

LOSRA AGM 24 JUNE 2009
QUESTIONS FOR SPELTHORNE BOROUGH COUNCIL
MANAGEMENT TEAM

QUESTION 1

There is a widely held perception that, in this Borough, insufficient account is taken of the views of residents when it comes to controversial planning applications; and that too often there is a presumption in favour of the developer. This perception has been around for many years and was most recently reinforced during the successive planning applications in respect of No.72 The Avenue. The views of a very substantial number of residents as to the visual suitability of building 2 houses on that plot were completely ignored by the Planning Authority; but nevertheless emphatically supported by the Planning Inspector on appeal.

Whilst accepting that officers are constrained by planning law and guidelines, we are yet to be convinced that they have any interest in the views of residents or the very considerable effects that applications can have on their lives. We are mystified as to why this should be so. In most applications there is a degree of latitude which allows for subjective judgement on the part of the planning officer. Developers, rather than residents seem to benefit from such latitude.

Could you please specify what are the pros and cons for SBC regarding local developments and how the Planning Office will go about changing this long held perception?

ANSWER 1

It is unfortunate that Sunbury residents have the perception that the planning department takes insufficient account of the view of local residents. This is certainly not the case. As you will know, planning applications have to be determined in accordance with planning policy unless there are material reasons which indicate otherwise. As Lower Sunbury is in the developed area, government guidance states that there should be a presumption in favour of development.

When officers deal with any application, they have to take into account the views of those who write in and comment on a proposal. In some cases the concerns raised by residents are in line with those of officers. Where this is the case, and a scheme is contrary to policy, it will be refused.

However, it is always difficult when there is a difference of opinion between the view of the planning department and those of local residents. Officers do understand the concerns that residents have, but in many cases these are not

issues which planning can deal with. Where it is a planning issue, the officer has to weigh up the issues raised by objectors along with the wording of the policy in question. Planning is not black and white and there is always some scope for interpretation. Officer's judgements will be based on experience and the large number of applications they will have dealt with over time. They usually have clear understanding of whether a concern which has been raised by residents is an issue which would win at an appeal (if an application were refused).

The planning department accepts that it does not always get it 100% right but around 2/3rds of planning appeals are dismissed, and the overwhelming majority are decisions made at officer level.

The Head of Planning, Heather Morgan, is acutely aware that some residents have this perception, not only in Lower Sunbury but in other areas of the Borough where development pressures have been very strong. The planning service will not be able to please everybody all of the time. However, there is need for more information about what planning can and cannot deal with, along with more detail about the application process. The Head of Service is considering what additional information might be needed to help the public, and is considering changing information on our website so that there are specific areas for developers, those submitting applications, and residents affected by applications.

One of the other Supplementary Planning Documents (SPD) which will be produced will cover residential extensions and infill residential development. This document will need to expand and build upon the policies set out in the adopted Core Strategy and Policies Development Plan Document (DPD). This will be subject to public consultation and residents associations will be involved in this process. A timetable will be prepared by the Autumn for agreeing which documents will be produced. However, this is likely to be the first SPD to be tackled due to impact it will have on the need to provide more detailed advice and guidance on the application of more general policies and guidance in the DPD.

72 The Avenue

The application was recommended for refusal on the basis of the impact on the adjoining neighbour. Objectors comments were set out in full in the report, and the issues were considered in the main body of the report. It is therefore not correct or accurate to say that the views of residents were ignored. Planning Officers reached a different conclusion to residents in terms of Planning Policy - but this does happen occasionally.

QUESTION 2

Why is Spelthorne Borough Council not more robust in obtaining planning gains from developers and others? Other Councils seem to be much more successful without being accused of being ‘bought’ by the developer - a fear which has been expressed by a senior SBC planning officer in previous answers to this question.

ANSWER 2

It is assumed that this question is referring to the fact that some of the other planning departments within Surrey have adopted a document which sets out a tariff approach for asking developers for contributions from schemes. This has not been adopted by all authorities. In addition, the document has not been formally adopted as part of the Local Development Framework (LDF) process by any Council and therefore has limited weight.

