

DEVELOPMENT CONTROL COMMITTEE

16th November 2004

PRESENT:-

Labour Group

Councillor Dunn (Chair), Councillor Shepherd (Vice-Chair) and Councillors Bambrick, Isham (substitute for Councillor Southerd), Richards, Southern and Whyman, M.B.E.

Conservative Group

Councillors Bale, Bladen, Ford, Hood and Lemmon.

[The following Members also attended the Meeting and, with the approval of the Chair, spoke to the Minute No. indicated:-

Councillor Taylor
Councillor Wilkins – Minute No. DC/82(d)]

APOLOGIES

Apologies for absence from the Meeting were received from Councillor Southerd (Labour Group) and Councillor Mrs. Walton (Independent Member)

DC/74. **MINUTES**

The Open Minutes of the Meetings held on 5th and 26th October 2004 were taken as read, approved as true records and signed by the Chair.

DC/75. **DECLARATIONS OF INTEREST**

Councillor Whyman M.B.E., declared a prejudicial interest in planning application 9/2004/1217/M (Minute No. DC/81(c)) as Chair of the Governors of John Port School, the applicant body.

DC/76. **REPORTS OF MEMBERS**

(a) Councillor Bale

Councillor Bale reported that earlier in the day, he had been in the presence of His Royal Highness the Prince of Wales. He advised that the Committee might receive an invitation to visit a mixed community development at Poundbury, Nr. Dorchester, to which His Royal Highness had contributed.

(b) Development at Main Street, Newhall

At the last Meeting, Councillor Richards had referred to a current development at Main Street, Newhall, expressing concern at the amount of mud being deposited on the road in this vicinity. Councillor Richards reported that he had been contacted by the County Highways Authority on the day following the last Meeting and expressed his thanks to Officers for their speedy response on this matter.

(c) Telecommunication Masts

Further to the report to the last Meeting on this matter, Councillor Whyman queried any further progress. It was reported that to date, there had been no

response from the operators' organisation regarding a hierarchy. Councillor Whyman commented on a recent High Court judgement, which had concluded that health concerns were not planning issues for Local Planning Authorities. In view of this High Court judgement, Councillor Whyman considered that the establishment of a hierarchy was essential.

The Planning Services Manager reported that the draft version of the proposed document was nearing completion and it was hoped that this would be presented to the Environmental and Development Services Committee early in the New Year. He also reported that a copy of a CPRE publication on the matter had been ordered for each Member of the Committee, which would be distributed upon receipt.

Councillor Richards reported that the National Institute of Environmental Studies had produced a report in March 2003, which expressed concern with regard to telecom safety. However, the Planning Services Manager understood that this report related to handsets only, rather than telecom masts.

MATTERS DELEGATED TO COMMITTEE

DC/77. SITE VISITS

- (a) The provision of an off-road motorcycle riding facility together with classroom and changing facilities in the existing office block at Royle Farm, Caldwell Road, Drakelow (9/2004/0893/U)

Further to Minute No. DC/70(a) of 26th October 2004, it was reported that Members of the Committee had visited the site prior to the Meeting. Reference was made to a letter received from the applicant. Consideration was given to the application and, it was,

RESOLVED:-

- (1) *That planning permission be granted, subject to the conditions set out in the report of the Planning Services Manager to the Meeting held on 26th October 2004, with condition No. 1 being amended to reflect a permanent permission and the name in condition No. 11 being amended to "Mr. Naseby".***

(Councillor Southern wished it to be recorded that he was not in favour of this decision).

- (2) *That the conditions imposed be monitored carefully.***

- (b) Application for the approval of reserved matters of application 9/1990/0515/O for substitution of house types to plots 122-146 and the addition of plots 186-203 and associated works at Area B on land to the north of Castle Road, Castle Gresley (9/2004/1058/D)

Further to Minute No. DC/70(b) of 26th October 2004, it was reported that Members of the Committee had visited the site prior to the Meeting. Reference was made to a letter and an amended scheme received from the applicant company. Members were unhappy at the proposed three storey flats and expressed a preference for a mirror image of the adjacent design, as

reflected on the original plans. Consideration was given to the application and, it was,

RESOLVED:-

That the application be deferred to enable further negotiations with the applicant company on the proposed design.

DC/78. **PUBLIC HEALTH ACT 1925, SECTION 17**
STREET NAMING

(a) Repton

It was reported that a new street name was required for a development under construction at the former Repton Garage, High Street, Repton. The suggested name by the developer was “Mercia Court”, to which the Royal Mail had no objection. However, the Parish Council had been consulted and had proposed an alternative name.

The Council could only object to a suggested name from a developer under limited circumstances. As there appeared to be no valid grounds for objection, the developer’s choice was therefore considered acceptable.

