

**Scrutiny Workplan Item – Traveller Site on land off A414 at Woodham Mortimer**

1. The four main areas of scrutiny set by the Committee and the detailed points of scrutiny looked at by the Working Group are set out in bold, together with the information gathered and responses in italics, are as follows:

**A. Planning Appeal – chronology of events / what happened / what went wrong and why?**

➤ **Scene setting as to the management of the appeal**

➤ **Officer recommendation overturned/professional conflict**

*Planning application 22/00344/FUL was refused planning permission at the District Planning Committee on 22 September 2022. Members resolved to overturn the officer recommendation for approval. On 17 February 2023 the Local Planning Authority (LPA) was notified that an appeal against the refusal of planning permission had been submitted to the Planning Inspectorate. As part of the appeal process a 'start letter' is received setting out the timetable for the submission of documents to the appeal. This includes the date the statement of case is to be submitted to the Planning Inspectorate. On 28 February 2023 the case officer to manage the appeal was identified and initial documents processed.*

➤ **Clarification of non, rather than late, submission of appeal statement and Statement of Common Ground**

*On 4 April 2023, the Council received an email from the Planning Inspectorate (PINS) advising that the Council's Statement of Case had not been received by the due date. Comments from the Head of Development Management and Building Control following the email from PINS indicates that it was understood that the appeal was in hand, the only matter being that an agency officer would represent the Council at the hearing instead of the permanent officer. Given that the due date had passed, PINS would not accept a late submission. The agency officer became unavailable, and a decision was taken to engage an external consultant.*

*On 12 May 2023 the Council requested fee quotes from three external consultants.*

*On 22 May 2023 the Council had conversations with Boyer Planning and clear.<sup>1</sup> (Planning division) on representing the Council at the appeal.*

*On 24 May 2023 the Council commissioned Arron Breedon MRTPI (Member of the Royal Town Planning Institute) of clear. to represent the Council's case. Mr Breedon had conversations with PINS regarding the lack of a Statement of Common Ground from the Council and was advised by PINS that the Council would be able to present its case to the hearing in full, notwithstanding the lack of a statement.*

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<sup>1</sup> <https://cleararchitects.co.uk>

*On 19 June 2023 the Council submitted the Statement of Common Ground, which is a document in which both the appellant and the Council agree on matters which are not in dispute or matters which are in dispute and on which there is no agreement<sup>2</sup>. The Council's position was that the Maldon District Local Development Plan Policy H6 was relevant to the assessment of the appeal and its approach to a criteria-based assessment of Gypsy and Traveller sites did not undermine the policy.*

➤ **Representation arrangements – who actually attended**

*The Council was represented by Mr Arron Breedon MRTPI of clear. Planning and Maldon District Council (MDC) Environmental Health Officer (EHO).*

➤ **The Environmental Health Officer's involvement/awareness**

*The Officer representing MDC Environmental Health, was called at the last minute request of the Planning Inspector who sought input in respect of the noise and nuisance reasons for refusal. The EHO made it clear that Environmental Health officers found no statutory nuisance following the reports received and as such there was no grounds on which formal action under Environmental Health legislation could be taken against the occupiers of the site.*

**B. Assertions made, and issues raised in the most recent emailed communication from Russell Forde** (may be part of a long sequence of correspondence) – overlaps with the Planning Appeal theme above –

***Most recent***

➤ **No appeal statement was submitted whatsoever**

➤ **See comments above that the Inspector allowed the Council to present its full case verbally at the appeal.**

➤ **The EHO who attended was not familiar with previous site visits and readings – he was completely oblivious**

*The issues of nuisance complaint investigations and commenting on a planning application proposal are entirely separate. The issue of potential noise nuisance has already been dealt with and noted by the Working Group and reported to the Committee. There were no objections on noise grounds when Environmental Health were originally consulted on the application. The position as noted by the Appeal Inspector was that there was nothing before him to indicate that the proposed use would give rise to noise and disturbance to existing residents and that there were separate mechanisms available to the Council to deal with any noise arising from occupation of the site.*

*In terms of the appeal hearing, the attendance of the EHO was as a result of the Inspector requesting, during the hearing, that he (if*

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<sup>2</sup> They are an expected part of planning appeals and serve to help the Inspector narrow the focus of hearings or inquiries to the matters which are in dispute.