Whilst it may be the case that some additional gains might have been achieved by some Councils, there have been considerable number of appeal decisions where Planning Inspectors have not accepted the need for ‘planning gain’ in accordance with the document. Appeals have therefore been allowed without developers having to pay the contributions.

Spelthorne (along with a number of other Surrey authorities) chose not to adopt this approach for several reasons:

1. Government guidance is very clear that any ‘planning gain’ has to meet certain tests in order to be necessary. We felt that we needed to control the discussion on potential planning gain on a case by case basis, and all ‘gain’ needs to be identified in advance, as a result of a needs analysis.
2. Perhaps more importantly, the population characteristics within Spelthorne are different to a number of other authorities. We are not experiencing a growth in the younger age groups and therefore we could not legitimately argue for monies for additional school places for example. There is a falling population over the period of the LDF which will limit the opportunity to mitigate any harm arising from a scheme. A falling population means it is more difficult to argue the need for such facilities.
3. Policy CO2 allows us to negotiate planning gain where we consider it is necessary. The Local Development framework Inspector accepted this policy and we have indicated that we will be producing a Supplementary Planning Document which will set out in more detail what we will require from development in future. However, any requirements will need to be backed up by evidence. This will ensure we have a robust approach which is successful.

This SPD will need to be subject to public consultation and LOSRA along with other residents associations will be invited to comment on this. The timetable for developing this and other SPD's will be agreed this summer.

QUESTION 3

The intentions of London Irish to re-locate from The Avenue have been public knowledge for many months and residents have now been given formal notice of their intentions. The Club has also advised of its wish to hold a public consultation with residents at which their agents will outline the development proposals for The Avenue and Croysdale Avenue sites.

Can we be advised as to whether preliminary discussions had taken place with the Planning Office prior to the formal announcement and, if so, the date on which those discussions commenced? Further, if discussions have taken place, and given that at this stage there would have been no competing commercial interests which required confidentiality, why were residents not invited by the Planning Office to make their observations at the earliest possible opportunity?

ANSWER 3

As LOSRA know, the planning department offers a pre-application service to applicants and agents who wish to discuss their proposals prior to formally submitting an application. These proposals help to facilitate the development of preliminary ideas in accordance with the Council's Local Development Framework. Sometimes, there is also an element of commercial sensitivity which developers expect us to respect in return for the pre-application advice, which must be paid for.

Whilst the intentions of London Irish may have been public knowledge for some time, they only formally came to see the planning department on 5 May 2009. There has only been one formal pre-application meeting where initial plans were tabled. The planning department has given its initial feedback on the schemes as submitted. The owners and their planning agents are also fully aware of all the relevant policies in the Core Strategy and Policies DPD and Saved Policies of the Local Plan that any scheme will need to meet.

At that meeting, we advised that due to the controversial nature of any proposals, they should fully engage with the local community, LOSRA, Green Street Action Group and ward members before any application was submitted. They indicated that this was already part of their communications strategy, and confirmed that they would be consulting widely and were happy to meet and discuss the proposals.

The Statement of Community Involvement which was agreed by the Inspector and adopted by the Council sets out the planning protocol for engagement with the local community on planning applications.

The letter which was received by LOSRA from London Irish was sent at the end of the same week as the pre-application meeting.

