

Audit and Corporate Governance Committee



Listening Learning Leading

Report of Strategic Director

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AGENDA ITEM NO 15

Waterstock Driving Range – finding of maladministration and review of council performance

PURPOSE OF REPORT

1. The purpose of this report is to brief the Audit and Corporate Governance Committee on the Council's handling of a request from the Waterstock Parish Meeting (the Parish) for a discontinuance order to be issued in respect of the floodlit driving range at the Waterstock Golf Club, Waterstock and to ask for the committee's views on whether any further action is appropriate.

SUMMARY OF CASE

2. The request for the Council to issue a discontinuance order to Waterstock golf driving range was submitted by the Waterstock Parish Council in October 1998. This request was also supported by a number of organisations and the owners/occupiers of various properties alleging light nuisance from the driving range floodlights.
3. The matter was referred to the Planning Committee for a final decision approximately 9 ½ years later at its meeting on 23 April 2008. At this meeting the Planning Committee resolved that no form of discontinuance order was warranted in the circumstances of the case.
4. The Council's prolonged consideration of this matter led to understandable frustration on the part of objectors to this development and to a complaint being

lodged with the Local Government Ombudsman regarding the time taken. As a result of an investigation, the Ombudsman concluded, on 6 February 2008, that there had been maladministration on the part of the Council in the avoidable delay in bringing to members the concerns about Waterstock driving range.

The Ombudsman discontinued his investigation on 6 February 2008 on the basis that the council had agreed a local settlement as follows:

- inform Members of the recent discovery of this possible remedy for the impact of the lights
 - invite Members to attend a site visit during the hours of darkness when the lights are in operation to see for themselves the impact (during this winter season)
 - inform Members that they have the power to require discontinuance if they are so minded to and that the residents have asked that this power be considered
 - research and test out the possibilities of the new technology and put the results of that research and testing to Members by April 2008;
 - at the same meeting put to Members the option of using their powers of discontinuance with the officers' recommendation on whether to use that power (again by April 2008) so the Members have a choice between discontinuance and the alternative technology or if that technology is now found to be inappropriate for the purpose a choice on what to do next;
 - pay to the complainant the £250 recommended by the Ombudsman to acknowledge the time and trouble to which he had been put.
5. The Ombudsman also recommended that members be apprised of the complaint and informed of his view that maladministration had occurred. This report to the audit and corporate governance committee complies with the Ombudsman's request. In addition a brief report of the case will be included in the weekly information sheet in order that all members are informed of the complaint and its outcome.
6. A report was brought to the planning committee on 23 April 2008 and this report is attached as appendix one. In his report the planning officer advised that the alternative technology investigated did not significantly improve the problem of light pollution and he recommended that a discontinuance order be served. The planning committee, after detailed consideration of the matter resolved "that no form of discontinuance order be made with regard to the floodlit golf driving range at Waterstock Golf Club."
7. The council complied with the terms of the local settlement, other than in one respect, namely that the formal site visit to the driving range and all of the adjoining properties was not carried out until 16 April 2008, after the commencement of British summertime. There had been visits to the driving range in November 2007 and in January 2008, but not to the properties affected by the lighting.