*possible) attend to respond to matters concerned with noise nuisance. The EHO was able to attend and take part, but was not given time to prepare, as it was the position that the matters of noise raised in the reason for refusal were not an Environmental Health issue as EHOs had not objected to the scheme during the planning application on noise grounds; a fact contained in the Committee report. The comments / responses made by the EHO could only reasonably be to state the findings of Environmental Health colleagues recorded on their case file – the EHO's professional position was that there was nothing in the case findings that could be challenged from an Environmental Health perspective and powers to deal with those matters fall under their legislation.*

*Matters of noise and nuisance / disturbance could only therefore be dealt with by the Council's Planning witness under planning considerations. As there was no statutory basis for a noise objection, and the use itself is not a noise generating activity beyond a residential habitation of the site, there were no substantive grounds on which to defend this reason for refusal. As stated above, the Inspector made this point clear in his findings. An important distinction all Planning Committees need to acknowledge is that when determining a planning application / appeal - it is the development that needs to be tested not what may have already happened on the site or what might happen from what is a residential use.*

➤ **Relevance of trees to the appeal – two Officers lied to and misled the Committee – are Tree Preservation Orders (TPOs) in place?**

*A TEMPO (Tree Evaluation Method For Preservation Orders) was carried out on 11 February 2022 by Andrew Day Arboricultural Consultancy and confirmed that the tree merited a TPO. Emails between relevant officers of the Council reveal that an Area Tree Preservation Order was served on Friday 11 February 2022. A Temporary Stop Notice requiring specified work / activities on the site to cease was served on Monday 14 February 2022. The Emails also report that the Notice was breached. Officers visited the site to confirm. The Director of Service Delivery and the legal officer were included in the communication.*

*As such, officers had not lied as alleged by Mr Forde. The reporting of the TPO by Mr Forde and commented on by the Planning Officer was correct as to the facts of the case at the time. The allegation by Mr Forde therefore is without foundation.*

*To lie – as alleged by Mr Forde – the former officers would have had to have had the intention to deceive the Committee.*

*The officers are no longer employed by the Council and cannot be interviewed against the MDC Code of Conduct as part of this scrutiny item. Their email accounts no longer exist, and it cannot be established beyond reasonable doubt that the former officers had any intent to deceive when they gave verbal advice at the Committee. The Professional Code of Conduct in place at that time was the [RTPI Code of Professional Conduct 2016](#) (updated 1 February 2023).*

*The Council has not been made aware of any formal complaint being made to the RTPI Conduct and Discipline Panel, which is a Coded obligation on any other Member of the RTPI if they know of a professional member who has breached the code.*

*The Committee report mentioned that the vegetation and trees on the south and east boundaries of the site had been removed which had resulted in some visual harm. At the meeting it was clarified that the removal of trees had taken place prior to the service by the Council of a tree preservation order. The Committee report also dealt in some detail with the submitted Tree Protection Plan and this proposed to deal with certain remaining trees, and a condition was recommended to secure protection and also require new soft landscaping. The appeal Inspector observed that limited harm had been caused by the removal of trees and noted that some limited opportunities existed for new planting.*

➤ **Lack of a timely plan to ensure adequate representation at the appeal**

*The appointment of the consultant for the appeal was a challenge for this appeal. The Council had a number of consultants who did not respond to the specification, others declined and only one who was willing to take the case on. Whilst the search started in advance, their appointment was not until just before the hearings and this did affect how much time they had to present the Council's case at the hearings. No external party would have been able to prepare any quicker.*

*The oversight of appeal caseload was at the time of this appeal an activity which rested with Planning Officers as part of a case load, overseen by the Development Management Team Manager. Work on the Planning and Implementation's Service Plans since 2024 has highlighted the need to reduce the reliance of only looking at appeals as a caseload activity and instead explore how software solutions could be deployed better to support the task. Supported by discussions with best practice authorities elsewhere in Essex, Officers have already begun work on developing a new Planning Appeal dashboard using Uniform and PowerBi to simplify how appeal information can be monitored at a glance by management, to ensure cases are meeting the deadlines set by the Planning Inspectorate and to ensure deadlines are not inadvertently missed.*

➤ **External representative was not prepared on the day and ill-equipped to present the case that existed.**

*External representative was appointed on 24 May 2023 after an extensive search for willing consultants to undertake the work. This gave him 3 / 4 weeks to prepare, as best as he could and included engaging with officers prior to the hearings on GTAA (Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment) need.*

➤ **Officers advice fell short of the highest level of integrity required and appear to be seeking to avoid blame**

*This assertion is refuted. Officers operated to their best ability given the circumstances before them. It is acknowledged that the non-submission of a statement meant that the Council had no written representation of its case, however that did not detract from officers presenting the case to the relevant standards. The fact remains that the officer could not*

refute the policy basis for supporting the appeal, and the reasons for refusal had no firm planning basis on which the case could be defended. This is all the more clear due to the fact that no statutory nuisance was identified by Environmental Heath. Therefore, the arguments to be presented were very limited.