QUESTION 4

Residents were very pleased to have been consulted on the future of the TP26 Linear Park, and the public exhibition at the Embroidery Gallery on 7 February was well attended. It is understood that the sum of £150,000 has been held over for the landscaping and cycle track. My question is in 3 parts:

- 1. It is now June and nothing seems to have happened. Is a start date in prospect?**
- 2. During the course of consultation were any views expressed which indicated a preference to leave the TP26 as it is? (fear, for example, that a cycle track would also attract the illegal use by motorcyclists, joy riders and the like).**
- 3. Conscious of this possibility, ie, to leave it as it is, would this mean that the sum of £150,000 would be forfeited; or could it be put to other use in the locality?**

ANSWER 4

1. Yes, a start date is in prospect, subject to the County Council agreeing (within the next week or so) the layout and the completion of their safety audit regarding the area where the footpath abuts the highway. We anticipate starting working on site in September/October 2009 and completing within the financial year.
2. The majority of responses (57%) did not mention either support or opposition to the proposals. Of those who commented on this point, more people (29%) were in favour of the proposals than those who were against (14%)
3. If we were not to proceed with the cycle track then the Borough Council would be obliged to return the £150,000 to the County Council.

QUESTION 5

The keys to the Benwell Centre were handed over to the developers by Cllr Vivienne Leighton on 19th March to much fanfare in the local papers. The fierce opposition to the demolition of this valuable community asset and its development is a matter of public record. Nevertheless, now that it is to go ahead we can expect very considerable disruption to traffic and parking during the construction phase. Can residents be told the dates on which work will commence and anticipated completion?

ANSWER 5

Higgins - the builders appointed by Notting Hill Housing Trust, took the keys to the site in March. The first months have been spent carrying out appropriate site surveys and consultation with local neighbours.

Meetings have taken place with residents in Benwell Court and residents from surrounding roads.

Confirmation was given by Higgins that the building operations would be as sensitive as possible to local residents. Staff on site have been told to park in the station car park as there is plenty of room. Deliveries will be at times that minimise disruption to residents.

Higgins have already circulated their first newsletter to local residents detailing that demolition commenced end of May and also gave contact numbers in the event of any issues.

- Liz Borthwick holds regular briefing meetings with Ward Members and the Cabinet Member as appropriate.
- An officer group has been set up to prepare for the operational aspects of the facility.

A reminder – what the facility will consist of

- 39 Flats, for sale, shared ownership, rent.
The Council has nomination rights for shared ownership and rent.
- Day Centre activity room,
Restaurant
Lobby/IT room
Hairdressers.
- Major milestones
 - Substructure work completed by mid August
 - Superstructure by end of November
 - Watertight building by February
 - Fitting out May

- Show flat open May 2010
- External works completed by August 2010
- Operational Oct/Nov 2010.

The project is on schedule.

QUESTION 6

Some 4 years ago, LOSRA prepared and published a Vision for Lower Sunbury document setting out the aspirations of the residents in Lower Sunbury. How much does this document impact on the Council's approach and policy development for our area?

ANSWER 6

The document was conceived by LOSRA following publication of the options consultation for the Core Strategy in September 2005. It was sent to the Council at the time of the Preferred Options consultation in June 2006.

The points made in the document were carefully considered by the Council and a number of matters were taken into account in the preparation of the submission version of the Core Strategy and Policies DPD. The key points and the Council's response are documented in the publication "Report on the Preferred Options Consultation May – June 2006.

LOSRA did not specifically refer to the document in its representations on the submitted Core Strategy and Policies DPD but did pursue a number of its concerns through the Examination of the plan. The Inspector's Report set out clearly her response to representations made and concludes that, subject to some specific changes, the overall strategy for the future of the Borough was "sound". The DPD was adopted on 25 February 2009.

The Council's approach and policy for the future of Lower Sunbury will therefore be based on the Core Strategy which was formulated having regard to the views of Sunbury residents but which also has to take proper account of Government and Regional requirements.

QUESTION 7

A year ago, the Local Government Ombudsman found Spelthorne Council guilty of maladministration and causing an injustice to a Spelthorne resident. The LGO made a number of recommendations to the Council regarding its planning policy, and the Council "agreed a number of ways to do things better in the future". Can you tell us what changes have been made to local planning policy as a result of both the complaint, and the LGO's recommendations? It is nearly 2 and a half years since the resident drew the Council's attention to the issues that prompted the LGO's recommendations, so it is hoped that tangible progress has been made.