DETAILS OF ACTIONS TAKEN

8. In December 1993 the Council received a planning application (P93/N0704) for a “golf range shelter and practice range with long range low level lighting” on part of the Waterstock Golf Club near Waterstock. The application was approved by the Planning Committee at its meeting on 22 March 1994 contrary to the officer’s recommendation. A planning permission (P93/N0704) was subsequently issued on 20 April 1994.
9. The driving range lights were installed towards the end of 1994 in accordance with a lighting scheme approved pursuant to the conditions of planning permission P93/N0704. The scheme provided for a total of nine high-pressure sodium lights, including five main lights with an output of 1000W, and four secondary lights with an output of 150W.
10. The Parish first raised concerns regarding the impact of the floodlights in December 1994. The lights however, had been installed with the benefit of a planning permission and in accordance with an approved lighting scheme. The lights were therefore lawful and there was no breach of planning control as the basis for enforcement action to address the concerns of the Parish. On 20 October 1998 the Parish wrote to the Council through Harbottle and Lewis (solicitors) to request that a discontinuance order, pursuant to section 102 of the Town and Country Planning Act 1990 (the Act), be issued in respect of the driving range development.
11. Under section 102 of the Act the Council may issue an order to require the discontinuance of a use, the imposition of conditions, or the alteration or removal of a building or works, if having regard to the development plan and to other material considerations it is considered by the Council expedient in the interests of proper planning of the area to do so. Discontinuance orders are, however, extremely rare and involve the payment of compensation by the Council to any person (such as the golf club) who suffers damage as a consequence of the order. There appears to be no published government policy guidance to assist local authorities in the exercise of their powers under section 102 and discontinuance orders are generally regarded as an action of last resort.
12. The Parish’s request for discontinuance was considered by the former Planning (Appeals and Enforcement) Sub-Committee on eight different occasions between September 1999 and May 2001; in 2002 a barrister’s opinion was sought; and in January 2003 a briefing of District Councillors also took place. As a result of all of the above deliberations a number of studies were undertaken to investigate the extent of the lighting impacts and to consider possible alternative options to address the concerns of objectors whilst respecting the lawful rights and business viability of the Golf Club. The Council expended considerable time and resources on lighting and landscape consultants to investigate various alternative lighting and landscape schemes. Numerous reports were commissioned and lighting trials were conducted in 2001 and 2008. Discussions were also held with Oxfordshire County Council from 2002 through to 2005 with a view to resolving the matter as part of a proposal by the golf course owners to

retain some unauthorised fill on the site for an extension to the golf course. In June 2006 an investigation was undertaken by the Council's Environmental Health Team, following changes to the legislation on statutory light nuisance. However, no clear solution emerged from all of these efforts.

13. The Council's failure to bring this matter to a conclusion was brought to the attention of the Local Government Ombudsman in a complaint from a neighbouring objector in May 2007. As a result of this investigation the Ombudsman returned a finding of maladministration by the Council for its failure to make a decision in a timely manner.
14. The matter was finally brought before the Planning Committee for a final decision on 23 April 2008 when the committee resolved that no form of discontinuance order should be made.

ANALYSIS OF PROCESSES AND SYSTEMS

15. Discontinuance orders under section 102 of the Act are extremely rare and there appears to be no published government policy guidance to assist local authorities in the exercise of their powers. In the absence of previous experience and with no published guidelines on processes and procedures, planning officers and councillors are largely left to their own devices in the way in which they handle such matters.
16. Unlike other functions of a local planning authority there are no performance standards governing the turnaround time for the assessment and determination of a request for a discontinuance order (as in the case of planning applications); and there is no statutory time limitations regarding the exercise of discontinuance powers, (as in the case of enforcement action).
17. A discontinuance order also involves the payment of compensation by the Council to any person (in this case the Golf Club) who suffers damage as a consequence of the order. Although matters of compensation are not relevant to the Council's decision on whether or not to issue a discontinuance order, there nevertheless remains an understandable reluctance to rush into a decision involving discontinuance, with all that that entails, whilst the possibility of an alternative solution remains viable.
18. Unlike enforcement action where a degree of fault can be attributed to the person found to be in breach of planning control, in matters involving discontinuance there is no breach of planning control and no fault on the part of those persons against whom discontinuance action is proposed to be taken (hence the need for compensation). In the circumstances of the present case the Golf Club had a valid planning permission issued by the Council, and the lights were installed in accordance with that permission. Consequently planning officers and councillors found themselves caught between a sincere desire to address the concerns of complainants while at the same time recognising the rights of the Golf Club and seeking to protect the viability of a lawful business entity and a valued recreational facility.