RESOLVED:-

That, in accordance with the provisions of Section 17 of the Public Health Act 1925, no objections be raised to the suggested name “Mercia Court”.

(b) Woodville

It was reported that a new street name was required for a development under construction at the former Butt Farm, High Street, Woodville. The suggested name by the developer was “Radleigh Grange” to which the Royal Mail had no objection. However, the Parish Council had been consulted and had proposed alternative names associated with breeds of cattle.

The Council could only object to a suggested name from a developer under limited circumstances. As there appeared to be no valid grounds for objection, the developer’s choice was therefore considered acceptable.

RESOLVED:-

That, in accordance with the provisions of Section 17 of the Public Health Act 1925, no objections be raised to the suggested name “Radleigh Grange”.

DC/79. **FOOTBRIDGE AT THE A38 DERBY ROAD, BURNASTON**

It was reported that this site had been used as a storage facility and haulage yard for many years and during that time, the landowners of the site and a further site across the road, had constructed a footbridge over the A38 to link the two sites. This reflected a previous use of the sites as petrol filling stations.

In 2003, planning permission had been granted for the erection of a warehouse building on the land at Derby Road, Burnaston. A Unilateral Undertaking was attached to this permission, which required a survey to be undertaken of the structure, with an upper limit for the cost of repair of £66,000. The building was now in place and the internal survey of the footbridge had been undertaken. This survey revealed that the footbridge was in reasonable condition and therefore, the company had sought three tenders to carry out the necessary work to the footbridge. These tenders had all been received and were all in excess of £100,000. There was also an additional cost of a commuted sum to be added, which had been estimated by the Highways Agency to be in the vicinity of £15,000. This total sum of £115,000 was far in excess of the amount included in the Unilateral Undertaking.

In addition, the Highways Agency had indicated that it would be unwilling to adopt the footbridge in the absence of agreement from the third party to allow public access to pass and re-pass and for future access for maintenance purposes by the Agency. In view of this situation, Councillor Ford sought a meeting with the company and the Highways Agency, which was held on 1st October 2004. At this meeting, the company's representatives had outlined the above problems. Councillor Ford explained that the footbridge was seen as a valuable local resource used by people to cross the A38, albeit without the landowner's permission. He had carried out local research which revealed that three people had responded, confirming that one used the footbridge on a twice-weekly basis and the others were occasional users. Councillor Ford had advised that the footbridge was a valuable community asset and for the sake of a few thousand pounds, it should be retained. It was noted that the current appearance of the footbridge deterred its use.

The company's representatives explained that the company was happy to try and retain the footbridge. In the first instance, it had allocated approximately £15,000 to refurbish the footbridge. Subsequent negotiations had taken the cost to a maximum of £66,000. The current position was such that the full cost to the company would now be approximately £160,000, which was not comparable with the very small benefit that would accrue to the community. The reason for the increase in the cost of restoration was the need to close the A38 and crane the footbridge down to carry out the refurbishment and then reverse the operation when the works were completed. This would be the most cost-effective way of undertaking the work, as carrying out the refurbishment of the footbridge in-situ would be even more expensive.

It was reported that there was no change to the position of the Atkins Family Trust in that it would be unwilling to grant public access to its land. Discussions had then taken place on the merits of retaining the footbridge and the company's representatives had left the meeting to conduct a private discussion on the way forward.

Upon their return to the meeting, the company's representatives had emphasised the company's commitment to the community. It was regretted that the footbridge could not be refurbished within a reasonable cost base but the company advised that it was willing to commit the sum of £15,000, being the original amount it had set aside for the works to the footbridge, to the local Parish Councils to undertake local amenity projects in those areas

as a gesture of goodwill. The company advised that it would also bear the cost of removing the footbridge.

The Unilateral Undertaking specified that if further works over and above the works specified in Schedule 2 were required to bring the footbridge up to the requisite standard for use as a public footbridge and adoption by the Highways Agency and the costs of this exceeded £6,000, then the Unilateral Undertaking would cease to have effect. The Committee report on the Unilateral Undertaking dated 16th September 2003 made it clear that the footbridge would be removed in those circumstances.

The reluctance of the Atkins Family Trust to allow for public access to its land on the east side of the A38 was of equal significance. If there was no public access to the land, the footbridge would not be adopted by the Highways Agency under any circumstances under the provisions of the Highways Act. The original request to retain the footbridge had come from the Highways Agency and therefore, its unwillingness to adopt the footbridge was significant.

The offer from the company to provide £15,000 as a gesture of goodwill to local amenity projects was made as a means of ensuring that the community benefited from the removal of the footbridge. It was reported that initial verbal consultation had taken place with the Clerks to both Parish Councils and both had identified that there were potential projects within the parishes that would benefit from an injection of new funds. If the Committee was minded to accept the goodwill gesture from the company, the Parish Councils would be formally consulted.