ANSWER 7

The Council has put number of measures in place following the decision:

1. It was accepted by the Council that the impact of a chalet bungalow on an adjoining property (as opposed to a single storey or two storey extension) and the issue of the potential loss of light to side facing windows to adjoining properties from a development was not dealt with explicitly in the current Supplementary Planning Guidance on residential extensions. These will need to be incorporated into the wider review of guidance on extensions and new residential development as part of a Supplementary Planning Document. As set out above, the timetable for agreeing the extent and scope of the SPD's which will follow on from the adoption of the Core Strategy will take place this summer. (Details on the process itself are set out in the answer to the question below).

It has not been possible to proceed with the issue any quicker as it has to be dealt under the Local Development Framework and required the adoption of the Core Strategy and Policies DPD first.

Other issues raised included the impact of loss of sunlight/daylight on adjoining properties from a proposed development, concerns about the accuracy of dimensions on plans and officer recommendations for approval where minimum standards/distances are just met.

2. Officers have been advised at internal team meetings that where cases are marginal and have an unusual relationship with an adjoining property they should ask for a sunlight/daylight assessment.
3. Officers already check to ensure that plans represent an accurate picture of what is on the ground. Whilst legally we cannot insist on requiring dimensions to be added to plans, we will ask for this information where it is considered important or where there are discrepancies.

4. All committee reports already set out the relevant policies and indicate where standards and guidelines have been met. Officers have been advised at team meetings to pay particular attention to ensure that this continues to be done.

QUESTION 8

Conditions laid down by Inspector at Public Inquiry

1. **The site currently under construction by Antler Homes in Green Street (Taranaki/Little Manor) was subject to a public inquiry. Condition 6 laid down by the Inspector required details of foundations, drainage, service routes and tree root protection zones.**

Because of local concern of the inability of soakaways to deal with flash flooding, I asked the planning officer to view the planning details particularly as the latest planning application has extended the original approved building footprint.

He did not have the details, but referred me to the Building Control Department. The Building Control Department did not have the details and referred me to the National House-Building Council as being the approved building control inspector for the site.

I asked NHBC whether, as a Rule 6 Party at the inquiry, I could see the drainage details. I was told that because I did not live on the site they would not answer my questions or let me view any information.

This is an unsatisfactory situation in that SBC does not know what is being built, has no control over it and is in no position to exercise breaches of building regulations.

The following questions need addressing:

- 1a. ***What check is made that those conditions laid down by the Planning Inspectorate Appeal reports are enforced by SBC?***
- 1b. ***What checks are made by SBC that the design of soakaways are adequate in view of the fact that the water table can rise above the gravel layer in our area?***
- 1c. ***What consideration is given to SBC assessing the cumulative effect of all development on the ability to deal with flash flooding?***

2. The Planning Inspectorate also laid down that no development would be allowed unless the road access into the site had been completed to the drawings approved at the Inquiry (Condition 5) and the street lighting column re-sited to an approved scheme (Condition 9)

The buildings are now at an advanced stage of construction without these two conditions being implemented, which gives rise to my next question:

- 2d. *What enforcement orders does SBC intend to implement as the authorised building inspectorate (NHBC) has no powers to issue enforcement orders?*

Supplementary Planning Guidance

By the changing of the planning system from the Borough Local Plan to the Local Development Framework a lot of detail has been lost that needs incorporating in Supplementary Planning Guidance by which planning applications are judged. There needs to be a comprehensive volume incorporating all supplementary planning guidance available to the public.

I should like to know:

- 2e. *What public consultation and input takes place in formulating Supplementary Planning Guidance?*
2f. *When will a comprehensive SPG document be available?*
2g. *Will the SPG cover internal and external amenity space standards as has been carried out by some other local authorities?*

ANSWER 8

This question posed many interrelated points, which we have sought to group into two broad areas: Planning and Building Regulations

Planning

- 1a) Condition 6 of the appeal decision granting permission for the Little Manor development required a method statement to be submitted in order to protect damage to nearby trees. The condition was not imposed because of concerns relating to flooding. The statement was required to include details of foundations, drainage, service runs and root protection zones in order to protect the roots of trees.

