

## **DRAFT MINUTES PENDING CONFIRMATION AT THE NEXT MEETING**

### **BATH AND NORTH EAST SOMERSET**

#### **MINUTES OF SPECIAL DEVELOPMENT CONTROL COMMITTEE**

Thursday, 5th January, 2012

**Present:-** Councillor Gerry Curran in the Chair

Councillors Lisa Brett, Neil Butters, Liz Hardman, Eleanor Jackson, Les Kew, David Martin, Douglas Nicol, Bryan Organ, Martin Veal, David Veale and Brian Webber

Also in attendance: Councillor Tim Ball

#### **97 EMERGENCY EVACUATION PROCEDURE**

The Senior Democratic Services Officer read out the procedure

#### **98 ELECTION OF VICE CHAIR (IF DESIRED)**

A Vice Chair was not required

#### **99 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There was none

#### **100 DECLARATIONS OF INTEREST**

There were no declarations of interest

#### **101 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There were no items of urgent business

#### **102 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS**

The Senior Democratic Services Officer informed the meeting that there were various members of the public etc wishing to make statements about the subject of this meeting and that they would be able to speak for up to 3 minutes when reaching that Item on the Agenda

#### **103 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS**

There was none

#### **104 LAND AT FORMER FULLERS EARTHWORKS, FOSSEWAY, COMBE HAY, BATH**

Mr Harwood, Planning Consultant, gave a power point presentation on this matter. He referred to the Officers' Update Report (attached as *Appendix 1* to these Minutes)

which commented on further representations received and clarified aspects of the Main Report.

The public speakers made their statements on the matter (the Speakers List is attached as *Appendix 2* to these Minutes). Councillor Tim Ball, Cabinet Member for Homes and Planning, addressed the meeting and requested that copies of comments and documentation that are not planning related be sent to appropriate Cabinet Members for consideration.

Councillor David Veale made a statement as Committee and Ward Member. He considered that little had been achieved in recent years and that, if meaningful negotiations did not achieve any progress, enforcement action needed to be considered.

At the Chair's request, Members asked questions for clarification. They were centred on progress on the negotiations for the delivery of a residual waste facility on the site and the timescale by which enforcement action could be taken against what appears to be breaches of planning control set out in the Report so as not to fall foul of the 10 year rule after which no enforcement action would be possible. The Planning Consultant advised that, on the basis of the information available, it was considered that immunity would not arise until Spring/Summer 2013. Councillor Martin Veal felt that, if a specific date could not be provided at this meeting, it could, after further consideration by Officers, be posted on the Council's website including all the unlawful activities covered by that date. However, the Development Manager, after liaison with Officers, considered that early Spring 2013 was the earliest possible date but if the Committee wanted a specific date, it was considered that 1<sup>st</sup> February 2013 could be the date to work to. In response to another query, the Planning and Environmental Law Manager stated that Counsel's advice had been sought and that Counsel had had input into the Committee Report. Councillor Martin Veal queried why there were no comments from the body in charge of the Cotswold AONB given its location to the site and considered that their views should be sought.

The Chair opened the matter up for debate. Councillor Les Kew considered that further information was required. He felt that insufficient detail was available for the Committee on the negotiations with the owner/operator on the delivery of a residual waste facility on the site. He considered that, without full information, it would be difficult to make a decision at this meeting regarding enforcement action. He therefore moved that the recommendations be accepted but that all the information regarding the negotiations for the delivery of a residual waste facility be provided at a meeting of this Committee by no later than 30<sup>th</sup> March 2012 and that the Strategic Director for Service Delivery be asked to attend that meeting; and that a Site Visit be held prior to the Committee meeting. Councillor Lisa Brett considered that the motion needed to be more robust and felt that the opinion expressed by the Bath Preservation Trust in the bullet points of their previously circulated statement needed to be addressed. Councillor Les Kew agreed that the report should address the matters raised in the Bath Preservation Trust's presentation set out in bullet points in their submission. The motion was seconded by Councillor Eleanor Jackson. Councillor Neil Butters reiterated the need for the Strategic Director for Service Delivery to attend the meeting to provide appropriate advice.

