

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL  
COMMITTEE HELD AT THE COUNCIL OFFICES, WIGSTON ON  
THURSDAY 30 JANUARY 2014, COMMENCING AT 7.00 P.M.**

**IN ATTENDANCE:**

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

Councillors: G A Boulter, F S Broadley, D M Carter, M H Charlesworth, B Dave, R Eaton, Mrs J M Gore, Mrs S Z Haq, Mrs R Kanabar, J Kaufman, Mrs L Kaufman, R E R Morris, Mrs S B Morris

Officers in Attendance: K Garcha, C Forrett, T Carey, S Jinks and G Richardson

Min Ref	Narrative	Officer Resp
52.	<p><b><u>APOLOGIES FOR ABSENCE</u></b></p> <p>An apology for absence was received from Councillor Mrs H E Loydall.</p>	GR
53.	<p><b><u>MINUTES</u></b></p> <p>The Chair noted that the minutes had been incorrectly dated but that this had been rectified prior to the meeting and the signed minutes would reflect the correct date.</p> <p><b>RESOLVED:</b> That the minutes of the previous meeting of the Committee held on 16 January 2014, be taken as read, confirmed and signed, subject to the amendment stated above.</p>	GR
54.	<p><b><u>DECLARATIONS OF INTEREST</u></b></p> <p>Councillor Bentley noted that he had spoken to several residents regarding the application number 13/00507/COU (land adjacent to 116 Dorset Avenue), but that he had not expressed any opinions.</p> <p>Councillors Mrs S B Morris and R E R Morris advised that they had publicly supported residents in objecting to application number 13/00507/COU (land adjacent to 116 Dorset Avenue). Having ascertained that their views were closed on the matter, the Head of Corporate Resources confirmed that they were unable to be present during the debate and voting for this application.</p>	

	Councillor J Kaufman noted that he had spoken to a number of residents who lived near 10 Milton Gardens, in relation to application number 13/00398/FUL.	
<b>55.</b>	<b><u>PETITIONS AND DEPUTATIONS</u></b>  None	GR
<b>56.</b>	<p><b><u>REPORT OF THE DEVELOPMENT CONTROL MANAGER</u></b></p> <p><b>1. 13/00398/FUL – Erection of detached bungalow (Rev C) (10 Milton Gardens, Oadby)</b></p> <p>The applicant, Mr Prickett, spoke about the shape of the design and argued that it was inkeeping with the style of the bungalows on the road. He noted that the new build would not be prominent and that it would have a positive impact on the amenity of the area.</p> <p>The Area Planning Officer outlined the application as set out in report pages 3 to 16, which should be read together with these minutes as a composite document. She noted that it was felt that the addition of this new bungalow would not be considered as dominant and would have a limited effect on the street scene. There were no Highway Authority objections and sufficient access and parking and the proposal included the removal of 9 trees which were not worthy of protection. It was therefore recommended that the application be approved.</p> <p>It was confirmed that the application had been brought to Committee as this was a detailed application and previously the outline application for the same site had been brought before Committee.</p> <p>The Area Planning Officer noted that it was not considered to be overdevelopment. She added that based on her calculations of the root protection areas the development would not have a detrimental impact on other trees at the site.</p> <p>Members discussed the fence to the rear/side of the property and whether it could be conditioned that this fence was retained. The Area Planning Officer and the Planning Control Manager advised that as the application doesn't propose the removal of the fence it would be unnecessary to condition it. There was also a condition which required the applicant to submit boundary treatment details in any event and if a boundary was removed as part of the development the Council would require a new fence to be erected.</p> <p>It was confirmed that the front fence would be removed to</p>	

permit appropriate access to the site.

Members queried whether it could be conditioned that materials and vehicles could be stored on the application site but the Planning Control Manager note that this would result in the loss of another tree to the front of the property and that such a condition is likely to be seen as unnecessarily restrictive.

It was confirmed that there was a condition which required details of the materials to be used in the development to be submitted to the Council for approval and that Officers would ensure that these were comparable to the existing dwellings.

The Area Planning Officer also confirmed that there was a 1 metre clearance between the edges of the proposed development and each of the respective boundaries.

Councillor Mrs S B Morris did not vote as she left the room during the debate.