These details were submitted on 20 Dec 2007 and approved by 3 March 2008. The Council is not aware of any breach of this condition.

The Council have previously served a temporary stop notice in December 2007 relating to a breach of the condition relating to

contaminated land on this site. The Council will consider doing this again if that is necessary to secure compliance with any of the conditions.

The appeal decision contains no condition requiring the details of soakaways or drainage to be submitted to and agreed by the Council as local planning authority. The development will need to comply with the Building Regulations in this regard. Compliance with the Building Regulations is being carried out by an Approved Inspector and not this Council's Building Regulation section.

Condition 9 of the appeal decision required a scheme to be submitted to secure the relocation of the street lighting column. The developer subsequently agreed a quote from Surrey CC for that authority to do the work on behalf of the applicant. This was formally agreed by the Council on 3 March 2008.

Condition 5 required the stopping up of the existing access to Little Manor prior to commencement of any other work on site. Aerial photographs indicate that this had taken place by the end of 2008.

Building Regulations

- 1b) Initially requirements relating to foundations and drainage on the site were noted within the planning conditions. However the technical requirements relating to the issues of foundations and drainage are dictated by the Building Regulations 2000.

To ensure compliance with the legislative requirements the developer of the site has a choice of using either the Local Authority Building Control service or a private building control company ("Approved Inspector"). In this particular instance an approved Inspector has been appointed to inspect the building works. Consequently Spelthorne Borough Council (SBC) has no powers of enforcement under the Building Regulations nor, under the powers inferred upon it within the Building Act 1984, does it have any rights of access to the site to inspect the works.

Notwithstanding the above, the Building Regulations are a national standard and are required to be enforced equally by both local authority building control and approved inspectors. In such case the approved inspector has a responsibility for ensuring that all surface water on the site is discharged sufficiently such that the possibility of flooding is negated. Any soakaways on the site are required to be sized appropriately, their adequacy being subject to compliance with the requirements of the Building Regulations and to the inspection of the approved inspector. Consequently, surface water drainage within the site should ultimately be disposed of satisfactorily.

- 1c) The issue of surface water flooding was addressed in the SFRA prepared as part of the evidence base for the LDF. In due course surface water management plans will deal with the issue in greater detail. At present the Council relies for advice from the Environment Agency, Thames Water and Surrey CC as Highway Authority.
- 2d) The Council has no powers to issue enforcement orders in respect of NHBC approved work.

Supplementary Planning Document

Under the new procedures for preparing Local Development Frameworks Local Planning Authorities may produce Supplementary Planning Documents (SPDs) to provide greater detail on the policies in their Development Plan Documents. The current Local Development Scheme for Spelthorne sets out the SPDs which the Council intends to prepare to provide further guidance on particular policies in the recently adopted Core Strategy and Policies DPD.

- 2e) The process of preparing SPDs will involve engagement and consultation with statutory bodies, residents and, in particular, representatives of local groups.
- 2f) Due to the delays in adopting the Core Strategy and Policies DPD a revised detailed timetable for the production of the various SPDs has not yet been finalised although preparatory work is currently underway.
- 2g) The detailed content of each SPD is still subject to discussion but the matters must relate to the policies in an adopted DPD, and may not introduce policies which should be the subject of formal examination.

QUESTION 9

We chose to split this into two questions as they covered different areas.

Could you please ask Mr Tambini what the cost of being twinned with Melun the town in France and Mauritius the island off Africa is? In the present economic climate should we not sever our ties with these towns.

ANSWER 9

The budget per annum for twinning is £2,000.

A whole raft of activities with Melun are in place through the Friends of Melun Association.

The “civic” twinning relates to an annual visit by the Mayor and occasional visits by other senior Councillors who have become Honorary Chevaliers.

