

DEVELOPMENT CONTROL COMMITTEE

Minutes of the meeting held at 7.30 pm on 7 January 2014

Present:

Councillor Peter Dean (Chairman)
Councillor Alexa Michael (Vice-Chairman)
Councillors Graham Arthur, Douglas Auld, Lydia Buttinger,
Nicky Dykes, Simon Fawthrop, Peter Fookes, John Ince,
Russell Jackson, Charles Joel, Mrs Anne Manning,
Russell Mellor, Tom Papworth and Richard Scoates

Also Present:

Councillors Michael Tickner

34 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Councillors Katy Boughey and Eric Bosshard.

35 DECLARATIONS OF INTEREST

No declarations of interest were received.

36 CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 21 NOVEMBER 2013

RESOLVED that the Minutes of the meeting held on 21 November 2013 be confirmed and signed as a correct record.

37 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

Although no questions were received by members of the public, Committee Member Councillor Papworth asked the following:-

'Why did the Chairman decline my request for an emergency item for tonight's agenda to discuss the illegal religious service that took place at 25 Church Road on New Year's Eve?'

The Chairman responded as follows:-

'Officers from planning and licensing attended the event on 31 December 2013.'

We will need their considered report and legal advice before receiving a recommendation on action going forward. This development does raise some important issues and whatever the outcome, we need to be properly advised. On past trends, the next event will be some weeks/months away so I would suggest that officers promptly prepare a report for a Plans Sub-Committee in the near future e.g. 6 February.'

Following this, Councillor Papworth asked the Chairman to indicate what action he thought would be appropriate to take in the event that activities were deemed to fall outside legal planning permission. The Chairman said he did not wish to speculate until the report was forthcoming.

Councillor Jackson reported that an item in regard to a change of use at the premises had previously been considered at the Plans 2 Sub-Committee meeting held on 17 October 2013. At that time, Members resolved that it was not expedient to take enforcement action however, the premises should continue to be monitored. Councillor Jackson considered enforcement action should now be taken if unlawful use was established.

38 PLANNING REPORTS

Members considered the following planning application report:-

Item No.	Ward	Description of Application
38a (page 11)	Copers Cope	(12/03084/TPO) – Fell one oak tree (T.1) in front garden SUBJECT TO TPO 2459 at 10 Crab Hill, Beckenham, BR3 5HE.

Oral representations were received from Mr Clive Lees of the Ravensbourne Valley Preservation Society. Speaking on behalf of the owner of 10 Crab Hill, Mr Lees submitted the following points in objection to the felling of the tree:-

This application had been deferred on two occasions. In June 2012, Members deferred in order to explore the possibility of a root barrier. The Quaife report confirmed that a root barrier would be effective, a letter from Crawfords confirmed they were happy to proceed with one and MWA (the applicant), visited the site and confirmed that a root barrier could be installed. This would be an effective solution and the loss adjusters and MWA were happy to proceed with it. Therefore, Mr Lees could see no reason why the TPO should be lifted.

At the second Sub-Committee meeting in September 2012, Members noted that experts considered the measurement of the movement of the property to be technically incorrect and that the proper solution would be underpinning. The Committee deferred making a decision in order that an independent report could be commissioned to review how the movement of the property

had been measured. It was, therefore, very disappointing to note that the Quaife report made no reference to the very issue that Members wished it to.

The fundamental evidence had not changed. There had been three separate investigations of the roots found in the boreholes ('BH'). In the first, dated January 2012 by Richardson's, all the roots recovered from both boreholes were either unidentifiable or dead. In the second, again by Richardson's, dated July 2012, no confirmed oak roots were found in BH1 and all the roots that were found were dead anyway. DNA analysis confirmed that the roots in BH1 were not related to T1. BH1 was located next to the bay window. If all the roots were dead in this vicinity and not shown to be related to T1, then what was causing the subsidence within the vicinity? Additionally, what was causing the subsidence at the rear of the property, much further away from the tree?