When the company entered into the Unilateral Undertaking, it placed an upper limit to the amount that it would be required to spend, in order to protect its financial position. This limit was £66,000, based on the best estimates available at the time plus an additional contingency of 10%. Subsequently, additional research had been undertaken and the costs had been revealed to be considerably in excess of £100,000. In view of the clauses in the Unilateral Undertaking, the company was no longer bound by the Undertaking because the further works cost more than £6,000. As the company was the owner of the bridge, it could choose to remove it, should it so wish. In addition, the landowners on the opposite side of the A38 had stated that they would be unwilling to allow public access to the land. Therefore, the Highways Agency would not accept the footbridge for public adoption.

In conclusion, it was advised that the provisions of the Unilateral Undertaking could not be enforced against the company. The £15,000 being offered by the company would help to mitigate the loss of the footbridge. In accepting the situation reluctantly, Councillor Ford expressed his disappointment that it had not been possible to secure the future of the bridge.

RESOLVED:-

- (1) That the report on the restoration of the footbridge and its subsequent demolition be accepted on the basis that the cost of repair is beyond that envisaged in the application reports to the Committee and the Highways Agency's unwillingness to adopt the***

footbridge as a public right of way due to the unwillingness of the third party landowners to allow access to their land.

- (2) That the offer of £15,000 made by NYK Logistics be accepted as a contribution towards local amenity projects in the parishes of Findern and Burnaston and the allocation of this sum be determined in due course in conjunction with the Head of Legal and Democratic Services and the Head of Planning.**

DC/80. **REPORT OF THE PLANNING SERVICES MANAGER**

The Planning Services Manager submitted reports for consideration and determination by the Committee and presented oral reports to the Meeting to update them as necessary. Consideration was then given thereto and decisions were reached as indicated. The following item was noted:-

Appeal Dismissed

Enforcement Notice issued to correct breach of planning control at No. 44 Coton Park, Linton, being the unauthorised erection of a car port on the front elevation of the garage.

DC/81. **PLANNING APPROVALS**

RESOLVED:-

That the following applications be granted, subject to the conditions set out in the reports of the Planning Services Manager and to any matters annotated:-

- (a) The erection of a 15 metre high lattice structure with 3 dual band dual polar antennae and two 600mm dishes and cabinets with ancillary developments at land to the rear of Unit 45, Station Yard, Station Road, Hatton (9/2004/0979/FT).**
- (b) The felling of a tree (T3) covered by South Derbyshire District Council Tree Preservation Order No. 180 at No. 25 Hastings Road, Swadlincote (9/2004/1157/TP).**
- (c) The erection of a 12 classroom building with associated offices and ancillary spaces at John Port School, Main Street, Etwall (9/2004/1217/M).**

(Councillor Whyman declared a prejudicial interest in this application as Chair of the Governors of John Port School, the applicant body and withdrew from the Meeting during the consideration and determination thereof).

DC/82. **APPLICATIONS DEFERRED FOR SITE VISITS**

RESOLVED:-

- (1) That consideration of the following applications be deferred for the reasons indicated to enable Members of the Committee to visit the sites prior to the next Meeting:-**
- (a) The change of use of area to transport/storage use and erection of storage/office and office/maintenance buildings at**

Transport Yard, Woodyard Lane, Foston (9/2004/0652/M) – to assess the implications in connection with the proposed additional use of Woodyard Lane. Reference was made to an e-mail received from the County Highways Authority and the need for a Section 106 Agreement to secure a contribution towards highway improvements.

- (b) Conversion of existing seven stables to provide holiday lets on land to the south of Ashleigh House, Grassy Lane, Burnaston (9/2004/0815/F) – to enable various issues to be clarified.***
- (c) The demolition of a dwelling and the erection of 15 dwellings together with the formation of an associated access road on site of No. 224 and land at the rear of Nos. 220-230 Burton Road, Woodville (9/2004/1075/M) – to enable various issues to be clarified in connection with this new proposal.***

(Mr. A.P. Sylvester (Development Control Manager) had not been involved with this application due to a family interest and withdrew from the Meeting during the consideration and determination thereof).

- (d) Outline application (all matters to be reserved except for siting and means of access) for the erection of new units (ground floor retail and car parking) and the use of existing dwelling for retail purposes at Hillcrest Fish Bar, No. 1 Limetree Avenue, Midway (9/2004/1267/O) – to enable various issues to be clarified.***
- (2) That Members be authorised to consider any ancillary matters which might arise.***
 - (3) That the local representatives be invited to be present in a representative capacity, as appropriate.***

W. DUNN

CHAIR

The Meeting terminated at 7.15 p.m.