Melun undertake several visits to Spelthorne which are paid for by them, involving the Mayor’s Ball and the annual Remembrance Day service.

In 2010 a range of activities will be planned to commemorate the 20th anniversary of twinning and it is envisaged that private sector funding will be sought to assist with the majority of any funding requirements. We also have some funds raised some time ago from a local company which is “ringfenced” to help fund the anniversary.

The twinning with Grand Port Savanne of Mauritius has almost exclusively been funded by private sector partnerships. It is not envisaged that any civic exchanges will take place at the expense of the public purse.

QUESTION 10

Also, please could you explain to me and the audience, when a planning application is rejected by the planning department and then is presented to the planning committee with a recommendation from the Deputy Chief Executive for a REFUSAL, and the reasons for the refusal given, that the planning committee members have the opportunity to overturn the recommendation and may allow a development which is unacceptable.

ANSWER 10

Applications which are considered by the planning committee are determined by the members of that committee. Committee reports are prepared by officers and set out all the policies, issues and material considerations that members need to take into account. A recommendation will be made at the end of the report, either for approval with conditions or refusal with reasons.

In considering each application, members will have read the report and will listen to any representations made via public speaking before debating each application. It is for them to discuss and decide whether the issues and weighting that officers have given to certain issues are correct (in their view).

For the vast majority of the time, Members will agree with the officer's recommendation. However, they are legitimately able to reach a different conclusion as long as there is a justifiable planning reason for doing so. It is entirely possible for members to reach a different conclusion if they feel officers have given too much or too little weight to a particular issues or policy. On those rare occasions where members do want to reach a different decision to officers, then they need to give reasons for doing so.

I would point out that on the rare occasion that members do reach a different decision, it is usually to refuse an application which officers had recommended for approval rather than the other way round.

QUESTION 11

Why are Tree Preservation Order's (TPO's) in The Avenue not being enforced? A letter reminding the resident that a fine of £20k could be levied should a felled tree not be replaced would surely result in compliance in most cases

ANSWER 11

The replacement of trees in The Avenue is being followed up and the approach suggested would not be appropriate because it would not accord with current legislation.

In general, horse chestnut trees in The Avenue have only been felled because they have been dead, dying or dangerous. Under Section 198(6) of the Act permission is not required to fell any such tree, however Section 206 of the Act places a duty on the landowner to plant a replacement tree as soon as he or she reasonably can. If an owner fails to replant within a reasonable time the Local Planning Authority may serve a "Tree Replacement Notice" under Section 207 of the Act. There is a right of appeal to the Secretary of State against such a notice. However, even if confirmed by the Secretary of State there is no penalty for non-compliance with a "Tree Replacement Notice" and failure to comply is not an offence. The only recourse for the LPA is to enter on the land, plant the replacement and recover the costs from the owner.

Owners of trees which have been felled by virtue of Section 198(6) have all been sent standard letters explaining the replanting requirements and procedures.

QUESTION 12

Why don't Spelthorne have a published guideline for those who contemplate building stables, which would save a lot of wasted time from applicants and protesters?

ANSWER 12

The Planning Department has a number of advice leaflets and supplementary planning guidance which cover the major issues within the borough, such as residential extensions and parking standards. These are widely used by applicants and planning agents and apply to a significant number of planning applications we receive.

Whilst the department could in theory produce a whole range of guidance leaflets we have to make a decision on how widely they would be used within the borough. As such, we have chosen to focus on those issues which we have most queries about. Although we receive a few applications for stables each year, they are not significant in number. We therefore felt it would be more appropriate to offer advice on such proposals via our pre-application advice service.

As 70% of the borough is green belt, stables are almost always located in such an area. There is very clear guidance in saved policy GB1 of the Local Plan which sets out what is and is not an appropriate use in the green belt. Keeping of horses for recreational use is not an appropriate use in the green belt, and this has been established by case law. As such, any proposals would need to show 'very special circumstances' as to why they should be allowed in such a location.