

KENILWORTH TOWN COUNCIL

Minutes of the Meeting of the KENILWORTH PLANNING FORUM

held at 7.00 pm on 19 October 2006

PRESENT: Councillor M F Coker (in the Chair).

Councillors Mrs F Bunker, A J L Cockburn, R I G Davies, Mrs U S Durrant, Mrs P W Edwards, D A Golby, S C Harrison, J E Hatfield, S V Howell, G R Illingworth, T A Martin and Mrs A R M Tyler.

Mr G D Symes, Town Clerk.

Mr John Archer, Head of Planning and Engineering, Warwick District Council.

Four members of the public were present.

A Health and Safety briefing was given to all present.

The Chairman opened the Meeting by welcoming all present. He then introduced Mr J Archer; who was thanked for giving his valuable time to attend the Forum. This was followed by a brief explanation of how the meeting would be conducted.

PF.47 APOLOGIES

Apologies were received from Councillors Mrs Blacklock (holidays), P J Ryan (other business), D J Shilton (other Council business) and Councillor N J Vincett (other Council business).

PF.48 DECLARATIONS OF INTEREST

Councillor Mrs F Bunker Personal (Member of District Planning Committee).

PF.49 MINUTES

The Minutes of the Planning Forum held on 20th October 2005 were reviewed, agreed as a true record and duly signed.

MATTERS ARISING

PF.50 TALISMAN SQUARE SUPERMARKET AND THE YOUTH CENTRE (PF.38, PF.39 and PF.40)

Councillor Golby, whilst pleased that the regeneration was now moving apace, sought an update on the traffic modelling work that had been briefly outline reviewed at the last meeting as the success of the highways scheme was pivotal to the whole project.

Mr Archer, the Chair and three Members all concurred that the traffic scheme was of paramount importance. In summary, it was advised that the County Highways were progressing with the production of alternative scenarios and that the next meeting would be held on 13 November 2006 when a report on the results of various studies would be presented. Once a firm set of proposals had been prepared these would go to public consultation.

Councillor Golby thanked the contributors for their updates.

QUESTIONS

PF.51 THE USE OF SECTION 106 AGREEMENTS

A resident enquired: “*With respect to the Town & Country Planning Act 1990:*

1. *What is WDC's policy with respect to the use of Section 106 agreements with Developers for Planning Applications, and how many times has this been used so far this year?*
2. *Is the use of Section 106 agreements an appropriate tool to mitigate the impact of proposed back-land developments?”*

Mr Archer provided an overview of the S.106 regulations, both in their legislative context and in the reality of daily operations.

He then described the two elements, noting that a *Condition* was essentially a methodology whereby a proposal that might otherwise be unacceptable could be made to comply with all the requirements. It was the method preferred by Government guidelines and policy. An *Obligation* was a medium whereby, typically, a financially related requirement could be imposed. This might include a requirement to provide affordable housing within a development package, to offset Highways or other cost and so on.

The District typically handled in excess of 2000 planning applications in a year and conditions would frequently be included on many of those submissions that were approved to ensure compliance with all the planning requirements. Obligations were much rarer and might only be used perhaps ten times in a year.

With regard to the second element of the question, S.106 agreements were not a tool to mitigate or reduce the loss of green space, backland, gardens etc for which alternative methodologies, such as the Supplementary Planning Document (SPD) and like policies were appropriate.

The resident thanked Mr Archer for this response.

PF.52 PLANNING ENFORCEMENT PROCEDURES

A resident stated: *I understand there are a range of tools available to Warwickshire County Council for Planning Enforcement, is this correct, and if so how many times has WDC liaised with WCC so far this year for the issue of*

- a. *Requisition Notices (Section 330).*
- b. *Planning Contravention Notices (Section 171c).*
- c. *Breach Notices (Section 187a).*
- d. *Enforcement Notices (Section 172).*
- e. *Stop Notices (Section 183).*
- f. *Injunctions (Section 187b).*

Mr Archer clarified the enforcement situation by advising that, with some exceptions such as respect of waste and tipping which fell within the spectrum of the County's duties, most enforcement issues were the responsibility of the District Council. Liaison and co-operation was maintained between the two agencies as required.

The framework of the enforcement process, and the seven tools cited by the resident, were then reviewed. This was initially explained in the context of the government guidelines followed by the manner in which these procedures were applied on day to day basis.