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

**2. 13/00507/COU – Change of use of former football clubhouse (use class D2) into place of worship (use class D1) (relating to land within the Oadby & Wigston administrative area) (Land adjacent to 116 Dorset Avenue, Wigston)**

An objector, Mr Patel, from the Saffron Cemetery spoke in relation to the proximity of the proposed place of worship to the adjacent cemetery, which is due to be extended onto the neighbouring playing fields pursuant to a planning permission.

He noted his concerns regarding access to the boxing club to the rear of the proposed place of worship and suggested that the decision would impact on the tranquillity and sanctity of the cemetery. He also noted his concerns that residents' views had not been taken into consideration and asked the decision of the Committee to be deferred to allow a full consultation to take place.

Councillors Mrs S B Morris and R E R Morris spoke separately in objection to the application on behalf of residents. They advised that as their views were known they were not impartial and were therefore unable to partake in any debate on the

matter nor were they permitted to vote on the application, as confirmed by the Head of Corporate Resources.

Councillor Mrs S B Morris noted residents main concerns, in particular the fear of increased crime, which had been heightened by comments made in the local media, and the viability of the site in terms of parking, access and general Highways issues, which was exacerbated in that many of the residents are elderly and require mobility assistance an/or regular carers. She expressed her disappointment that Highways had not objected to the proposal despite evidence going back to 1995 of complaints of inconsiderate and unsafe parking, blocking of driveways and accesses and situations where emergency vehicles had been unable to pass along Dorset Avenue.

Councillor R E R Morris echoed these concerns. He expressed his further disappointment that the City Council had failed to listen to the views of the residents of South Wigston when making their decision on this matter and urged Members to represent their residents and consider what they want.

He noted his serious concerns with regards access to the site and the free flow of traffic on Dorset Avenue, reiterating that there have previously been issues whereby residents have been unable to access their own properties.

He sought legal advice on two points. The first was whether the City Council had lawfully approved the application before them despite refusing a previous application for the site. The second was whether himself and Councillor Mrs S B Morris were permitted to remain present during the debate in their capacity as residents only, such that they could hear the comments of their fellow Councillors and understand the basis of any decision.

The Head of Corporate Resources, through the Chair, advised that the first question was something which was better dealt with outside of the scope of the Committee meeting. In relation to the second question, the Head of Corporate Resources, again through the Chair, stated that it was for the Councillors themselves to decide, but that they would have to face any repercussions which arose from remaining present. Therefore, the advice was to leave the room as any other Councillor with an interest would be required to do. Nevertheless, to avoid any negative perception or suggestion of bias or undue influence, they still could not vote.

Councillors Mrs S B Morris and R E R Morris choose to leave the room during the debate and voting.

Councillor J W Boyce also spoke in objection to the application. He advised that the conditions imposed by the City Council, namely the permitted opening times, had been incorrectly stated in the agenda update before the Committee and stated that the Sunday opening times were in fact 10.30am until 9.00pm.

He felt that it was reasonable for Members to refuse the application on the basis that the vehicles which are parked on site, which could be up to 39 as there will be 39 parking spaces, would be unable to safely exit onto Dorset Avenue. He stated his concerns in relation to the access to the boxing club and felt that there were errors and a lack of information in the application.

He asked that if Members were minded to permit the application they impose conditions requiring the access to be brought to Highway standards and requiring production to the Borough Council of the Travel Plan for the proposal. He further suggested that it be conditioned that the gates will be open no more than 15 minutes before the permitted opening times and no more than 15 after the required closing time, with anything over and above this to be agreed in writing in advance. The Planning Control Manager later confirmed that this would be reasonable to condition.

The Planning Control Manager outlined the application as set out in report pages 17 to 23, which should be read together with these minutes as a composite document. He explained that the majority of the site fell within the City Council's administrative area and as such that the City Council had heard an application for the main part of the site the previous evening, for which they gave permission subject to conditions. The matter for the Borough Council to consider is simply the change of use of an access and part of 4 parking spaces associated with a building and nothing else.

He advised that the information presented to the Borough Council (from the City Council) in relation to the condition as to opening hours was as set out in the agenda update, but he advised that a decision to approve should be in consistent with City Council's actual conditions and it was recommended that this be part of any possible resolution.

He advised that the proposed change of use, from class D2 to class D1, would actually be seen as a less intense use of the site. He added that there is no significant increase in terms of traffic generation, that the parking at the site is due to increase under this new proposal and that it would be difficult to justify

conditions regarding the width of the access and the associated drop curb as the Highways Authority had not considered such alterations as necessary.