19. The Council therefore expended considerable time and resources in an effort to find an alternative solution aimed at satisfying the interests of all parties. Although these efforts ultimately proved to be fruitless, they nevertheless contributed to a fully informed decision by the Planning Committee not to issue a discontinuance order.
20. The combination of all of the issues identified in points 1 to 5 above contributed to procrastination on the part of officers and early in the process, councillors, in bringing this matter to a satisfactory conclusion. The time taken in reaching a final decision (approximately 9 ½ year) is clearly unacceptable.

LESSONS

21. Although the Council is unlikely to have to consider another request for a discontinuance order for some years, it should nevertheless critically analyse its performance in dealing with this case to ensure that similar delays do not occur again in the future.
22. Reference has been made above to the absence of published guidelines on processes and procedures for dealing with requests for discontinuance orders under section 102 of the Act. Although it would be good to have clear guidelines, I see little value in seeking to do so when the Council is unlikely to encounter a discontinuance order for many years. It is unlikely, in any event, that a prescriptive set of processes and procedures based upon the Council's experience of a single discontinuance request would be appropriate to the circumstances of any such future request.
23. Discontinuance and revocation orders are unique planning functions that don't fit comfortably within either the 'planning application' or 'planning enforcement' regimes. They are nevertheless more akin to an enforcement action. Given the complexity and unique nature of the issues involved in a discontinuance matter, expert and specialist attention is required. The absence of a resource, within the planning service, capable of devoting the necessary time and expertise to resolving the complex issues involved in a matter such as this has, in the past, prevented a number of significant enforcement matters from being dealt with in timely fashion. This has contributed to a backlog of outstanding enforcement matters.
24. The planning enforcement best value review undertaken in 2005 recognised, among other required actions, the need to revise enforcement policies, priorities and targets. In addition, the enforcement team structure was revised, including an additional resource of a specialist planning officer with a remit to assess and bring to closure complex enforcement and planning related cases. There were a number of these outstanding cases, including the Waterstock driving range request for discontinuance. The various actions arising out of the best value review have been implemented. As a result of these actions and with some extra temporary staff, the number of outstanding enforcement matters overall has been significantly reduced from a peak of 1300 cases in 2006 down to the current level of 600 outstanding cases (we receive about 600 new cases per year).

25. The Waterstock case, together with a number other complex planning matters, has been progressed to a satisfactory conclusion largely as a result of changes already implemented in connection with the best value review.
26. An enforcement policy has also been adopted in January 2007 to give greater focus to the work of the enforcement team and to better manage expectations and workloads. With these changes already implemented and with the knowledge gained from the Council's dealings with the Waterstock site I feel confident that any future requests of a similar nature will be dealt with in timely fashion.
27. Performance monitoring systems are now in place that require outstanding enforcement cases to be reviewed regularly by the Head of Planning. Targets are set and progress is closely monitored until such cases are finally resolved.

CONCLUSION

28. Overall, although the Waterstock case was a complex planning matter that required all options to be fully assessed, it is accepted that the case was poorly managed over a long period, which resulted in an unacceptable delay to the complainants.
29. The Local Government Ombudsman found that these delays were unreasonable and confirmed that maladministration had occurred. He considered, after his initial investigation, that there was an agreed remedy through a local settlement. Officers and councillors complied with the Ombudsman requirement for members to consider the option of using their powers of discontinuance before the end of April 2008.
30. Although the site visit to the properties affected was not carried out until 16 April 2008, the Ombudsman noted in a letter to the complainant of 15 May that although an earlier visit would have been preferable, he could not conclude that the decision would have been different.

RECOMMENDATIONS

The Audit and Corporate Governance Committee is asked;

- to comment on the council's performance in relation to the handling of this case and to note the actions implemented by the planning service to limit any re-occurrence;
- to note the Local Government Ombudsman findings that there has been maladministration by the council due to the avoidable delay in bringing the matter to the planning committee for decision;
- to comment on whether the actions taken by the council to ensure such an event can not recur, as set out in points 21 to 27, are sufficient and, if not, to advise on whether further actions are required.