Mr Archer explained that enforcement was aimed at appropriate handling of all cases within the various regulatory stipulations. Planning Policy Guidance (PPG) 18, which dated back to 1991 (and could be downloaded from the DCLG (*Department for Communities and Local Government*) website), gave the core detail.

He stressed that it was important to remember that it was not an offence to develop without Planning Permission, as the law did not seek to criminalize inadvertent errors or omission. The offence occurred after enforcement action had been taken and not heeded. With this background, discretion and guidance were generally the watchwords, with expediency and a measure of judgment applied commensurate with the breach of regulations.

After a short resume of the various measures, he then explained the various courses of action ranging from 'no further action,' and resolved by negotiation or submission of a retrospective planning application through to the issue of an *Enforcement Notice*. The use on an Enforcement Notice would only apply to the rump of the 15 - 20 investigations that were left, out of typically 500 or so investigations initiated in a year.

Turning to *Stop Notices*, Mr Archer advised that these were rare and, because of compensation issues only used sparingly. He did however cite an example in the town. *Planning Contravention Notices* were, like *Breach Notice*, also rare although the latter did allow virtually immediate application to a magistrate.

Injunctions were very rarely used and were extremely expensive as they generally involved High Court action. The District experience with Coventry West Midlands International Airport had illustrated the other problems and issues that could arise.

Mr Archer concluded his response to this question with a short resume of other actions and procedures that could be undertaken to enforce the rules.

The resident enquired regarding monitoring and was advised that, as might be expected by their context, many investigations stemmed from local reports, notably from local Councils and individuals. Pure monitoring in the form of exploratory visits to sites was severely limited by resources, although this issue was being addressed.

PF.53 DEVELOPMENT CONTROL ISSUES

A resident enquired: *When approached by Developers who are appealing against a Planning Committee ruling, do Development Control issue permission letters allowing for the establishment of services over land acquired as standard practise, and how often do Developers subsequently re-apply for Planning Permission?*

Mr Archer confirmed with the resident that this point stemmed from a particular case, which he identified and displayed a photograph showing the issue that had concerned nearby residents.

He explained that in this particular case the application to build had been refused and the subsequent Appeal dismissed by the Planning Inspectorate. However, the applicant had stated a desire to proceed with one particular item and this *was* within Permitted Development (PD) rights. All applications had to be viewed on their merits and as stated, even if the applicant's ultimate aspirations went beyond the current submission. Whilst the situation might look absurd it was submitted and judged strictly in accordance with the regulations. If the applicant wished to proceed further than the current PD building situation he would need to submit a new application and start the entire process afresh.

Following clearance of some points relating to this response the resident thanked Mr Archer for his response.

PF.54 'PROTECTION OF PRIVATE GARDENS' BILL 2006.

A resident asked: *Subject to successful second reading in Parliament (scheduled for 20th October 2006), what impact will the Right Honourable Greg Clark (Member of Parliament, Tunbridge Wells) proposed private member's bill 'Protection of Private Gardens' have on windfall and brownfield sites within Warwick District Council?*

Mr Archer advised that there were two Bills of interest, which would again be considered for a Second Reading on 20 October 2006. He provided a short overview of both Bills:

- a. The Protection of Private Gardens (Housing Development) Bill seeks to amend the Planning and Compulsory Purchase Act 2004 by protecting private gardens from housing development which is out of character with the surrounding area and for connected purposes by inserting after section 34 a new item:

"34A Guidance: private gardens. Guidance issued under section 34 must have regard to the desirability of protecting private gardens from development which is out of character with the surrounding area."

and secondly:

- b. The Local Government and Planning (Parkland and Windfall Development) Bill. This would be a new piece of legislation that would impose conditions on the sale of parkland by local authorities. It would also make provision about the circumstances in which a planning application may be rejected by a local authority and about rights of appeal in such circumstances. Finally it sought to prohibit repeated planning applications in certain circumstances and for connected purposes.

Mr Archer noted that, although these Bills were being represented, it was generally true to say that such items had little chance of success unless picked-up by the government. These Bills were, however, highlighting particular areas of concern where the tenets therein were being brought to the government's attention and might therefore be taken on board in other elements of the legislative processes.

