

PLANNING COMMITTEE (on-line)

26th October 2020

Present – The Chairman (Councillor Brockbank) and Councillors Brown, Handley, Lis, Place, Pringle, Shuttleworth, Sutcliffe and Welch.

Also in attendance: Councillor Ireton.

Officers – Planning Solicitor, Planning Manager, Senior Democratic Services Officer and Democratic Services and Scrutiny Officer.

Also in Attendance: Mrs Harriet Townsend of Counsel.

Apologies for absence were received from Councillors Heseltine, Morrell and Rose.

Ward Representative : Councillor Moorby.

Start: 1.35pm

Finish: 3.21pm

Councillor Place left the meeting at 2.30pm.

The minutes of the 5th October 2020 were confirmed.

PL.1001

HELLIFIELD FLASHES, PLANNING HISTORY AND ENFORCEMENT ISSUES

The Strategic Manager for Planning and Regeneration submitted a report presenting to Members Council's advice on the planning history and enforcement issues in respect of development at Hellifield Flashes. The report contained advice from Counsel and provided the opportunity for Members to ask questions thereon. It was not the occasion to consider or review the extant planning permissions on the site.

Counsel's advice was published on the Council's website and the public were invited to submit questions until the date of today's meeting which were considered by Counsel. In addition to this, the Planning Manager confirmed that he had notified the consultees from the last application, of Counsel's advice and only one response was received, having no questions or comments. Regarding the importation of material, the Planning Manager indicated that it had always been the intention to raise the site to be level with the A65 as in some parts there was a difference of 2 meters. The Environment Agency and the Council's enforcement officer had visited the site and would continue to monitor the situation.

Further points the Planning Manager made were that the Gallaber Flash was included in the adopted Craven Local Plan as a green space and that the Local Plan also identified extant heritage and education facilities to the South East of Gallaber Flash.

In concluding his report, the Planning Manager stated that Counsel's advice offered the opportunity of learning lessons for the future, in terms of improving administration around the process of environmental impact assessments and increasing transparency. He also took the opportunity to reassure Members that site monitoring would be pro-active rather than reactive and enforcement action would be taken if it was expedient and appropriate to do so.

Craven District Council had appointed Counsel (Mrs Harriet Townsend) to advise on certain planning issues which had been raised in relation to the planning history and allegedly unlawful development at Hellifield Flashes, specifically the outline 2003 permission and whether that permission should have been subject to an environmental impact assessment (EIA); whether the 2003 consent had been implemented and review the Council's approach to the enforcement of planning control at the site.

The Chairman introduced Mrs Harriet Townsend of Council whom established the brief she had been given and then continued to chronologically go through her advice as appended to the Strategic Manager for Planning and Regeneration's report and in response to questions she had received, clarified certain aspects of that advice.

The Ward Member for Hellifield, Councillor Chris Moorby was invited to speak to the Committee and he set out various concerns particularly the loss of wildlife and pleaded with the developer to give consideration to the local community who had enjoyed this haven of green space and wetland area where once about 2,000 lapwings nested, now there were none. He stated the importance of conservation and preservation of the site as one of a few areas of water in the Craven area that attracted many different and unusual species of birds, some being on the endangered list. Councillor Moorby felt most strongly that the levels could have been maintained without destroying the flash and it was clear that the developer wanted a lake which had now been done.

Counsel's brief included being asked whether the 2003 consent and/or the 2005 reserved matter approval should have been subject to an Environmental Impact Assessment (EIA). Her opinion was that whilst the Council erred in failing to subject the 2003 consent application to EIA an officer had expressed the view that a screening opinion should have been adopted, but it was impossible to second guess its result, or the outcome of the more rigorous assessment that (if appropriate) EIA would have been required. The fact that this occurred over more than 17 years ago and that the Local Planning Authority had acknowledged in 2013 that a legal error was made meant that there was very little (close to zero) prospect of a judicial review of the 2003 consent being successful. Therefore, whilst likely that an error or errors were made in 2002, Counsel did not think the 2003 consent was at any material risk of a successful challenge.

In relation to the 2005 reserved matters approval as to whether the terms of approval fell outside the scope of the authority delegated to the Head of Planning and Building Control, Counsel saw no possible basis for concluding that officers acted in excess of the authority given to them.

Regarding the implementation of the 2003 consent it was her opinion that there was permission for a car park in the North West area of the site and there was no legal requirement for the site of the reserved matters application to extend to the site identified in the 2003 consent for car parking. In her view there was a reasonable explanation of the issues surrounding the car park and levels of paths, roads and parking areas and there was no error of law by the Authority.

In response to a particular question raised around the reserved matters approval, in that permission regarding the retention of the wetland area as opposed to a lake still remained live by way of condition, Counsel had considered what the Committee meant when it distinguished wetland from "the creation of a lake" as she understood there to be suspicion that the applicant wished to turn the Gallaber Flash into a fishing lake, full all year round, with limited environmental interest.

In that context, Counsel believed that the Committee's objective had been to ensure that the Gallaber Flash would function as a wetland in a way that fostered the environmental interest of the site and its ephemeral characteristics. Generally speaking, it should be full in winter and dry in summer and that objective could be seen to have been shared fully by both the Environment Agency and English Nature as referred to in their letters.

Members asked about the importation of material which was supposed to be used to level the site but it was felt that the area was just being used as a dumping ground with waste being brought in from other sites in Lancashire. Members were concerned about the lack of enforcement and whilst Mrs Townsend had sympathy, she was clear that Craven acting as the Local Planning Authority had to identify a breach and take appropriate action as necessary as it should be borne in mind that activity on site may be designed to deliver the proposed development (as yet unauthorised).

Resolved – That, Counsel's advice is received.

Minutes for Decision

- None –

Chairman.