During the same investigation, (July 2012), two oak roots were found in BH2 (next to the garage) but could only be described as 'alive recently'. Only one root from BH2 was confirmed by DNA as belonging to T1. All of the above amounted to very slim evidence. Quaife made no acknowledgement of the impact of very dry weather (confirmed by the Met Office) or that every older property in the immediate area had required underpinning. Notwithstanding the evidence (or lack of it), as mentioned earlier, the loss adjuster and MWA had indicated that they were willing to proceed with a root barrier.

Mr Lees requested that the application to fell the tree be refused.

Oral representations from visiting Ward Member Councillor Tickner were received at the meeting. He indicated that this item raised a point of principle for the Development Control Committee because the outcome could shape the way in which future matters involving TPOs were determined. The Council had a duty under the Town and Country Planning Act to protect as many trees as possible - currently there were over 2,000 TPOs in place across the Borough.

The tree in question had been in situ since the 1920s and the surrounding houses were built in the 1930s. Most of the houses in the vicinity had since been underpinned including the property at No.10 following which, there had been no further problems relating to subsidence. As underpinning appeared to be an appropriate solution, Councillor Tickner urged Members to refuse the application.

Ward Member Councillor Mellor stated that this was a contentious issue within his Ward. The tree in question had been established prior to the construction of the property at No.8 which was built on a clay sub-soil and the foundations of the property were too shallow for the size of the house. The damage to No.8 had been assessed as 'not severe'. Other properties, including No.10, had been underpinned however, the insurers sought to blame No.10 for the damage caused to No.8. The evidence produced was not conclusive as other unidentifiable roots had been found. T1 may not therefore be the primary

cause of the damage and it was interesting to note that the applicant also agreed that a root barrier would solve the issue. Councillor Mellor alluded to the statement made in paragraph 2 on page 13 of the report which stated that underpinning was often a remedy for subsidence in the past but in more recent years insurers had sought tree removal, together with cheaper repairs. Councillor Mellor moved that the application be refused.

Councillor Michael agreed that the problem appeared to stem from the lack of sufficiently robust foundations at No.8 although roots may have been a contributory cause which could be solved by underpinning. This was a very attractive tree which added to the amenity and character of the area. Members should not be intimidated by the threat of compensation costs and should strive to protect trees whenever possible. Councillor Michael was concerned that a precedent would be set if the application was permitted. For the reasons outlined above, Councillor Michael seconded the motion for refusal.

Councillor Joel supported refusal and gave an historic summary of building regulations around the time the properties were constructed. This was prior to the introduction of the 1965 Building Regulations and would have been governed by Bromley By-Laws which differed significantly to those currently in existence.

The Principal Tree Officer informed Members there were no guidelines for determining by levels of percentage, whether trees were a cause of damage and not the cause; there was no requirement for it to be demonstrated beyond reasonable doubt. Trees in question need only prove to be a contributory factor not the main factor. She stipulated that previous court cases had always gone against Councils and in the last year, the Authority had paid compensation in excess of £25k each in two separate cases. Compensation was paid for any loss and damage caused by the Council's decision.

A survey on drains had been undertaken in 2011 which showed there were no defects or leaks. Underpinning would be the ideal solution to the problem and costs for the work would fall to the Council. Members were advised that the Council could not choose the solution to be used as this was entirely at the discretion of the affected parties and their insurers.

Councillor Mrs Manning was surprised that Councils' decisions were overturned by Courts and that a percentage of cause was not taken into consideration by them. In this particular case, it appeared that roots did not have any impact on the property concerned and it was disappointing to note that although the rear of the property was also damaged (this was double the distance away from the tree in question), it was not mentioned within the report.