Turning specifically to The Protection of Private Gardens (Housing Development) Bill, Mr Archer felt that it was too detailed to be an item of legislation but its tenor might be suitable for incorporation within an updated guidance note or PPG. In respect of The Local Government and Planning (Parkland and Windfall Development) Bill, he felt that again this was far too precise to be adopted as a piece of stand alone legislation. However, once again it touched on an area of considerable concern where every available piece of land was being developed in a buoyant housing market, so it might impact on future government guidance.

Mr Archer noted that the local Supplementary Planning Document (SPD) which restricted development within the District where targets had been exceeded did act in some measure to control housing development.

It was also important to remember that the Regional Spatial Strategy was progressing and in January 2007 the Regional Assembly would publish the next stage of its studies on (in part) housing needs. These documents might look dry but it was vital that communities studied them and recognized their importance as they would, once adopted, ripple down and impact on every aspect of housing development policy until 2026. There would be a public consultation in the 2007 - 2008 timeframe, followed by formal implementation probably in 2008. This would be the basis of the new Development Framework which would replace the District Plan.

PF.55 ADDITIONAL QUESTIONS AND ISSUES

The Chair enquired whether anyone present had any additional points emanating from the above that they wished to raise.

Planning Enforcement Procedures.

Councillor Illingworth sought clarification on the policing and monitoring of enforcement work, suggesting perhaps that Town and parish Councils should be informed of such action prior to the retrospective planning application or like activity. He was also concerned, as had been discussed at the recent District Planning Forum over the prospect of increased Permitted Development rights and of the conflicts that this could create for enforcement. Equally, with the very high housing densities now in use it seemed absurd, however understandable from the householder's standpoint, that developments were scarcely completed before applications for add-ons were submitted. Surely in the very tightly developed sites there were grounds for withholding PD rights?

Mr Archer responded that local councils tended to be the eyes and ears that identified many of the problems or issues. Given that many of the issues were very technical and that the percentage of those that required formal action which would result in parish/town councils becoming involved were so small, the current system was effective. He noted that in this context the legal obligation rested on the developer not the council.

Permitted development rights were more complex. PD had become more complex following the last round of changes, which included items like limitations on distance. The proposals to give more rights to the householder did not seem to be proceeding at present and offered the prospect of a considerable backlash if introduced. Similarly, implementation posed considerable challenges for both the government and planning authorities.

The denser property developments did pose considerable issues but it was government policy only to remove them in exceptional circumstances. The practical issues were then explained in the context of development in the District (not in Kenilworth) where this had occurred and how even quite modest developments, such as conservatories, raised judgemental and other problems.

Councillor Martin voiced concerns over the noise associated with construction works at a particular site near Windy Arbour and, secondly of traffic obstruction caused on the main Leamington Road at peak times due to deliveries blocking the A452. Surely enforce or S.106 procedures could address these problems?

Mr Archer advised that, despite the understandable concerns and issues, the District were constrained by government guidelines. Whilst conditions could be imposed (as the County duly implemented with minerals and like activities covering hours of operation, wheel washing etc) these were for continuing activities or processes. The examples cited were essentially short term. He cited examples of where such procedures had been attempted elsewhere and how problematic they had been; enforcement was also an issue. Consequently, conditions or other action would only be imposed in exceptional circumstances and when they could be enforced.

Supplementary Planning Document (SPD)

Councillor Mrs Bunker enquired:

- (i) What happened when the SPD expired in those cases where it had been utilized to refuse planning applications)
- (ii) Did the new Regional Spatial Strategy proposals take into account what had already been built, particularly where existing quotas had been exceeded?

Mr Archer advised that if the SPD had been the sole grounds for refusing an application then the developer would be able to reapply and, if all the other site specific factors remained the same, then he would get approval. However, such an application would be viewed against all the factors applying at the time it was submitted. However, a number of applications had been refused on a range of grounds in which the SPD was only one aspect; all the site elements would need to be acceptable to obtain approval in the future.

In respect of the Regional Spatial Strategy, Mr Archer gave some considerable background detail to clarify the scene but confirmed that the base line, which went back to 1991 and then projected forward to 2026, did include earlier construction as part of the total count

PF.56 CONCLUSION AND SUMMARY

The Chair summed-up the evening's debate. He then drew the meeting to a close by thanking Mr Archer for his invaluable participation and the residents for providing questions which provided an illuminating insight into the complexities of planning law and procedures.

The formal meeting concluded at 8.03 pm. A number of those present then held informal discussions with Mr Archer until 8.25 pm.

Signed

Dated.....