

MEMBER QUESTIONS TO PORTFOLIO HOLDER at Place Scrutiny Committee – 12 June 2017

Questions from Councillor Mrs Thompson

(1) Is the Portfolio Holder able to explain how internal amendments to a Planning Consent which change the proposals of the application presented to the Planning Committee and override the public consultation are considered?

- Councillor Gottschalk responded to the question that there were two ways of amending a planning consent. Amendments which were "non-material" were dealt with through an application for a "Non-Material Amendment Application". The Local Planning Authority had 28 days to deal with such an application and there were no requirements to consult anybody.

Material amendments were dealt with by way of an application under Section 73 of The Town and Country Planning Act 1990. The LPA does consult on such applications and should consent be granted it would have the effect of a brand new planning approval. Whether either type of application was determined by officers or the Planning Committee was covered by the general powers of delegation contained within the constitution. In practice many Section 73 applications on major developments were considered by Committee whereas non-material amendments were not.

- Councillor Thompson asked a supplementary question, could the Portfolio Holder define the technical amendment.
- Councillor Gottschalk responded to the supplementary question, explaining that material amendments would have an impact on the external party.

(2) In the event of a breach of a Consent is this a confidential matter between the LPA and the Developer or a matter of transparency for the public domain?

- Councillor Gottschalk explained that the Council treats enforcement complaints confidentially but the complainant was always advised of the reasons for a particular course of action. Details of individual enforcement cases were not therefore in the public domain.
- Councillor Thompson asked a supplementary question to the Portfolio Holder to confirm if enforcement was a private matter.
- Councillor Gottschalk responded to the supplementary question, informing that though enforcement was a private matter, information could be obtained from members of the public upon request.

(3) If there is a breach to the Consent is the breach brought to the attention of the Planning Committee prior to considerations of a S. 73 application - or is the cause of breach allowed to continue and progress?

- Councillor Gottschalk responded that it was not routinely but the expediency of enforcement action may be discussed with the Portfolio Holder/Chair of Planning Committee. If there had been a breach which a Section 73 seeks to regularise, then this may be reported in the officer's report to committee. Although this did not alter the way in which an application should be dealt with. It must be considered on its merits.

- Councillor Thompson asked a supplementary question to the Portfolio Holder about expanding on the resolving issue, and was it the policy of the Council to seek to deliver a more practical approach.
- Councillor Gottschalk responded to the supplementary question by requesting this question in writing.

(4) What is the formal procedure for making a decision to pursue or not to pursue enforcement in event of a breach?

- Councillor Gottschalk explained that the decision on expediency rests with the City Development Manager who may take the advice of the Portfolio Holder and City Solicitor. Formal enforcement action could only be undertaken by the City Development Manager in agreement with Portfolio Holder and City Solicitor.
- Councillor Thompson asked a supplementary question, on whether there was a benchmark for a material breach.
- Councillor Gottschalk responded to the supplementary question by confirming that this was answered as part of a previous response.

(5) If a Certificate B was issued with the first application are these revisited if any amendments are made to the original consent or a subsequent application?

- Councillor Gottschalk responded that it was not in respect of a "Non-Material Minor amendment" but an application under Section 73 needed to include the relevant certificates.
- Councillor Thompson asked a supplementary question, on whether the Certificate B was connected to Planning and would there be an impact?
- Councillor Gottschalk responded to the supplementary question by confirming that there would be no impact.

(6) Could you please confirm (as I understand) The Monkerton Heat Company Limited, company number 09853521 has six representatives listed with one representative from Exeter City Council Planning Department?

- Councillor Denham responded that the Exeter City Council representative was from the City Development team on behalf of the City Council and was one of the six appointed Directors of The Monkerton Heat Company.
- Councillor Thompson asked a supplementary question to request clarification on how the MHC would be operated including funding for when Exeter City Council was the only shareholder and would additional directors to the existing planning officer be appointed in the future?
- Supplementary written response by Councillor Denham: The Development Phase is likely to continue for more than 10 years. Consideration will be given to the appointment of alternative and additional directors towards the end of the development phase. The operation of the company by the City Council has been estimated as certainly less than £10,000 including all officer time.

