

WEST OXFORDSHIRE DISTRICT COUNCIL

DEVELOPMENT CONTROL COMMITTEE

4 JUNE 2019

NOTICE OF MOTION - ENVIRONMENTAL PROBLEMS DURING DEVELOPMENT

REPORT OF THE BUSINESS MANAGER - DEVELOPMENT MANAGEMENT

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1. PURPOSE

To consider the Notice of Motion regarding environmental problems encountered during development referred to the Committee by the Council and to make recommendations accordingly.

2. RECOMMENDATION

That consideration be given to the Notice of Motion and the information provided as set out below.

3. BACKGROUND

- 3.1. At the meeting of the Council held 24 April 2019, the following motion was proposed Councillor Harry St. John and seconded by Councillor Ted Fenton, namely:-

"That this Council asks the Development Control Committee to investigate and report back on how the use of clear and enforceable planning conditions and the imposition of monitoring fees might enable the better and more effective control of mainly environmental problems (e.g. dust, mud on roads, noise etc) during the construction period on larger development sites in our towns and villages; and charging of monitoring fees would help to offset some or ideally all of the cost of additional staff time in the enforcement team needed to enforce such conditions".

- 3.2. In accordance with paragraph 11(e) of the Council Procedure Rules, it was resolved that the motion should stand referred without discussion to this Committee.
- 3.3. With the threefold increase in the rates of housing delivery required in the District arising from the desire by Government to make a step change in housing delivery there is a consequent increase in the number of building sites and the complaints arising from the operation of those sites has also increased accordingly. Adverse weather conditions in terms of the very dry summer last year gave rise to many complaints regarding dust and the desire by the housebuilding sector to build as many units as possible before the uncertainties of Brexit meant that activity over the winter period meant that mud was carried out onto the highway network in many locations.
- 3.4. Historically the position was that if the harms arising from development sites were a statutory nuisance (noise, dust, smell, antisocial hours etc) then this was dealt with by Environmental Health officers as a breach of the Environmental Protection regime, if it caused danger (mud, inconsiderate parking near junctions) it was a breach of the highway code and a matter for the police and if it resulted in damage to the highway, vehicle routing etc. then it was a matter for OCC. The control of the planning regime was restricted to the granting of the permission rather than enforcing "non-planning" matters.

Planning control is expressly prohibited from covering matters addressed by other legislative regimes.

3.5. In more recent years the ability and willingness of these third parties to enforce the legislation for which they are responsible has apparently diminished somewhat and of course there are occasions where the level of harm is not such as would constitute a Statutory Nuisance/criminal offence/harm to the highway but where there are still some residual harms that the Planning system can properly deal with. The consultees are now routinely seeking to have construction traffic management plans (CTMP) and routing agreements etc imposed as a means to try to persuade developers to address the concerns before they arise. This has however had a presumably unintended consequence in that it has raised expectations amongst residents that every impact of a development being implemented can be controlled (whereas all building operations cause a degree of harm and action could only reasonably be taken against harms over and above 'normal' levels) and where there is a breach of a CTMP condition residents have been advised to the effect that 'it is a District condition and so is up to the District to monitor and enforce it' when perhaps other legislation/landownership etc powers held by the third party organisation would be more effective. The workloads and ability of the Planning Enforcement team and those officers in ERS who are assisting has become excessive to the extent that more problematic enforcement issues are taking second place to managing the CTMP. Officers were thus on the point of advising third parties that they were minded to recommend members not to impose the CTMP condition even were it requested by OCC etc. In that regard the resolution has come at an opportune time.

3.6. Use of Planning Conditions

It is a legal requirement of a Planning condition that it is, inter alia, precise and enforceable and to that extent the element of the motion concerned with "the use of clear and enforceable planning conditions" is not considered to be a particular issue. There is however an issue as to the public expectation of what can reasonably be done if there is a breach of a CTMP condition. Before enforcement action can be taken the test of the expediency of taking action must be passed - rather than merely identifying that there is a breach, but this is the case with most Planning enforcement matters. It does however leave the public dissatisfied that "nothing is being done" whereas the legal position is that the situation is different to what was approved but the harms are insufficient to justify action.

3.7. Use of a developer levy

It is the responsibility of any developer to ensure that they comply with the plans and conditions. It is not however a criminal offence not to comply with them. There may therefore be some legal issues in imposing a levy if framed in the terms set out - as 'law abiding' developers could rightly state that they were paying for a service that was not required for their development and this would sit outside of what it is possible/legal for a 106 agreement to require, as it would not be necessary. However, given that developers often seek minor variations to schemes as they are under the course of implementation to reflect changed market conditions, shortages of particular materials, market taste etc. there may be a case to ask them to contribute to a liaison officer. Given existing workloads and the need to meet statutory deadlines for determining applications it can be that such requests for variations to approved schemes from developers may not have the same urgency for a Planning Officer as for a live application. It is considered that developers may be prepared to pay for a service where there was a dedicated officer assigned to their site whose responsibilities involved handling the variations requested by

them, but who could also handle any variations/breach of conditions as they arose also. Clearly however this cannot be applied retrospectively and would only be applicable (if imposed) on any 106 agreement negotiated from now on

- 3.8. This report provides an overview of the position. In formulating any recommendations to Council it is suggested that consideration be given to requesting Officers to test the legality and propensity of the development industry to recognise the merits of such an approach as part of any resolution on forthcoming applications and that, if there are reasons why it cannot be imposed, that a further report be prepared for Members' consideration.

4. ALTERNATIVES/OPTIONS

- 4.1. None

5. FINANCIAL IMPLICATIONS

- 5.1. None arising directly from this report

6. RISKS

There are risks in seeking funding from developers that does not meet the statutory tests but there is also a reputational risk if it is perceived, albeit erroneously, that a lack of action is a result of a lack of will rather than because the legal tests have not been met.

7. REASONS

To ensure that any decisions issued are subject to the appropriate monitoring and to support the Council's aim to maintain West Oxfordshire as one of the best places to live, work and visit in Great Britain.

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Date: 21/05/2019

Background Papers:
None