There was further debate on the motion to which the Development Manager responded. Councillor Martin Veal requested that all areas within the site be made

accessible to Members on the Site Visit. The Chair then summed up the debate. He expressed sympathy for local residents but considered that more information on the detail and progress of the negotiations was needed to enable the Committee to be in a position to consider the matter further.

The following motion was put to the vote and it was resolved unanimously:

- (1) to continue to work positively with the owner of the site to achieve delivery of a residual waste facility on the site;
- (2) that the Committee Members make a Site Visit;
- (3) that a further report detailing progress with negotiations towards achieving a residual waste facility on the site be submitted to this Committee on or before 30<sup>th</sup> March 2012 and that the Strategic Director for Service Delivery if possible attend that meeting to give appropriate advice;
- (4) that it was not considered expedient to take enforcement action before the matter is considered further by this Committee on or before 30<sup>th</sup> March 2012 where the contents of a further report will be considered including further consideration of the expediency of whether or not enforcement action should be taken against what appears to be breaches of planning control as identified in the Report; and
- (5) that the report addresses the matters raised within the bullet points of the statement provided by the Bath Preservation Trust; namely:
  - (a) To make clear what the terms of negotiation are and at a minimum note that, if any breakdown in negotiations were to occur, including refusal for reasonable site access in order to plan for future uses, the decision on expediency of enforcement action would be reviewed;
  - (b) To make clear in what timeframe a planning application for a residual waste facility should be brought forward; and given that the Officer's report had suggested that such a facility may not now be needed at the scale envisaged, this could not be left as the reason to hold fire on the site as a whole; and
  - (c) Enforcement proceedings may be initiated against all operational developments which do not have planning permission outside Site A and the process would be reviewed for progress on a regular (say quarterly) basis.

The meeting ended at 3.30pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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**BATH AND NORTH EAST SOMERSET COUNCIL**

**Development Control Committee**

**5 January 2012**

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN  
AGENDA**

**ITEM 8**

**Address**

Land at Former Fullers Earth Works  
Fosseway, Combe Hay

**Page No**

9-180

**Further Representation**

A further letter has been received from the Legal representative of Protect Bath. A copy of this letter is attached to this update. The main points are as follows:-

- The report accepts that substantial unauthorised changes of use have occurred at the site extending inappropriate and substantially harmful development over a significant area of Bath's nationally important Green Belt.
- The Council should not tolerate such deliberate and extensive breaches in the green belt
- The only basis upon which enforcement is not considered expedient at this stage is because there is a hope that negotiations will secure development in accordance with the allocation
- There is no inconsistency between pursuing negotiations to encourage development pursuant to and in accordance with the allocation and enforcing.
- Enforcing will force the landowner to pursue (allocation complaint) alternative development
- It is not accepted that government guidance on negotiation prior to enforcement covers the current situation.
- The report provides no detail of how the negotiations are progressing.
- Responses to Freedom of Information requests indicates that the owner has only recently entered into "early stage" negotiations with the Council.
- There is no aerial photograph from 2003
- The report indicates that if negotiations are not successful then enforcement action can be undertaken later. This is factually and legally wrong. The Council can have no confidence that the changes of use did not occur until 2003 and that the Council can have no confidence that delay will not be fatal to any later enforcement.
- The report carries no assessment as to the timescale it is envisaging.
- Do not accept much of the remainder of the analysis

## **Officer Comments**

No new legal issues are raised in terms of suggesting that the analysis of the breaches of planning control is incorrect.

The evidence available to officers indicates that the initial breaches of control took place in early to mid 2003 with a change to a mixed general industrial and storage and distribution use with in Area A, part of Area E, Area D as well as by an extension of the car parking in front of the dwellings further encroaching into land previously used for agriculture.

