



**REPORT of
MONITORING OFFICER**

to
**JOINT STANDARDS COMMITTEE
16 JUNE 2022**

**MOTION OF COUNCILLOR A S FLUKER REGARDING PLANNING DECISION ON LAND
SOUTH OF CHARWOOD AND EAST OF ORCHARD, STONEY HILLS, BURNHAM-ON-
CROUCH**

1. PURPOSE OF THE REPORT

- 1.1 To assist the Committee make a recommendation to the Council on any action that should be taken on the Motion of Councillor A S Fluker, duly seconded by Councillors R P F Dewick and M W Helm, automatically referred to this Committee on 12 May 2022.

2. RECOMMENDATIONS

To the Council:

- (i) That the Council set up an external investigation into the decision-making process in relation to this planning application only;

OR

- (ii) That the Council set up an external investigation into the decision-making process of this application, but with the terms of reference being to look at member decision-making generally to identify any systemic problem;

OR

- (iii) That the Council rejects the call for an external investigation but accepts the findings of the Inspector and that Council emphasises the need for more objective and evidence-based decision-making in the future;

OR

- (iv) That the Council rejects the need for an external investigation.

3. SUMMARY OF KEY ISSUES

- 3.1 The Motion from Councillor Fluker is cited here in full:

“Preamble:

With reference to the Cost Decision Appeal Ref/APP/X1545/W/21/3281036 Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA and in the best interests of maintaining the status of the Council as a Local Planning Authority.

Motion to Council:

With regards to openness, transparency, and public interest the Council writes to the Planning Inspector appointed by the Secretary of State, Mr Terrence Kemmann-Lane JP DipTP FRTPI MCMI, asking him to evidence his findings of ‘substantive’ ‘unreasonable behaviour’ and pre-determination by ‘elected members’, and that the Council appoints an Independent Person to conduct a review of the decision notice and report their findings to Council.”

- 3.2 On 17 February 2021 the South Eastern Area Planning Committee resolved to refuse a planning application to construct a cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces and garden (Minute No. 265 refers). This was contrary to officer recommendation.
- 3.3 Due to the possibility of legal challenge on the grounds of alleged pre-determination the application was re-determined by the District Planning Committee on 9 June 2021. The Committee resolved to refuse the application again contrary to officer recommendation. The Minutes of that meeting are shown as **APPENDIX 1**.
- 3.4 There was a written representations appeal determined by a Planning Inspector. His decision letter is shown as **APPENDIX 2** and he granted the application. There is nothing in that letter that alleges pre-determination by any Member. The Costs Decision letter is shown as **APPENDIX 3** in which the Inspector awards the full costs of the applicant on the grounds that the decision of the Council collectively demonstrated “unreasonable behaviour”.
- 3.5 In the Motion there is incorrect reference to the Inspector awarding costs due to pre-determination. He made his decision on unreasonable behaviour alone. Pre-determination is mentioned in **APPENDIX 3**, but only in relation to reciting the allegation of the Applicant in his application for costs.
- 3.6 As the Inspector did not base his decision on pre-determination there is no benefit in writing for more specific information about individual councillors.

4. CONCLUSION

- 4.1 Members gave two reasons for refusal which were not substantiated, and it is this that led to the finding of unreasonable behaviour, but not to pre-determination. The Committee needs to decide whether this decision warrants the special treatment of an external investigation.

5. IMPACT ON STRATEGIC THEMES

- 5.1 None.

6. IMPLICATIONS

- (i) **Impact on Customers** – Delayed and unfair decision-making.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.

- (iv) **Impact on Resources (financial)** – The Council has to pay out the costs of the Applicant.
- (v) **Impact on Resources (human)** – None.
- (vi) **Impact on the Environment** – None.
- (vii) **Impact on Strengthening Communities** – None.

Background Papers: District Planning Committee report of 9 June 2021.

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