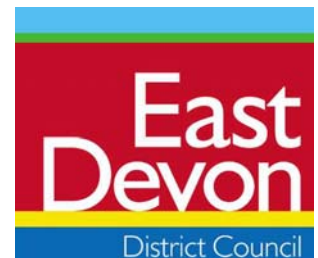


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Dear

Planning Application 08/2537/FUL, Longboat Cafe, Budleigh Salterton

I am writing in reply to your letter of 4 September 2009 addressed to Mr Holland one of our Democratic Services Officers in which you express your complaint about the handling of the Longboat Cafe planning application at the Development Management Committee meeting on 25 August. You believe that the validity of the proceedings was questionable because of the conduct of the Chairman and the planning officers. In my role as Monitoring Officer for the Council I have considered your complaint and discussed the matter with the Head of Planning & Countryside Service Kate Little who was, as you are aware, in attendance at the meeting that day during the discussion of this application.

In considering your complaint I have taken your issue regarding the validity of the proceedings to refer to the legal process that the Committee went through to reach a decision on the planning application. I have also considered whether the conduct of the Chairman was a matter for the Standards Committee. With regard to the latter I found no grounds for referring Councillor Diviani's conduct to the Standards Committee as there is insufficient evidence of a breach of the Council's Code of Conduct for Councillors.

Turning to the question of the proceedings at the Development Management Committee itself, I wish to preceed my comments on your points by saying that members of the Development Management Committee are supposed to judge planning applications on the evidence and policies before them and reach unbiased conclusions. Councillors may be pre-disposed to a particular view before attending a committee either for or against a planning application but they must have an open mind before they can vote at the Committee. Councillors are entitled to both hold and express their own views so long as they are prepared to reconsider their position in the light of all the evidence and arguments presented. They must not give the impression that their minds are closed. This advice is promoted by Standards Board for England and is also included in "Probity in Planning – The Role of Councillors and Officers" recently published by the Local Government Association.

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2.
25 September 2009
Letter to

It is also important to explain that the strength of feeling of the local community is not in itself a reason for a planning committee to reach a judgement supporting that view, no matter how many of the local residents express it, if this flies in the face of the facts of the case. In a democracy local people are entitled to make their views known. The definition of democracy however does not include an automatic presumption that there should be agreement with the community view. The Development Management Committee at East Devon allows the public to express their views direct to the Members of the Committee and for the Councillors to ask questions for clarification. By this means, the Members have access to the local community's view. This of course is not their only access as the written comments received during the processing of the application are summarised in the committee report which the Members have before them and which is a published document available to the public 10 days before the Committee sits. This committee report is a comprehensive collection of all the views expressed in respect of a planning application and it contains an analysis by the planning officers culminating in a recommendation on the application.

The Members of the Committee having read this report, having heard the local view and often having been to site themselves to have a look and appreciate the context of the site then debate the issues as they see them before reaching a resolution on the application. I need to say at this point that I find no evidence that any of these elements were missing at this particular Committee. The agenda was available, the public did address the Committee, and there was a full debate on the case. Further, there was a motion to refuse the application which was put to the vote but failed. A subsequent motion to approve the proposal in principle, and in particular in relation to the bulk and design of the building was also voted on and passed. Whilst there are those who will disagree with that decision, the opportunity to both refuse and approve the application was exercised by the Committee and it was the latter which was successful. Whilst this may not be acceptable to some residents of Budleigh Salterton, it is nevertheless an expression of the democratic process working correctly. I will turn now to your specific points:

1. In the light of what I have described above it was not unreasonable for the Chairman of the Committee to ask the Members not to be swayed by the strength of local feeling in reaching a judgment. Whilst you believe that this gave an unfortunate impression that the views of local residents and taxpayers was of no interest, those views were widely aired in the meeting and the Members of the Committee were at liberty to either agree or disagree with them as they felt appropriate, but they had to base their decision on the facts of the case.
2. Similarly with the contribution made by the Mayor of Budleigh Salterton, who is obviously an important local resident. The fact that he had the opportunity to speak on behalf of the community and express their views does not require the Committee to follow his thinking.