Sometime after 2005 individual compounds were formed within part of area E .Two of these are currently used for the storage, distribution and repair of scaffolding and as well as a stonemasons yard and are considered to be separate planning units.

It is true that there is no aerial photograph from 2003 but the Council has relied upon other evidence, including previous site visits and evidence submitted with the CLEU application, and the June 2002 aerial photograph. Officers consider that on the basis of the evidence it is a reliable point in time

Taking into account the available evidence, on the balance of probabilities, the assessment contained within the report is considered to be correct.

The Development Control Committee at its Meeting on 18 May 2012 resolved that Officers work positively with the Owner of the site to achieve delivery of a residual waste facility on the land as allocated in the West of England Joint Waste Core Strategy. Central Government, Planning Policy Guidance 18 advises that Local Planning Authority's should work with owners and occupiers of sites in order to remedy harmful impacts from unauthorised developments. The discussions with regard to this site are positive and on-going and are therefore clearly a material consideration. There would be substantial public benefit in delivering the aims of the development plan and Officers are of the view that the substantial weight should therefore be given to the positive discussions, notwithstanding the fact that they are at an early stage.

Officers are mindful of the potential for the breaches of control on the site to become immune from action and will ensure that Members are updated accordingly in order that the Council's position is safeguarded.

## **Additional comments made since the report was published**

2 additional emails received

Main points are:-

- Concern about moving earth on the site and the potential for the site owner to bury large amounts of waste.
- Concern about the nature of the material being spread on the field.

- Disturbance resulting from the movement of topsoil.
- Potential risk from burying unknown waste.
- Request that the Council rigorously monitor the work.
- Height of stockpiles on the edge of the site, visual impact upon the sky line and countryside on the south side of Bath.

### **Officer comments**

Planning permission (ref 10/01774/FUL) was granted for the agricultural improvement of the land to the south west of the established industrial area on 13 December 2010. Officers have recently visited the site and can confirm that the work that is taking place appears to be part of the implementation of that scheme.

Any relevance that that permission has is explained in the main agenda report.

The enforcement of conditions is a separate matter.

### **Clarification of main agenda report**

Paragraph 3.065 refers to Annex C including previous committee report. However, these reports were not reproduced in full and were instead listed as background papers. Annex C contains the EIA Screening Opinion as stated on the front of the agenda.

Annex D refers to a 2006 photograph. This has not been relied on for the report and so has not been reproduced in the papers.

Annex F refers to plan 1 and plan 2. Only plan 1 is produced in the papers. Plan 2 will be presented at the Committee meeting to describe the different parts of the site.

### **Clarification of list of aerial photographs**

Annex D1 1946 and 1968  
 Annex D2 1975  
 Annex D3 1975 (duplicate)  
 Annex D4 2002  
 Annex D5 2002 (duplicate)  
 Annex D6 1999  
 Annex D7 2005  
 Annex D8 2009

These photographs are attached to this update with relevant dates added. They will also be presented at the Committee meeting.

### **Recommendation**

As per main agenda report.

1946





1968

1968



1968

1975





2002



2002

2002





HARRISON  
SOLICITORS GRANT

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**Private and Confidential**

Members of Development Control Committee  
And Legal Adviser  
Bath & North East Somerset Council  
Northgate House  
Upper Borough Walls  
Bath  
BA1 1RG

Our Ref: VOF0012  
30<sup>th</sup> December 2011

By post and email to: [David.Taylor@bathnes.gov.uk](mailto:David.Taylor@bathnes.gov.uk)