Members expressed their disappointment that the City Council had granted permission, which had in effect taken the decision out of the hands of the Borough Council.

Several Members therefore suggested that, if the Committee was minded to approve, it should be subject to conditions; namely that the access is brought up to Highway standards; that a drop curb is installed across the width of the access, that the entrance be widened to Highway standards for safety reasons; and that the gates are only permitted to be opened 15 minutes before and after the conditioned opening times.

The Planning Control Manager reiterated that in relation to the quality of the access to the site it already complied with Highway standards and as such although it was possible to impose these three conditions they were unlikely to achieve anything.

Members asked which of the residents' representations could be considered as valid planning grounds for objecting to the proposal. The Planning Control Manager outlined that all representations could be considered with the exception of the following comments:

- "would impact on future house prices
- there is an increase in the amount of gypsy and travellers knocking on doors asking for work – this will only get worse"

He asked Members to consider what weight these representations were given as many of the comments related to Highways issues, yet the Highways Authority had not objected.

Some Members agreed with the comments made by the objectors in that the proposal would result in an increase in traffic, more obstructive and inconsiderate parking, issues with access to the boxing club, the omission of light pollution from the site and boundary treatment, and the fact that this access is inappropriate for the site and alternative accesses should be considered.

The Planning Control Manager again advised that the Highways Authority had not objected, in which case they did not believe the access, traffic and parking issues to be a concern. In terms of access to the boxing club, the potential light pollution and the boundary treatment, he advised that these

were matters that should have been considered in the main application to the City Council which, as such, were not relevant to application before the Borough Council Committee.

Members commented on the purported lack of information, in particular the lack of comment by the Police, but the Planning Control Manager advised that it was up to the Police to respond and the applicant was not required to obtain a response from them, so refusal on this basis would be unjustified.

There was significant debate about a proposed condition to require the installation of a height barrier, to restrict the site from being accessed by larger vehicles. Some Members suggested that the height of the proposed barrier should be lower than a standard caravan provided that this didn't prevent a hearse from gaining access to the site.

The Planning Control Manager advised that he felt this condition would be unreasonable as the application was for a place of worship and as such there was no justifiable reason to have a height barrier. The Chair expressed further concern that this would also restrict access to the site by emergency vehicles. As such, some Members noted that they would not approve of such a condition.

There was a motion to refuse the application, which was seconded. The reasons for refusal were the increase in the volume of traffic; the impact on local amenity; the intensity of use; the lack of information from consultees, in particular the Police; light and noise pollution which will affect the Borough Council's residents; the access to the boxing club; the weight of the representations made by residents; and confusion as to who would take enforcement action in the event of complaints being received, the Borough Council or the City Council.

The Planning Control Manager reiterated that any decision to refuse must be based on legitimate planning grounds and that he did not consider some of the above mentioned reasons for refusal to constitute such grounds and no planning policy mentioned to support any of the suggested grounds.

He also outlined his concerns that if the Committee was minded to refuse the application and the applicant subsequently appealed the decision then he believed they would succeed in such application and costs were likely to be awarded also. He also noted that, on appeal, the Council could lose all control over what conditions were imposed, if any.

There was some discussion as to the number of parking spaces required for a proposal of this nature. It was confirmed that

Highways standards required a minimum of 23 parking spaces and the proposal identified that there would be 39 parking spaces on site.

There was a motion to approve pursuant to the officers recommendation and subject to the additional conditions already outlined, namely that a drop curb and the width of the access are to Highway standards for safety reasons; and that the gates are only permitted to be opened 15 minutes before and after the conditioned opening times.

The motion to refuse the application was defeated by majority.

**RESOLVED:** That, for the reasons set out in the report, to Permit the application subject to the conditions contained within the report (and Agenda Update) and subject to the following additional conditions, namely that:

- It is conditioned that a drop curb and the width of the access accords with Highway Authority design standards; and
- It is conditioned that the entrance gates shall only be permitted to be opened 15 minutes before the respective opening times of the site as conditioned by Leicester City Council and that they must be closed no later than 15 minutes after the respective closing times of the site as conditioned by Leicester City Council.

and that the hours of operation is consistent with that of the City Council's decision.

### **3. 13/00510/FUL – Retention of outbuilding to rear for ancillary domestic use (11 Lincoln Drive, Wigston)**

The applicant, Dr Owais, gave details of the revised application for retention of the outbuilding and suggested that the neighbour objections and the comments of the Planning team had been given serious consideration.