(7) Could the Portfolio Holder for City Development clarify how the democratic process is implemented to ensure Exeter City Council has no conflict of interest with private development companies please?

- Councillor Denham responded that the Monkerton Heat Company (MHC) exists to administer a contract with Eon to operate the District Heating scheme at Monkerton. It receives from each of the developers a long lease on the ground within which the District Heating pipework runs. MHC in turn grants a sublease to Eon. Once each developer had completed development on their site and completed the head lease, they surrender their shares in MHC. Once all developers had transferred their shares, Exeter City Council remained the only shareholder in MHC and as such had sole control.
- Councillor Thompson asked a supplementary question to enquire that as the development companies drop out, could the City Development Portfolio Holder advise on any future liabilities in relation to infrastructure or satisfactory performance of the heating system in the longer term?
- Supplementary written response by Councillor Denham: The maintenance of the district heating infrastructure is the responsibility of operator as set out in the contracts which run until 2082. The contracts set out the requirements for the infrastructure and plant to be handed over in satisfactory condition at the end of the contract period. At that time the Monkerton Heat Company would have the opportunity to re-let the contract to operate the District Heating System

(8) Could you advise the professional status of the other directors and could you explain how conflicts of interests are avoided?

- Councillor Denham responded that she was not aware of the professional status of all of the other directors. Monkerton Heat Company (MHC) was created to deliver a District Heating Scheme at Monkerton, required by planning policy secured through Section 106 agreements that were binding on the Developers. In this specific regard the developers and Exeter City Council were not conflicted and MHC did not create any conflict of interest with Exeter City Council elsewhere.
- Councillor Thompson asked a supplementary question, to ensure that there was no conflict of interest when receiving applications/ variations from fellow directors of the MHC (should they be directors of development companies) was it transparent there was no conflict of interest by the City Council as per the Constitution?
- Supplementary written response by Councillor Denham: District Heating is a planning requirement and the Monkerton Heat Company is a vehicle that has been created to enable that requirement to be delivered. There is no conflict with other planning controls.

Question from Councillor Musgrave

(1) Are you still confident the imminent implementation of the PSPO will reduce antisocial behaviour without having a detrimental impact on the street community?

- Councillor Brimble responded that he strongly believed in defending the rights of homeless people and rough sleepers. He believed that the outreach work with Julian House was finding a positive way to help these people get the support they need to give them a better life. Shortly after taking up this portfolio, he met with the Environmental Health and Licensing Manager to be briefed on Community Safety and Anti-Social Behaviour issues, including work conducted regarding the Public

Spaces Protection Order (PSPO). He was briefed upon the guidance and protocol that had been drawn up as well as training that he had and continued to undertake with the Police.

As a council we strongly believe in finding positive ways to help people out of a life of homelessness and rough sleeping. However we have to be clear that Public Spaces Protection Order was designed to address anti-social behaviour rather than the issue of homelessness and rough sleeping. As a Council we must address the problems of anti-social behaviour.

In line with the report that went through the committee cycle in January and February, the protocol and training had delivered on Members' wishes to educate and seek rectification to unacceptable behaviour that had a detrimental impact on the city, which the majority of which would not be part of the street attached community.

However as had been the case over the last 12 months, there was a clear mechanism in place to work with those who have complex problems to tackle the root causes through a positive pathway and not just tackle the symptoms displayed through behaviour. As part of the adoption of the PSPO, it was agreed that a report would be presented to Scrutiny to update Members six months after the order was implemented as to its operation and effectiveness in reducing problematic anti-social behaviour it sought to manage, together with any negative or unforeseen impacts that it may develop. In addition Councillor Brimble would also be seeking regular updates from the Environmental Health and Licensing Manager as part of his regular Portfolio Holder meetings.

- Councillor Musgrave asked as a supplementary question, would there be any detrimental impact on the street community and would it affect pulling the PSPO from use?
- Councillor Brimble responded to the supplementary question by informing that the Council had voted to use the PSPO to target anti-social behaviour in the city and would not to focus on the homeless community.