**For Addressees only**

Dear Mr Taylor,

**Re: Development Control Committee Agenda – Fuller's Earth site- 5 January 2012 at 2pm**

**Representations on behalf of Protectbath.org and Victims of Fuller's Earth Ltd**

We note that the report to committee accepts that substantial unauthorised changes of use have occurred at the site extending inappropriate and substantially harmful development over a significant area of Bath's nationally important green belt. It is inconceivable that this Council can tolerate such deliberate and extensive breaches of planning control in the green belt when the whole thrust of the Council's planning strategy is about protecting the green belt. It is plain from the report to committee that the only basis upon which enforcement is not considered expedient at this stage is because there is a hope that negotiations will secure development in accordance with the allocation. This is seriously flawed logic for the following reasons:

- (1) There is no inconsistency between: (a) pursuing negotiations to encourage development pursuant to and in accordance with the allocation; and (b) enforcing against unauthorised, harmful and inappropriate development. Indeed, enforcement will force the landholder to pursue alternative (allocation compliant) development of the land. The report to committee is plain that the current form of development is unacceptable and that any negotiations will be about delivering development in line

SOLE PRINCIPAL: Kate Harrison

1

HARRISON GRANT IS REGULATED BY THE SOLICITORS REGULATION AUTHORITY No. 279402

with the allocation - see e.g. para 4.08 - and not simply about making minor adjustments to the existing unlawful development. It is patently irrational to allow unlawful and harmful "X" to continue in order to help negotiations to achieving a completely different "Y";

- (2) It is not accepted that government guidance on negotiation prior to enforcement covers the current situation. That guidance is about a situation where the unauthorised development can be made acceptable by alterations to it. **That is not this case.** The current unregulated, uncontrolled, open air, un-landscaped development is wholly contrary to all policy (and there is no suggestion in the report to committee to the contrary) and the negotiations are not about trying to make the existing development acceptable but about introducing a new form of development in accordance with the allocation;
- (3) In any event, the report provides no details of how the negotiations are progressing. It is now more than a year since Lindblom J's judgment. The Court judgment sets out the detail of the negotiations and attempts to regulate uses back to at least December 2008 (more than three years ago). Yet councillors are told that negotiations are still at "a very early stage". The history tells its own compelling story. There is no indication anywhere in the papers of any concrete progress since then and the history of breach demonstrates that absent enforcement, the Council can have no confidence that progress will be made;
- (4) Indeed, responses to Freedom of Information requests paint a more nuanced picture. On the 22 July 2011 the owner of the site emailed the Council to say:  
*"For the avoidance of doubt I should make it clear that it is for the Council to deliver whatever facilities it needs within the JWCS. Gazelle Properties simply own the site and Waste Recycling @ Bath currently operate, wholly lawfully I would add, from the site."* This indicates someone who has very recently indeed entered into 'early stage' negotiations with the Council. For a long time it is clear that the owner has been intransigent to the views of the Council (copy email attached).
- (5) Further, the report appears to proceed on the basis that if negotiations are not successful then enforcement action can be undertaken later. This is factually and legally wrong. On the report's own assessment the "mixed use of the wider site appears to have commenced by mid to late 2003" (para 3.067). It does not define when that change of use commenced only that it had commenced by (at the latest) mid to late 2003. Para 3.055 shows that in respect of area E the change of use was a gradual process. The Council can have no confidence that the changes of use complained about did not occur until 2003. We do not have an aerial photograph showing the site at the beginning of 2003. The consequence is that the Council can have no confidence that delay will not be fatal to any later enforcement. Given the conclusions on harm in the report the Council cannot lawfully tolerate that position;
- (6) The report carries out no assessment as to the timescales it is envisaging. What is the deadline for negotiations? Even if they are successful, what then? The Council cannot lawfully let time expire in the hope of the landowner applying for planning



permission and then implementing an agreed development because, absent an enforcement notice, there would be no compulsion on the landowner to pursue the agreed solution. Officers do not attempt to, and cannot, give any confidence as to a timetable which will ensure that any agreement is given effect to before time for enforcement runs out.

For the avoidance of doubt, we do not accept much of the remainder of the analysis in the report to committee but have kept our comments in this letter to what we consider to be the heart of the matter to identify the flaws in the approach in the report.

