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## **1.0 Introduction**

- 1.1 As you are aware, I have been asked to investigate the decision making process of the planning application for two poultry houses an agricultural access and the formation of internal access tracks at James' Barn, Kerswell. The complaints made by 14 households and the Clerk to Broadhembury Parish Council fall into a number of categories which I have dealt with individually. I have not, however, dealt with the matter of the actions of individual Councillors considered by the Standards Assessment Sub Committee at its meeting on the 14 July 2009. My comments relate to the conduct of the Planning Officers and the Development Management Committee as a whole.
- 1.2 In undertaking this investigation I have adopted a similar methodology to that of the Local Government Ombudsman, whereby I have sought to establish whether there has been maladministration in this case, sufficient to suggest that the decision taken on the planning application was misdirected by either taking into account matters it should not have done or having failed to take into account matters that it should have.
- 1.3 I have also examined any potential areas of less than best practice that have been raised by the complainants and where appropriate have made recommendations for improvements which I hope will be of benefit in the decision making process in the future.
- 1.4 I fully understand the complainant's strong feelings about this application and their perception of its potential impact on both their village and their lives. The quality of the objections on the planning file is generally very high and there has been, in the main, a clear intention to focus on the material planning matters relevant to the case. I must however explain that planning applications are judged on their merits and a Planning Authority must take that judgement on the proposal submitted and not in relation to a preferred alternative – for example, a different site. The analysis that the Planning Authority undertakes must be based on evidence and facts and not subjective views, nor on the volume of objections or strength of feeling locally. In my investigation therefore, I have not dealt with personal comments, for example about the behaviour of either the applicants or the supporters of the proposal, nor have I considered the value of assumptions about the future of this poultry unit.
- 1.5 The specific issues I have identified for investigation are as follows:
1. The handling of the planning application by the Planning Officers.
  2. The reaction of the Members of the Development Management Committee to the presentations made by both objectors and supporters.
  3. The conduct of the Development Management Committee in reaching a decision.

## 2.0 The Handling of the Planning Application by Planning Officers

2.1 The specific points raised under this heading were:

- ❖ An Environmental Impact Assessment should have been required with the planning application.
- ❖ EDDC could be at risk of knowingly permitting pollution by the development being unable to meet the relevant legislative and regulatory requirements.
- ❖ Planning application changed after submission without re-consultation of the Parish Council.
- ❖ Planning application riddled with inaccuracies.
- ❖ Planning Officers influenced by Ward Member's views.
- ❖ No notice taken of Blackdown Hills AONB Partnership's objection.

2.2 *Environmental Impact Assessment (EIA)*: The requirements of the EIA Directive were introduced into UK Legislation in 1981 and following a number of court challenges about the interpretation of the Directive the former Office of the Deputy Prime Minister issued a guidance note to all Chief Planning Officers in 2004, which I have used for reference in my analysis on this issue.

2.3 Certain categories of development necessitate an EIA either because they are defined in Schedule 1 of the Regulations in which case the requirement is mandatory, or in Schedule 2 of the Regulations, where the need is discretionary, dependent on the development's anticipated environmental effects. For poultry units Schedule 1 refers to 85,000 places for broilers or 60,000 places for hens. In this case only approximately 10,000 hens are proposed on site. In Schedule 2 the area of new floor space for intensive livestock units must exceed 500 square metres. This case falls below this threshold, if only just.

2.4 The Office of the Deputy Prime Minister's guidance note points out that projects that fall below the thresholds and criteria in Schedule 2 do not generally require an EIA and that the Planning Authority need not adopt a screening opinion. In effect the Regulations have already provided a negative Screening Opinion. However the Council did undertake a formal Screening Opinion (to advise on the need for an EIA) and confirmed that it was not required.

2.5 The anticipation of more units cannot be taken into account in a Screening Opinion. When and if more poultry houses are sought in the future however, as the thresholds are cumulative, an EIA may then be required.

2.6 The need for an EIA is therefore not dependent on anticipated effect alone, but on the category of size and scale of development and then its anticipated effect. The decision made by the Screening Opinion was therefore correct in my view.

2.7 *Knowingly permitting pollution*: The Town and Country Planning Legislation deals with land use only and does not have jurisdiction over pollution matters dealt with by Defra, the Environment Agency and others. That is dealt with by reference to other legislation. All necessary consents must be obtained before development can commence. The Planning Authority has dealt with the issue of waste however by the relevant condition. Thus the Planning Authority has dealt with the issues it does have jurisdiction over and not sought to impose conditions relating to matters arbitrated by other bodies. There is information known as an 'informative' for the applicant on the decision notice about the need to obtain all the listed consents. This is the correct approach.