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3.
25 September 2009
Letter to

3. A member of the public whose contribution was followed by the Chairman reading an extract from an Environment Agency letter has made a separate complaint which I have responded to direct to him. In this I explained that the document that the Chairman was reading from was a public document part of the background papers to the application and in the public domain. He was not expressing his own view, simply that of the Environment Agency one of the statutory consultees on planning applications. The Agency did not object to the planning application. Whilst it may have been more appropriate to have read the letter out at the end of the presentations it nevertheless was reasonable for him to draw this contrary view to the attention of the members making the judgement as the more information they have the better able they are to make that judgement.
4. Everybody who speaks from the floor may say who they are if they wish. The Chairman of the Ottervale Association pointed out her status and it is not unreasonable for a former Councillor to mention his. The availability of cream teas in Budleigh Salterton as you rightly point out isn't a planning matter but much of what members of the public say to the Committee is often of that type and in order to allow the flow and not continually interrupt speakers, it is the Chairman's normal practice to simply allow the speakers to say what they wish for their 3 minutes.
5. The Committee can choose to visit a site if it wishes. It is however an expense for a full Planning Inspection Committee to visit the site before reaching a decision and members of the Development Management Committee are therefore asked to visit as many sites coming to Committee as they can in order to prevent the necessity for this exercise. Nevertheless, if they wish to vote for a site visit they may. In this case the Committee showed no inclination to follow the recommendation of Councillor Parr to have a site visit. The point of the planning Inspection Committee is for Members to familiarise themselves with the site, if they have not already done so. There is little point in the Planning Inspection Committee being instigated if Members have already seen the site. In any case there is no guarantee that the decision would be different if the Planning Inspection Committee had occurred.
6. This has been answered above.
7. I agree that the disappointing behaviour by some members of the Budleigh Salterton community in attendance at the Committee is to be regretted. Kate Little advises me that the Chairman did attempt to keep interruptions to a minimum but the persistence of those residents was difficult to control, to the extent that one resident made some particularly unfortunate remarks regarding the health of one of the Councillors for Budleigh Salterton. This is completely unacceptable.
8. On the question of sustainability, in fact the resolution passed by the Committee requires that the potential sustainability credentials of the building are investigated and increased sustainability levels secured.

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4.
25 September 2009
Letter to

9. Kate Little advises me that she did not say that there were no planning grounds for the rejection of the planning application on the question of design. Rather she was very careful to explain that design is a subjective subject and the most difficult to defend in a planning appeal. Planning Officers do not debate with Councillors at the meeting and therefore once Mrs Little had made her point regarding the issue of using design as a ground for refusal she would not have responded to Councillor Hall's statement unless the Chairman required it. On the question of dealing with the replacement shelter as the Council is the landowner the shelter is being dealt with by the Council's Estates Team. It was not necessary therefore to deal with it under the planning regime.
10. I believe that this point is one of perception rather than an issue regarding the legal proceedings of the Committee.
11. I am sorry that you are not clear about the nature of the final resolution of the Committee due to the behaviour of certain residents of Budleigh Salterton at the meeting as discussed above. The minutes of the meeting are available on the Council's website should you wish to see them. As the recommendation to approve followed one to refuse the application I am not sure that I could substantiate the term 'bulldozed' as describing how the resolution to approve the scale and mass of the building was reached. It is true that several of the Councillors did not agree with the recommendation and they exercised their right to vote against it. However decisions at Development Management Committee are dealt with on a majority basis and an 8-6 vote is a perfectly acceptable outcome.
12. Members of the Planning Committee are members for the whole of East Devon and whilst they do acknowledge the quality of the setting of Budleigh Salterton this is not likely to be expressed by them to the detriment of other settlements in the District. Whilst local people might regard Councillor Diviani's comments that Budleigh is one of a number of seaside settlements in East Devon and thus not unique in that sense as ill considered and provocative I do not believe that this was the impression the Chairman's remarks made upon the Members of the Planning Committee for the reason I've just explained.
13. All the Members of the Planning Committee had the full and comprehensive report prepared by the Planning Officers available to them and whilst this contained reference to the objection from Natural England it also explained all the consultees responses along with an analysis of the facts and policies. It is this balanced exercise that must inform the judgement. It would be inappropriate to reach a decision based simply on the view of one statutory consultee without reference to the views of others.

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5.
25 September 2009
Letter to

In conclusion therefore, whilst I understand your disillusionment with the proceedings of the Development Management Committee I think this is based more on the fact that the decision did not go the way you may have wished rather than on any factual errors or matters of procedure not being followed correctly. One of the Council's lawyers is always in attendance at the Committee along with the Democratic Services Officer both of whom are available to advise on council protocol. I find therefore that the Development Management Committee and the Chairman together with the actions of the Planning Officers present to have been appropriate.

Yours sincerely

Denise Lyon
Deputy Chief Executive and Monitoring Officer

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