This is in truth a simple case of unauthorised, harmful, inappropriate development in Bath's hugely valuable and correctly strongly protected green belt. There is no rational basis for not enforcing and any failure to enforce at this stage will, we are afraid, have to be the subject of an urgent application for judicial review.

Yours faithfully



**Harrison Grant**

Bath & North East Somerset Council  
Request for Information

Please provide the following information:

*Details of meetings and correspondence with Andy Ridings of Waste Recycling @ Bath*  
*Subject areas - Joint Waste Core Strategy, hiding the site with a 'bund(s)', enforcement issues relating to the Old Fuller's Earth Works, Odd Down*  
*Timescale - Six months preceding 1st October 2011*  
*Council Staff - Glen Chipp, David Trigwell, Lisa Bartlett, members of the Planning Department*

The Council has reviewed its records and holds the following recorded information which matches your request. The Council also attached a copy of a letter that matches your request. You will note that some information has been redacted from this letter. This information relates to a residential address and is therefore exempt under Regulation 12(3) of the EIR. This Regulation provides an exemption to the general right of access to information, where the disclosure of personal information would breach any of the Data Protection principles. The Council considers that disclosure of this information would constitute a breach of the fairness requirement of the first principle. This is because the individuals in question have not consented to the disclosure of their details. In addition they have a reasonable expectation that the Council will keep their information confidential.

Email from Andy Ridings of Waste Recycling @ Bath to Cllr Paul Crossley, copying in Glen Chipp, David Trigwell & Lisa Bartlett sent on 27 June 2011

... [information not relevant to request] ...

In the meantime in a more general sense, Waste Recycling @ Bath Ltd will continue to offer invaluable recycling services to BANES communities under the lawful use it has always enjoyed at the site.

A number of your councillor colleagues have been to visit the site, and I do hope that you will be able to take up the offer of a visit in the near future. I am sure it would be useful in further developing your understanding of the invaluable service that we provide to BANES taxpayers. Having said this, equally I understand the many and varied calls upon your time.

... [information not relevant to request] ...

Bath & North East Somerset Council  
Request for Information

Email from Andy Ridings of Waste Recycling @ Bath to Cllr Paul Crossley,  
copying in Glen Chipp, David Trigwell & Lisa Bartlett sent on 22 July 2011

You have obviously received the latest email from Sue Ridings for Gazelle  
Properties.

For the avoidance of doubt I should make it clear that it is for the Council to  
deliver whatever facilities it needs within the JWCS. Gazelle Properties simply  
own the site and Waste Recycling @ Bath currently operate, wholly lawfully I  
would add, from the site.

Please note in respect of Mr Ridings claim that the use of the site at the Old  
Fuller's Earth Works is lawful, a report is being prepared for the Development  
Control Committee in line with its resolution of May this year.

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**SPEAKERS LIST  
BATH AND NORTH EAST SOMERSET COUNCIL  
DEVELOPMENT CONTROL COMMITTEE**

**MEMBERS OF THE PUBLIC ETC WHO MADE A STATEMENT AT THE  
SPECIAL DEVELOPMENT CONTROL COMMITTEE ON THURSDAY 5<sup>TH</sup>  
JANUARY 2012**

<b>SITE/REPORT</b>	<b>NAME/REPRESENTING</b>	<b>STATEMENTS</b>
Land at former Fullers Earthworks, Fosseyway, Combe Hay	<p>Peter Duppa Miller, Clerk to Combe Hay Parish Council</p> <p>Hugh Mackay</p> <p>Trevor Osborne</p> <p>Claire Riou</p> <p>Philip Harrison</p> <p>Debbie Tripley, Harrison Grant, Solicitors representing Protect Bath and Victims of Fullers Earth Ltd</p> <p>Caroline Kay, Chief Executive, Bath Preservation Trust</p> <p>John White (representing the owner)</p>	Statements – Up to 3 minutes each

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