- 2.8 *The application changed after submission:* It is assumed that this refers to the removal from the application of the proposal for the retention of a mobile home on the site. As the application now included less development than previously, it would be unnecessary in my opinion to re-consult to seek views on this. If the amendment had proposed additional development then of course re-consultation would have been appropriate.
- 2.9 *Application riddled with inaccuracies:* It is acknowledged in the Committee Report that in answering in the negative on the question about water courses, the applicant was ignoring a small water course or ditch on the site. The question of flooding and the disposal of new surface water run off was however dealt with in the report, so the original error has not meant that the relevant issues were not analysed.
- 2.10 The failure to serve notice on the owner of the common land/right of way included in the red lined application site is potentially a technical error. The question then to be addressed is whether or not the applicant did this knowingly and with intent to mislead the Planning Authority. There is no evidence of this and the only area of apparently common land included in the red line is the existing access to the highway. No new works were proposed here. It may also be the case that the applicant owns this strip of common land – as indicated on the application plan (it is shown as land in the ownership or control of the applicant). All common land is owned, but it is land over which specified individuals have a right of access.
- 2.11 *Planning Officers influenced by Ward Member:* It is appropriate that Ward Members get involved in controversial planning applications by speaking to both local residents and Planning Officers. The Planning Officer's recommendation will however be an independent judgement, informed by all the available evidence, consultee responses and factual points raised by those affected by the proposed development. In this case the Ward Member spoke both to the Senior Planning Officer who dealt with the case and myself to highlight the issues as he identified them and to ask for the application to be sent for discussion by the Development Management Committee. There is nothing unreasonable in my view in this approach.
- 2.12 *The Blackdown Hills Area of Outstanding Natural Beauty (AONB) Partnership:* This site does not lie within an AONB but is adjacent to the Blackdown Hills AONB and the Partnership sent in comments objecting to the proposed two poultry units. The decision is however made by the Planning Authority which weighed this objection (amongst others) with all the other factors and reached a decision. The Committee Report records the objection from the Partnership, refers to the relevant policy in the adopted Local Plan and assesses the impact on the landscape. I can find no fault therefore with the process albeit that the conclusions are not what the complainants would have hoped for.

### **3.0 Presentations at Development Management Committee**

- 3.1 The specific points made under this heading were:
- ❖ Poor facilities at Exmouth Town Hall for presentations.
  - ❖ Speakers treated badly by the Committee – derisory laughter.
  - ❖ The remarks made by the supporters bordered on racism i.e. the length of time living in the area.
  - ❖ Agent for the applicant was allowed to make derogatory remarks about the objectors, raised non-planning matters and should have been called to order.
  - ❖ Comments of supporters should have been disregarded as non-planning matters.

- ❖ Atmosphere in the room was one of derision and intolerance – speakers lectured on farming.
- ❖ Murmurs of assent and support from Councillors during supporter's presentations and demure cheers when Councillor Skinner spoke.
- ❖ Councillors not listening to or having eye contact with objectors during presentations but listening actively to the supporters and agent's case.
- ❖ Planning Officers giggling during objector's presentations.
- ❖ One of the applicant's friends was fiddling with a mobile phone and had to be stopped.

3.2 I have spoken to a number of people present at the Committee but who are not directly cited by the complainants, about the conduct of Councillors during the presentations. It is clear that there was a lack of attention being paid to the objectors with some Councillors actually laughing and chatting between themselves during the presentations. The Exmouth Town Hall Chamber is not an ideal location for speakers, with less than ideal acoustics. However the lack of respect shown to the objectors whilst they spoke cannot be regarded as satisfactory.

3.3 The evidence of a difference of attitude to the supporters and the applicant's agent during their presentation is less clear cut, but it is not inconceivable that where Councillors agreed with points being made they displayed attitudes of support or agreement.

3.4 Any remarks made by Councillors or speakers which are inappropriate in any way should be stopped by the Chairman and disregarded by the Committee Members. In this case the questioning of speakers was inappropriate (this has been dealt with elsewhere in relation to individual Councillors) and the same inappropriate question was put more than once. The points made by the supporters and the agent regarding length of residence or the background etc of objectors was irrelevant to the determination of the planning application.

3.5 My research has not confirmed any inappropriate behaviour by any officers present at the meeting. The planning officer present was the Development Manager, Steve Belli, who has no memory of giggling during the meeting. I suggest therefore that it may have been a matter of his attention being diverted - I understand that he observed what he thought to be someone trying to record the meeting (something which is against the rules of the Exmouth Town Hall Chamber) and he drew this to the attention of his legal colleague.

3.6 It is important that speakers at the Committee are treated with respect regardless of whether their points are accepted or not in the subsequent debate or decision. The importance to the speakers of being listened to politely cannot be underestimated as they have a personal interest in the case and a right to put their views to the Committee. All speakers should be treated equally and as the Committee are effectively arbitrating the case a neutral attitude should be maintained until the debate commences.

