources advised the Committee that Counsel had given an advice after his consideration of all of the evidence and as such Counsel had held that the applicant had satisfied the legal test by providing evidence demonstrating continuous mixed use over a ten year period. She went on to say that it was for Members to look at everything in the round, in that they must consider the application and evidence before them, advices from Officers and Counsel and also what was orally being provided by the speakers themselves. She went on to confirm that they were then required to make a judgement based on all of that information and evidence placed and presented to them.

Members discussed the matter and were divided on the issue. The Motion to refuse the application was seconded.

The Motion to refuse the application was defeated by majority.

The substantive Motion to permit the application was tied upon being put to the vote. The Chairman cast a deciding vote in favour of permitting the application.

RESOLVED: That for the reasons set out in the report, a Certificate of Lawful Development for a mixed use for student halls of residence, meeting rooms and conference use, such

meeting room and conference use being limited to a non-residential use except during University vacations.

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

Mrs Penny McConnell addressed the Committee on behalf of the applicant. She 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. She advised Members that this was a question of fact and that the burden of proof was the balance of probabilities.

Mrs McConnell then proceeded to set out the evidence that the applicant had supplied in support of their application, which suggests that the planning permissions granted in 2004 and 2005 are unclear as to the permitted lawful use of the buildings and site as a whole. She went on to say that as a result consideration must be given to extrinsic evidence that relates to the previous use of the demolished building and references to controls on car parking in the Officer's report at the Development Control committee meeting in 2004.

Mr Gasztowiz addressed the committee. He informed Members that he agreed with the advice by Counsel to refuse the application.

The Planning Control Manager stated that lawful use of the building is as a halls of residence and that the planning permissions are not ambiguous as suggested by the applicant. He went on to say that it is inescapable that the use has not been in effect for a period of ten years and stated that it was his view and the view of Counsel that the application should be refused.

Upon being put to the vote the Motion to refuse was carried unanimously.

RESOLVED: That, for the reason set out in the report to refuse to grant a Certificate of Lawfulness of existing use or development.

4. 14/00254/HPA – 42 Forryans Close, Wigston – Proposed extension to the rear extending 3.4 metres

beyond the rear wall of the original dwelling house at a maximum height of 3.9 metres with an eaves height of 2.5 metres

The Planning Control and Enforcement Officer summarised the proposal and informed Members that the application had been brought to Committee as it related to a member of staff's property and could not be determined through delegated powers.

Upon being put to the vote the Motion to permit the application was carried.

RESOLVED: That, for the reasons set out in the report, give prior approval for the development.

The Meeting Closed at 9.15 p.m.