Councillor Buttinger was keen for the tree to remain protected. She asked if the two previous court cases differed significantly from the matter currently being considered. It was reported that the first court case concerned a tree in

Bromley North which was located on the opposite side of the road to the damaged property. The Council paid for the costs of underpinning the property. The second case concerned an extension to the rear of a property in Farnborough which was moving. Again, the Court found in favour of the applicant as the Council could not prove that the extension had not been built in accordance with building regulations. The Principal Tree Officer could not recall any successful cases by any Authority where trees were involved in matters of subsidence. She confirmed that the estimated cost of works which could be claimed (and for which the Council would potentially be liable), was in the region of £88,000 and that solicitors had written to intimate that they would lodge a claim in the event of a refusal of permission to fell the tree.

Councillor Arthur was concerned that the removal of the tree would not resolve the problem as there was no evidence to indicate that the tree contributed to the damage caused. The establishment of a root barrier would be a sensible solution. It was quite clear that the damage was caused by a lack of adequate foundation when the property was built.

Councillor Fawthrop said judges should give their reasons for going against Councils' decisions and the reasons should be minuted at that time.

Councillor Fookes stated that the consultants' report concluded that evidence had been provided which demonstrated that the oak tree was a contributory factor. For this reason, he moved that the application be granted.

RESOLVED that CONSENT FOR TREE WORKS BE REFUSED on the following grounds:-

- 1) The oak tree is considered to make an important contribution to the visual amenities of this part of the Downs Hill Conservation Area and its loss would be seriously detrimental to the amenities of the area as a whole.**
- 2) The Council considers that insufficient evidence has been submitted to justify the felling of the oak tree and alternative works, such as the installation of a root barrier have not been fully investigated.**

39 ARTICLE 4 DIRECTION - STATION SQUARE, PETTS WOOD

Report DRR 14/005

Members considered whether the Portfolio Holder for Renewal and Recreation be requested to confirm the making of a 'non-immediate' (12 month) Article 4 Direction to restrict specific permitted development rights for commercial frontages and forecourts in Station Square, Petts Wood in order to preserve the character of the Station Square conservation area by allowing the Council to consider each proposal on its merits.

A map outlining the area concerned was circulated to Members.

Councillor Fawthrop thanked the Chairman for allowing the report to be considered by Members and also thanked the Deputy Development Control Manager for providing the report. He informed Members that the recommendations set out in the report were supported by all three Ward Councillors. Councillor Fawthrop drew attention to the implementation of a 12 month delay before the Direction came into effect. He moved in favour of the recommendations as he wished to protect the visual amenity and historical value of the area under consideration.

Councillor Auld reported that during recent years, a number of businesses in the area had proceeded to erect boundary walls which had caused problems that were difficult to resolve. He seconded the motion in favour of the recommendations.

RESOLVED that the Portfolio Holder for Renewal and Recreation be recommended to confirm a non-immediate (12 month) Article 4 Direction withdrawing permitted development rights in Station Square, Petts Wood, Conservation Area in respect of the following Parts of the Town and Country Planning (General Permitted Development) Order 1995 (as amended):

- (i) Part 2 Class A: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure; and**
- (ii) Part 4, Class B: Temporary uses and moveable structures associated with such uses.**

40 LAND AT SNAG LANE, CUDHAM PROPOSED ARTICLE 4 DIRECTION

Report DRR 14/003

Members considered whether the Portfolio Holder for Renewal and Recreation be requested to confirm the making of an Article 4 Direction to remove certain classes of permitted development from an area of land between Cudham Lane North and Snag Lane as there was concern that subdivision of this land into small plots could undermine the open character and visual amenities of the area due to indiscriminate development including fencing, structures, temporary uses of land and stationing of caravans.

Councillor Scoates welcomed the implementation of the Direction as a significant amount of land banks were currently buying up agricultural ground then partitioning the land to sell as individual plots. He moved in favour of the recommendations.

Referring to a similar problem in regard to the partitioning of cemetery ground located adjacent to her Ward, Councillor Mrs Manning seconded the motion on the grounds that open land should remain so.