3.7 In this case this does not appear to have occurred and the following recommendations are therefore made:

1. All speakers should be treated with respect and listened to in silence.
2. All questions should be appropriate and related to planning matters.
3. There should be no display of agreement with or dissent from, the points being made by speakers.
4. The Chairman should put a stop to inappropriate points or questioning as soon as possible.

## 4.0 Reaching a Decision

4.1 The specific points made under this heading were:

- ❖ The decision was made too quickly, unlike a previous application for a garage which was given careful consideration.
- ❖ Committee had pre-judged the application – it was discriminatory and undemocratic.
- ❖ There was collusion and corruption practices evident.
- ❖ Committee refused to have a site visit as it said it didn't have the expertise to warrant the visit.
- ❖ Committee clearly rebelling against the lead from the new Chairman, especially over the site visit.
- ❖ The decision was seriously flawed and should be revoked.
- ❖ Felt something covert was going on at Committee.
- ❖ What happened to equal democratic rights as a fair and balanced hearing at the Committee?
- ❖ Decisions reached did not follow the proper legal and democratic process.
- ❖ Councillors had not read all the documentation or the 46 letters of objection, knew no details about the case and took no interest in it.

4.2 Development Management Committee can seem to be a fast moving and confusing experience if someone has not attended one before. The Members of the Committee will have read the comprehensive Committee reports prepared by the Planning Officers, in advance of the meeting so already understand all the relevant issues, in preparation for the debate. These reports include summaries of points of objection and support drawn from the letters received whilst applications are being processed.

4.3 Consequently it is inevitable that Members will already have drawn some conclusions from the written information, but good practice requires that they remain open-minded until they have heard all the speaker's points of view as required by the Code of Conduct.

4.4 The Committee Members are experienced – some of them have many years experience in determining planning applications. Equally over time trends emerge about the type of proposals they are sympathetic to. Rural agricultural businesses are important in this District to the local economy and in this time of financial hardship the weight given to such enterprises has increased in the balancing exercise that is the determining of planning applications. This is not an unreasonable position for the Committee to take and it reflects the emphasis of policy in the Local Plan and therefore there is nothing fundamentally wrong in the decision reached, or how it was reached. I can certainly find no evidence of collusion or corrupt practices.

4.5 Further, the decision was reached in the public domain with a published written agenda – available 10 days before the Committee met. The decision was taken by elected representatives of the East Devon community and as the Ward Member is not a voting Member of that Committee, by those who had no personal interest in the case. Whilst the decision may not have been what the complainants wished, it was reached via a democratic exercise with all who wished, able to make their views known either verbally or in the written form.

4.6 However, there is the question of the perception of the decision making process – how it appeared to those present, particularly those who had a personal interest in the decision. There was a definite feeling that the Committee had already made its decision before the

debate took place, both by the attitude towards the speakers by some Councillors and by the resistance to the Chairman's proposal for a site visit. It was not unreasonable to feel that a site visit was unnecessary as the Committee had sufficient information to make the decision but the way that judgement was portrayed did not come over well.

4.7 It is recommended therefore that the Committee adopts the following approach in making decisions on planning applications:

1. When debating an application, focus on the precise points where there is agreement/disagreement with the Officer's report, drawing from other information, or points of view brought to your attention as appropriate.
2. Only refer to material planning considerations and heed advice from the Chairman if straying from this.
3. Ensure the points made are valid in planning law.
4. Base decisions made, even when differing from the Planning Officer's recommendation, on policy and the facts of the case.
5. Be clear that all the relevant matters have been considered before a decision is made – this can be achieved by the Chairman rounding up the debate before a vote is taken.
6. The Chairman to ensure that the proposed motion for a vote is clear to all present.
7. After the vote the Chairman to confirm the decision made.
8. A Lead officer (usually a Director or one of the Council's lawyers) be nominated to assist the Chairman in all matters of process and protocol.

## **5.0 Conclusions**

5.1 Overall there is no evidence that the decision made was reached without all the appropriate legal and democratic processes being properly undertaken. However, there is clear evidence that the Committee failed to portray itself, in this instance, as a formal quasi judicial decision making body which not only was, but was also seen to be, fair and equal to all participants and remained open minded until the debate commenced.

5.2 It is recommended therefore that, in addition to the detailed recommendations listed above, the Committee be conducted in a more formal manner than previously, in a way that ensures that all those present understand the decision making process, the reasons why some applications generate more debate than others and why a particular decision was reached. These reasons should be minuted.

5.3 A training session for Members of the Committee on all the recommendations should be held as soon as possible.

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