He noted that the development was clearly within the parameters of permitted development and that Officers were satisfied with the quality of the building. Since the previous application the windows of the outbuilding had been obscured by a film cover and Officers considered that it did not affect the amenity and privacy of neighbouring properties.

He also noted that cats were no longer being bred in the



outbuilding which was only used for domestic purposes only as set out in the revised floor plan.

An objector, Mr Willis, spoke against the application and argued that the purpose of the outbuilding was to house cats and to operate a business. This was the fourth occasion that planning permission for retention had been sought. He noted that the new design proposed that the outbuilding would be used for “entertainment purposes” but questioned whether its size facilitated this

The objector expressed his concerns that the use of the outbuilding would revert back to business use if permission for retention was granted.

A second objector, Mrs Gray, reiterated many of these comments and concerns and added that she could not understand why the matter was before Committee once again when the previous application had been refused then withdrawn by the applicant the following day. She argued that the height of the building did not fall within the parameters of permitted development and suggested she had written confirmation of the same from the Council.

She argued that the business use could not be separated from this application for retention of the outbuilding, suggesting that it was far too large to be intended to be ancillary to domestic use, particularly given the size of the main dwelling, and questioned why an outbuilding such as this required two toilets.

The Area Planning Officer outlined the application as set out in report pages 24 to 34, which should be read together with these minutes as a composite document. She explained the differences between the current application and that submitted at the December meeting of the Development Control Committee.

Some Members commented that the applicant had made the changes that had been suggested by the Committee when refusing the previous application for retention and therefore, subject to close monitoring of the use of the outbuilding, were content to permit the current application.

Several other Councillors disagreed, noting that minimal effort had been made by the applicant in demonstrating that the outbuilding would no longer be used for business purposes. They felt that the outbuilding still represented overdevelopment and felt that its use for business purposes would never fully cease if permitted. Comments were also made in relation to the odour omitted from the outbuilding and it was suggested that

this was an Environmental Health issue.

Further comments were made in relation to the applicants' attempts to prevent light pollution, which were described as minimal.

Overall, several Members questioned the suitability of the outbuilding for domestic purposes.

Members queried whether the outbuilding was classed as permitted development despite it having two functioning toilets. The Area Planning Officer and the Planning Control Manager noted that the existence of the toilets would not prevent it from being permitted development but she understood that the applicants were willing to remove one of these toilets. However, because of the history of this building, it could never be classed as 'Permitted Development'.

Members asked for advice as to when a hobby breeding cats becomes a business and how many cats would be considered as too many for purposes incidental to domestic use. The Head of Corporate Resources advised that there is no set case law on this matter and noted that one particular case had expressly stated that it would be impossible to place an exact figure on this as each was dependant upon its own individual circumstances. She added that it would be down to the Council to prove that the applicant was operating a business.

Members asked for confirmation that the outbuilding did not represent overdevelopment and the Area Planning Officer confirmed that it was not.

Some Members disputed the applicant's argument that the business use of the premises had ceased as there was still an active website, advertising on third party sites and ongoing contracts for sale. The Head of Corporate Resources advised that once a contract for sale had been executed and consideration had passed into the hands of the seller, the contract for sale is complete and the buyer becomes the legal owner. The Corporate Enforcement Officer had seen these contracts for sale and the cats were currently in quarantine in readiness of their transfer.

The Planning Control Manager reiterated that the application before the Committee was for retention of the outbuilding for domestic use only, so the alleged former and/or present business use was irrelevant to the current application. The issue of business use would be monitored closely by the Corporate Enforcement Officer and it was confirmed that if there was found to be an ongoing business use then

	<p>appropriate action would be taken at that time.</p> <p>Members discussed a condition to prevent the light being omitted from the outbuilding but it was confirmed that such a condition would be unlawful.</p> <p>A motion to refuse permission for retention of the outbuilding was defeated by majority.</p> <p><b>RESOLVED:</b> That, for the reasons set out in the report, to Permit the application subject to the conditions contained within the report.</p> <p><b>4. 13/00511/CLE – Application for a certificate of lawful development to use the premises for the breeding and rearing of kittens ancillary to domestic use (11 Lincoln Drive, Wigston)</b></p> <p>This application was withdrawn prior to the Committee, as noted in the agenda update.</p>	
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**The Meeting Closed at 9.55 p.m.**