

# Bristol City Council

## Minutes of the Development Control B Committee

28 September 2016 at 2.00 pm



### **Members Present:-**

**Councillors:** Donald Alexander, Harriet Clough, Mike Davies, Carla Denyer, Richard Eddy, Martin Fodor, Sultan Khan, Olly Mead, Celia Phipps, Kevin Quartley and Afzal Shah

### **Officers in Attendance:-**

Gary Collins, Laurence Fallon and Allison Taylor (Democratic Services Officer)

### **1. Apologies for Absence and Substitutions.**

Apologies were received from Councillor Margaret Hickman (substituted by Councillor Donald Alexander).

### **2. Declarations of Interest**

Councillor Quartley declared that his wife worked for the BRI but he remained open-minded when considering the application.

Councillor Khan declared that he had some knowledge of the BRI in relation to other Council business but he remained open-minded when considering the application.

### **3. Minutes of the previous meeting**

These were agreed as a correct record and signed by the Chair.

### **4. Appeals**

The Representative of the Service Director – Planning referred to Item 40, the demolition of an existing store building and erection of two storey dwelling. This was a delegated decision and was refused on the grounds of loss of heritage aspect and potential loss of amenity for surrounding properties. On appeal it was allowed, the Inspector finding that the applicants had made reasonable efforts to retain the building and the flat roof was not used in association with the property. The applicants applied for costs and these were awarded which officers considered was



a harsh award as the Council had not acted unreasonably. He then referred to Item 42 – Avon Gorge Hotel Pergola. The application was for the retention of a Pergola and this had been refused under delegated decision. On appeal, the Inspector dismissed it stating that the structure was unacceptable. The owners would now need to remove the structure.

## 5. Enforcement

The Committee was advised there were no updates for this meeting.

## 6. Public forum

Members of the Committee received public forum statements in advance of the meeting.

The Statements were heard before the application they related to and were taken fully into consideration by the Committee prior to reaching a decision. An additional statement in respect of item 7 (1) which had been mislaid, was also included (*A copy of the public forum list and questions and statements are held on public record by Democratic Services*).

Questions were also received in relation to Item 7 (1). The Committee noted the responses and the Chair stated that he would hear two supplementary questions per submission.

These were as follows:-

Bruce Yates.

He strongly disagreed with the response to Question 1.

Question 2 – a tier 4 engine could be purchased but it was four-times the price of the proposed engine and the applicants did not wish to spend the money.

Stuart Phelps.

Questions 1 and 2 – Not properly answered.

Question - A QC's view was that the application had to be refused – will you refuse it?

Answer – The QC's opinion had been circulated to officers and was in the public domain. Officers were attaching some weight to the recommendation. Officers have a view having assessed carefully the impacts but it was for the members to decide. The application had been assessed in



the context of the National Planning Policy Framework and took account of economic, social and environmental benefits and impacts without hierarchy. The role of the Director of Public health was to provide a strategic enabling role with the NHS and was not to provide a source of medical expertise for planning applications.

Liz Beth.

Question 2 – To be clear, the higher limits above compliance were unacceptable but there were still health impacts below compliance. It could be refused on worsening health grounds and it did not need to exceed limits to be refused.

Answer – Officers worked to European and UK guidelines values and were tied by those values and assessed applications against them as standards.

Question 4 – The assessment was based on a short term exceedance whereas the annual average exceeded the Air Quality Management Area. This development would worsen air quality significantly. The Council had declared the area an AQMA to improve the air. How could it then justify an application which would worsen it ?

Answer – the air quality assessment looked at the annual impact along the Bath Road and the development site. The impacts on the annual objectives were classed as slight. This was a balanced recommendation between the need for the development and the air quality impacts.

Simon Holmes.

Question 3 – This balanced recommendation could cost mean a child’s life. There had been 350 objections. Could the officers respond to the serious consequence of approving this application ?

Answer - Children’s health was of course an emotive matter. The planning process was dispassionate and evidence based. Any decision needed to be defensible from legal challenge or at appeal. Officers had carefully assessed the evidence before them from both applicants and objectors using all the tools at their disposal. It was necessary to look at the potential benefits too and not air quality in isolation. Officers considered that the air quality impacts were not significant and also gave greater weight to the energy policy which was supportive of this type of development. The recommendation was a balanced one concluding that the overall impacts were not significant. Ultimately, the Committee must make their own balanced judgement in determining the application.

Celia Davis.

Question – Was concerned with the answer given to question 3 and in particular the response that 32% of the fuel would use “sustainable” crude Palm oil extract, but the applicant stated 100% sustainable fuel not almost 70%.



Answer – The figure was given in error (given the volume or correspondence between the applicant and LPA) and referred to an older statement from the applicant.

John Ross

Question 1 – Why was it not possible to ask for medical opinion ?