It was reported that a letter in support of the recommendations had been received from the Green Street Green Village Society.

RESOLVED that the Portfolio Holder for Renewal and Recreation be recommended to confirm that an Article 4 Direction be made on land between Cudham Lane North and Snag Lane to remove permitted development rights for the following classes of development:

- (i) erection or construction of gates, fences, walls or other means of enclosure (Class A or Part 2);
- (ii) formation, laying out and construction of means of access (Class B of Part 2);
- (iii) provision of temporary buildings, etc (Class A of Part 4);
- (iv) temporary uses of land for any purpose for not more than 28 days per year (Class B of Part 4); and
- (v) use of land as a caravan site (Class A of Part 5).

41 DEVELOPING BROMLEY'S LOCAL PLAN - DRAFT POLICIES AND DESIGNATIONS FOR CONSULTATION

Report DRR14/002

Members were requested to endorse Appendix 1 of the report as the consultative 'Draft Policies and Designations' stage in the preparation of Bromley's Local Plan. Following approval from the Executive, this document would form the basis of consultation with residents, partner organisations and the wider community, scheduled for early 2014.

Member comments, questions and suggestions together with officer responses (where applicable) are set out below.

Member Comments, Questions and Suggestions	Officer Responses
It should be noted within the document that Site L: Former DHSS Building at Bromley South had been sold to the Education Funding Agency for the purpose of establishing a Free School. This site had been previously earmarked within the Bromley Town Centre Area Action Plan as a site for mixed office and residential use.	Noted.

<p>Page 115 – Conservation Areas. Unlike the draft policy on Locally Listed Buildings, no reference is made to the Council having a policy of considering applications for Conservation Areas in the future.</p>	<p>Reference to potential new Conservation Areas could be made although this would be dealt with under a separate process. Areas of Special Residential Character are considered through the Local Plan process. The proposed continuation of Policy BE14 – Trees located within Conservation Areas, was omitted in error from the document.</p>
<p>Page 43 - Housing Supply: There is potential here for non-conformity with the GLA. 470 additional homes per annum over a 15 year period is the correct one for Bromley. The Council should continue to fight for this.</p>	<p>Noted.</p>
<p>Page 83 - Parking: Whilst there is potential for non-conformity with the GLA, the minimum standard for Bromley is justified. Flexibility should be maintained for parking in Outer London.</p>	<p>Noted.</p>
<p>Page 56 - Conversion of non-residential buildings to residential: Additional reference should be made to not adding undue parking and highway pressures on the area.</p>	<p>Noted and additional clause to be included.</p>
<p>Page 100 - The Green Belt: This should highlight that the surrounding edge of Green Belt land is the most vulnerable because once it is developed, the remainder of the land would become vulnerable.</p>	<p>The Draft Policy on page 103 of the report refers to land adjoining Green Belt or Metropolitan Open Land. The Draft Policy on page 100 protects all Green Belt land however, supporting text could be supplemented.</p>
<p>Page 54 - Side Space Policy: The 1m side space which applied to buildings consisting of two or more storeys should also apply to one storey buildings.</p>	<p>The Side Space Policy was introduced to prevent the appearance of terracing however, there are other policies which refer to layout and character of areas more generally which provides protection. Applying side space policy to one storey would need to be considered in more detail and separately to this consultation.</p>