Answer – This was not the function of Public Health. The Local Planning Authority assessed air quality impact. There was not an expert in the Council for health matters and it was not a specific issue for Planning Committees to consider.

## 7. Planning and Development

The Committee considered the following reports of the Service Director, Planning -

### (1) 16/00719/F – Avonbank, Feeder Road, BRISTOL.

An Amendment Sheet was provided to the committee in advance of the meeting, detailing changes since the publication of the original report.

It was noted that Councillor Shah was not present at the beginning of Public Forum for this item and would therefore not take part in the debate or vote.

The representative of the Service Director – Planning reported that this application had been before the Committee in July and was deferred to respond to specific issues. Consideration should therefore focus on those matters.

The following points were presented by officers:-

- Data showed that oxide exceedances around the nursery were not a risk to public health;
- The noise assessment concluded that a worst case scenario impact would not be detrimental in terms of the school and the nearest residential property. The Pollution Control Officer therefore supported the application subject to conditions;
- Given the findings, officers recommended approval in line with the recommendations at the previous meeting.



The following points arose from debate:-

- Councillor Denyer reminded the Committee that the application was also deferred in respect to the noise assessment of diesel engines and the tonality in start-up and shut down. The Officer replied that start-up and shut down was included in the air quality assessment; Councillor Denyer acknowledged the reference to start up and shut down in the air quality assessment however this did not cover tonality. The Pollution Control Officer was unable to give a response to this matter in regards to the noise assessment.
- Councillor Clough asked whether it was possible to condition the operating hours so that they did not operate when the nurseway was open and was informed that this was technically possible but was not part of the proposal and could therefore be appealed against;
- The Chair asked whether it was possible to condition the type of motor used in order to mitigate its impact and was informed that the proposal had to be assessed on its own merits and as this was not part of the proposal this would be an unreasonable condition;
- The Chair asked whether there were any controls to ensure that it did not operate beyond the 200 hours it proposed to operate per year and whether there were greater financial benefits to breaching than the sanctions imposed. The Committee was informed that the developer would have to submit annual reports and if these were exceeded a breach notice would be issued, if the breach continued there would be a prosecution at the magistrates court and fines for planning breaches were significant. It was not possible to comment on the company's financial benefits of breaching;
- Councillor Khan expressed surprise that 200 hours per year could be viable and suggested if this was granted a variation might follow. The Committee was informed that it was not possible to comment on the viability of the hours but was similar to other proposals elsewhere. A variation was another application and another decision and this application had to be considered on its own merits;
- Councillor Denyer stated that although noise levels had not been quantified with respect to start-up it did not mean they did not exist. She asked how the future effects on population had been assessed and why the assessment in the AQC report commissioned by some of the objectors differed so much from the applicant's air quality report and noted that indoor air quality could be worse than outside for a normal house. She highlighted that with climate change there would be a time when energy peak times changed. An Officer replied that the new development had been accompanied by an air quality assessment and in the future the impact on future usage would be considered. The AQC report had concentrated on impacts and had found them significant however impacts were different from effects. Officers had looked at the level of impact and assessed that 200 hours of operation was not significant;
- Councillor Alexander observed there was a genuine judgement to weigh up the health risks and the economic benefits. It seemed that one community's health was being balanced against national economic benefits which was unfair. The balance should be economic benefits and health both locally. He also reported that the Air Quality Report had made a massive assumption in its underlying modelling. In response, the Committee heard that the



balancing of local versus national was a valid point. The report had projected forward for energy needs based on assumptions for extra capacity;

- The Chair noted there was national policy for such developments but it did not have to be at this site. The harm needed to be weighed up. The area was already in breach of air quality standards and this development would not improve it. In response, the officer stated any additional impacts changed the baseline by which other applications were considered;
- Councillor Mead stated that this was not the only site for such a development. Being next to a nursery would contribute to children developing asthma. He would oppose the application based on the significant air quality issues in the area already and this additional impact;
- Councillor Eddy believed that the concerns regarding health and noise had been exaggerated and he was not convinced there was an argument to refuse it and would support the officer recommendations;
- Councillor Khan stated that he was minded to vote against based on air quality, business hours and noise pollution impact;
- Councillor Denyer remained concerned regarding start-up and shut down effects on noise and air quality. She agreed that the balance between local and national was unfair. The noise assessment was on the borderline of acceptability. It was a finely balanced case. She referred to policy DM14 regarding health inequalities and questioned how unacceptable and significant were defined. In summary, she was minded to vote against approval as the extra impact in the area was unacceptable;
- Councillor Mead moved that the officer's recommendations be rejected as it was contrary to DM14 as it was detrimental to human health and was consigning people to bad air quality;
- Councillor Denyer asked that the noise effects on the nursery relating to start-up and shut down be included in the reasoning and seconded the motion;
- Before being put to the vote the Officer summarised the reasons for refusal as the impacts on air quality which introduced a risk of harm to human health and wellbeing and a failure to address how it would mitigate against noise generation to the detriment of amenity.