<p>Page 96 - Development and Trees: The final sentence should be amended to read:- <i>'When trees have to be felled, the Council will seek suitable replanting of native species.'</i></p>	<p>Will be amended to read as suggested.</p>
<p>Page 97 - Conservation and Management of Trees and Woodlands: Reference should be made to ensuring there is sufficient room for trees to grow to their full size and potential.</p>	<p>Supplementary Planning Guide can provide information on detailed requirements.</p>
<p>Page 151 - Working in Bromley: Comments regarding the loss of offices and the permitted developments rights to allow a change of use without seeking the Council's consent, raised concerns as to whether there was sufficient protection.</p>	<p>DCC had considered Article 4 requests for three areas within Bromley Town Centre namely, London Road, Bromley North Station and the extension at Bromley South. These would be submitted for Portfolio Holder consideration at the Renewal and Recreation PDS meeting to be held on 28 January 2014.</p>
<p>Page 104 – There was concern that Urban Open Space would not have the same protection as Green Belt Land.</p>	<p>Green Belt and Metropolitan Open Land have the same protection. Urban Open Space has a different function and has protection but not at the same level. The NPPF brought in a new designation - Local Green Space (LGS) and areas could be suggested for consideration as part of the Local Plan process. Whilst small areas and all Urban Open Space could not be Local Green Space, areas of Urban Open Space could be considered against criteria for LGS.</p>
<p>Pages 183-184: It should be noted that the proposed development at Chipperfield Day Centre has commenced. Although the proposed development at Grays Farm Production Village had been permitted, this was no longer going ahead and may affect the target for housing provision.</p>	<p>Noted.</p>

<p>The possible removal of Green Belt status had been omitted from the document. This was discussed at a meeting of the Local Framework Advisory Panel on 4 December 2014.</p>	<p>This would be reviewed and reported back to Members.</p>
<p>Page 65 - Crystal Palace Penge & Anerley Renewal Area: The transport infrastructure needs to be reflected.</p>	<p>Wording referring to transport infrastructure will be included.</p>
<p>Page 65 - Crystal Palace Penge & Anerley Renewal Area: The importance of this regeneration site should be reflected on page 139 of the document as a potential area for economic growth.</p>	<p>Whilst there is a level of growth for this area, it is not enough to be included in page 139 at present. This will be monitored.</p>
<p>Page 11 - Draft Designation Schedule: It does not make sense to designate Bromley Civic Centre for retail use particularly while the Town Centre's principal shopping centre in and around the High Street is suffering an element of decline. Kentish Way, which lies between the two, would also act as a deterrent. Any new retail use would need to be directly supportive of the existing shopping area.</p>	<p>The Civic Centre is part of Bromley Town Centre and national policy states that this is appropriate for retail use. It would not be advantageous for Bromley if retail business was to migrate away from the Town Centre.</p>
<p>Pages 46/47 – Living in Bromley: Residential development schemes should contain a percentage of disabled units, bedsits, 1/2/3 and 4 bed roomed properties. Flexibility on car parking should also be considered especially in developments consisting of 4 or more bedrooms. Should encourage mixed development schemes in Town Centres.</p>	<p>Noted.</p>
<p>Page 81 – Burial Space: The only available land that could be suggested as possible burial space is farmland.</p>	<p>Noted.</p>

Page 100 – The Green Belt: Fracking could be undertaken on GB land however, this would be dictated by Government.	Noted.
Aviation-related activities need to be monitored re. expansion.	Noted.
Councillor Fawthrop reiterated his view that Petts Wood ASRC should be designated as ‘saturated’.	There will be a future Supplementary Planning Document relating to design which could be the most appropriate place to include this. Evidence would also be considered for the next cycle of Local Plan consultation.
The practice of joining together two semi-detached houses to form a single detached house had an impact on Areas of Residential Character – this should be addressed via guidance.	Noted.
Page 177 – 2 nd paragraph. Councillor Mellor requested feedback regarding the progress of discussions on the future of Fort Halstead.	An update would be reported to Members.

Members agreed that major changes to side space policy was an important issue and should be considered as a separate item at a future Development Control Committee meeting.

RESOLVED that subject to the above comments, suggestions and amendments, the ‘Draft Policies and Designations’ document (Appendix 1 of the report) be endorsed for the Executive to agree its release for public consultation.

The meeting ended at 9.00 pm

Chairman