On being put to the vote there were eight for, two against and one abstention. It was therefore:-

**RESOLVED – that the application be refused for the following reasons:-**

- 1. The development would result in significant impacts on air quality and would consequently introduce a risk of harm to human health and wellbeing in the local area, contrary to adopted local plan policies (BCS23, DM14 & DM33).**



**2. The proposal fails to address how it would mitigate against noise generation to nearby noise sensitive development, such as St Philips Nursery), to the detriment of amenity, contrary to local plan policies (DM14 & DM33)**

**(2) 16/01888/F – Old BRI, Marlborough Street, City Centre, BRISTOL.**

An Amendment Sheet and Supplementary Report was provided to the committee in advance of the meeting, detailing changes since the publication of the original report.

The representative of the Service Director – Planning commented as follows:-

- The application was for the development of the old BRI building into a medical school with office use and the erection of new buildings at the site to provide student accommodation and a café restaurant with pedestrian access;
- Reclaimed stone would be used to reflect the boundary walls close to the historic priory;
- The new building was pulled back from the pavement compared to the existing building;
- There had been two pre application processes and more than 20 alternative options had been explored before this application;
- A key factor was the heritage assets in the area. The site was adjacent to a Conservation Area and listed buildings (as outlined fully in the report to Committee). Great weight should be given to preserving the special interest of the Conservation Area and listed buildings. There was a degree of harm caused from certain views, particularly the Haymarket;
- Advice from key consultees had been taken into account. It was the officer's role to take an overview and weigh up all material considerations. The visible impact had to be considered in the wider urban context and seasonal changes;
- Great weight was also given by officers to the public benefits of the scheme which included retention of the Locally Listed Old BRI Building and chapel, regeneration of the site, provision of housing and employment floor space to meet an identified demand and making an efficient use of the land;
- A detailed commercial report stated that there existed clear and significant under provision of student housing;
- Student housing could be accommodated sensitively in a dense urban context and it was therefore believed that this was not a harmful concentration;
- In summary, officers strongly accepted the principal of the development and its mix of use. There was a clear need for student accommodation and the Central Area Plan stated that this was an appropriate location. The design was an area for debate. The applicant had demonstrated that the level of development was needed and an independent assessment confirmed this. The volume had been considered and this outcome had been reached in order to minimise impact on heritage assets. It was not necessarily the optimum solution



but the option reached took into account all of the considerations and the applicants needed a decision now as a delay would impact negatively on viability.

The following points arose from debate :-

- Every effort was made to make as much detail available as possible but there was commercial confidentiality which required some figures to be redacted, although the wording gave an indicator of the figures;
- There was an additional 42 cycle parking stands in the courtyard and there was separate provision in the old building. The cycle parking standard was not on a 1 to 1 basis. Highway Officers were satisfied with the cycle parking provision on site but there were safeguards should it prove insufficient;
- Councillor Davies stated that the orange metal extension to the top of the development was not in keeping with the historic and was informed that the colour could be looked at through conditions;
- A piece of work was being undertaken regarding the balance of student accommodation. The Council now had more control regarding the creation of HMO's in residential areas through Article 4 Directions. The Council promoted the delivery of appropriate student accommodation in acceptable locations and this application fitted that need;
- Councillor Shah questioned why there was a not a requirement for affordable housing, noting that 1<sup>st</sup> year students were likely to use this accommodation and they would only be there for 7 months. In response, he heard that there was a huge under supply for student accommodation and affordable housing was not required from student accommodation schemes. The year groups using the accommodation was not a material planning consideration;
- It was noted that £1, 854, 000 would be paid in CIL;
- Councillor Mead referred to the Council's Supplementary Planning Document 1 and questioned whether the design was exemplary in its design. He felt the views of the residents of St James Priory had been dismissed. He noted the that both Historic England and the City Design Group objected to the proposal and urged caution with respect to safeguarding heritage assets. He was informed that as neighbours these residents were a material consideration but less weight was given as this was not permanent accommodation;
- Councillor Alexander accepted that the front of the BRI was preserved but the view of the courtyard would be completely lost for something so functional. He believed a landmark building was needed;
- Councillor Denyer referred to the access to light for St James House and was informed that there had been some criticism of the analysis as not all windows had been considered. This was a material consideration and weight was therefore applied even though was temporary accommodation;





- Councillor Clough asked whether louvres could be conditioned on the St James Barton side in order to avoid overlook for residents and was informed that this was possible in theory though officers felt there was an appropriate relationship there;
- She also expressed concern that the Construction Management Plan was appropriate as she had recently visited the area and could find no signage regarding the moving of the taxi rank and access for wheelchairs. She was informed that there was a very detailed condition for this including safety for pedestrians. It was noted that there would be more pedestrian footway on Whitsun Street than currently when works were completed;
- The old exterior would be overhauled including re rendering and replacement of unsympathetic windows;
- Councillor Khan stated that the scheme was not in keeping with the St James Priory;
- Councillor Eddy was unimpressed with the application in such a unique location. He expressed concern regarding the mass and scale of the development and its overbearing St James Priory. The over concentration of student accommodation instead of residential uses. As the development was so close to the BRI he suggested that key worker housing could have been considered.

It was moved and seconded that the application be refused because of its design scale, mass and height and impact on historic assets and for its impact on amenity. On being put to the vote there were eight for, one against and two abstentions. It was therefore:-

**RESOLVED – that the application be refused for the following reasons:-**

- 1. Its design scale, mass and height and its impact on historic assets;**
- 2. Its impact on amenity.**

**(3) 16/02137/F – Land adjacent to 2, Southernhay Avenue, BRISTOL.**

An Amendment Sheet was provided to the committee in advance of the meeting, detailing changes since the publication of the original report.

At this point, Councillors Khan and Clough left.

The representative of the Service Director – Planning commented as follows:-

- The application had been referred to Committee as it had received 40 objections. The basis of objections had been loss of light, design too modern, not enough parking, subsidence, loss of wildlife, loss of a tree. There had also been letters of support;
- It was a in a Conservation Area but was not a listed building;
- Officers had no objection to the height or design as it was in line with National Planning Policy Framework and Development Management Policy 31;



- The objections regarding noise and overlook from the balcony were not considered an issue as there was already a courtyard;
- There were no highway objections and there was a condition that the parking space was to be retained. There was no undue parking pressure on surrounding streets;
- Building Control had confirmed that the building work could take place without affecting the stability of other buildings nearby;
- There was a Construction Management Plan condition;
- A desk based analysis of daylight had taken place and on balance officers considered this acceptable.

The Committee had no comments on the application. It was moved and seconded that the application be granted in line with officer recommendations. On being put to the vote there were eight for and one abstention. It was therefore :-

**RESOLVED – that the application be granted subject to the Conditions and Advice(s) in the report and the Amendment Sheet.**

**(4) 16/01193/X – Unit 4, Eastgate Centre, Eastgate Road, BRISTOL.**

At this point, Councillors Shah and Eddy left.

The representative of the Service Director – Planning commented as follows:-

- This application had been referred to Committee by the ward Councillor – Gill Kirk who believed that the condition should be removed as she considered the area to be an important retail amenity for local residents and it would not compete with Broadmead or Cabot Circus;
- There had been a number of applications to remove condition 6 and each had been dismissed by the Planning Inspectorate;
- There was now a change of circumstances as the Government has rescinded the practice guidance on need, impact and sequential approach that previously required applications to consider the scope for disaggregation;
- Officers recommended refusal as it failed to satisfy the sequential test and there remained the likelihood of a clear adverse impact on the health and investment of the City Centre.

The following points arose from the debate:-

- Councillor Denyer asked whether the recommendation would change if the assumption that Eastgate was an out of town shopping centre were to change and was informed that a process was undertaken for the Local Plan and it did not meet the test and this was



independently examined by the Planning Inspectorate. The City Council had been consistent in opposing applications for Cribbs Causeway for the same reasons;

- Councillor Mead noted that it was possible to buy almost everything at the nearby Tesco. The City Centre was choked with traffic and the local area was badly served by public transport. He therefore suggested that a more sustainable situation would be to reduce car journeys to Broadmead and create local jobs by allowing this condition to be removed. He was minded to go against officer recommendation and approve;
- The Committee heard that in the near future there would be decisions made that would affect the retail heart of Bristol, with proposals for the expansion at Cribbs Causeway being considered. The City Council's and Core Strategy supported Broadmead and Cabot Circus and members needed to bear this mind when making a decision now that could potentially affect the health of Broadmead. A decision to approve would broaden the use of the whole centre and give unrestricted uses;
- Councillor Davies stated that he lived nearby and believed this was good for East Bristol and that it would not have that much of an effect. He was therefore minded to go against officer recommendations and approve;
- Councillor Denyer asked when there was last a review regarding out of town centres and when another review might take place and was informed that the last Core Strategy was in 2011 and the next review was likely to be 2018.

It was then moved and seconded that the application be refused in line with officer recommendations. On being put to the vote there were two for, three against and two abstentions.

It was then moved and seconded that the application be granted with the removal of the condition No.6. On being put to the vote there were three for, two against and two abstentions. It was therefore resolved:-

**RESOLVED – that the application be granted with the removal of Condition No.6.**

**Meeting finished at 7 pm**

**Chair**