- **The parent permission has lapsed – Officers do not accept the logic of this position**

*The Council's planning legal advice has been that this is not the case and this external advice was used to inform Officers' position.*

#### **Earlier representations**

- **Presenting Officer deliberately misled the Committee on 22/9/22 about the status of the site access to the A414 – access misrepresented in application - consultation response of CHA not reliable – Officers' failure to clarify this with CHA amounts to maladministration**

*Access dealt with on the basis of that shown on the application as submitted. There is no requirement to investigate its status; that is for the Highway Authority to do. The Committee report referred to the site benefitting from an existing access which prior to the development commencing had been closed and fenced off. No material changes had been made to the access. The Highways Authority raised no objection to the proposed access subject to the condition as to its width.*

*At the Committee meeting, reference was made to the photos clearly showing an existing access, even if overgrown and not in use. Nothing had been done to create a formal access. Reference was also made to the existence of a dropped kerb which indicated that historically an access had been there.*

*The appeal Inspector acknowledged this and concluded that the proposal would formalise the existing access.*

*It is noted that no formal complaint as to maladministration has been made to date.*

- **Chronology of subsequent events, including key representations to the Council, responses on behalf of the Council, planning and other applications submitted including update on their current status. In particular, the letter of January 2024 from Holmes and Hills re. the lapsing of the original site permission granted on appeal – the current application cannot be considered valid, and the Council's response**

*The Council sought Counsel advice following the letter from Holmes and Hills. Our Counsel had a different view and gave their reasoning which was considered by officers. It cannot be provided to Mr Forde or the residents as it is bound by legal privilege.*

- **Failure by Officers to take corrective action compounding the errors of the past**

*Officers acted appropriately at all stages of the process. Where unauthorised activity took place a Temporary Stop Notice was served,*

*an emergency TPO was served, and an injunction was obtained on the site. Where any other activity took place on the site, officers assessed as to whether any breach of planning control had occurred and acted according to professional protocol. In terms of noise and disturbance, officers had regard to statutory regulatory powers in determining whether nuisance had occurred which triggered statutory action. Where none had occurred, officers reported accordingly.*

*Officers have not acted alone and have sought Counsel opinion given the challenges and complexities of planning law. Challenges of practice which are a matter of judgement are noted and it is respected that Mr Forde holds a different view, but neither officers nor the Council are compelled to fall into line and agree with that view.*

**C. Suggested outcomes/steps to avoid this happening again in the future**

- i. Training for Members to help them become more familiar with the Planning Appeal processes, when they can get involved etc in order to support communities and manage expectations.*
- ii. Members to be aware, and it be noted in the Planning Appeals Protocol, that officers may be professionally conflicted and therefore cannot represent the Council where an officer recommendation to approve has been overturned. This would extend to all officers in the planning service including managers who sign off the case.*
- iii. Amendments to the Planning Appeals Protocol to provide clarification on how Members can get involved in the appeal process, particularly since the introduction of the Constitutional Brake in 2023.*
- iv. After a Committee decision overturn, we could bring forward the activity to canvas and find a suitably qualified third party to defend the Committee decision to the point in time we are notified on the appeal's registration. This could include engagement with nominated Members where a choice is needed, or where it becomes clear a third party cannot be found and nominated Members may need to step into the breach and become witnesses for Council.*

**D. Any policy / protocol / guidance on the handling of an appeal involving a decision where the Officer's recommendation has been overturned**

*The Planning Guidance document in the Constitution states that a Planning Appeals Protocol has been approved and is appended to the Guidance. Further, that in the event of a decision taken to refuse contrary to the recommendation of the Officers, the Committee may nominate a Member to assist in agreeing the precise reasons for refusal and with the preparation and presentation of the Council's case should the decision be appealed.*

*The Guidance also states that Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners are obliged to follow the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries and hearings have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with that Code.*

*Depending on the conclusions/outcomes of this scrutiny, additional content for the Planning Appeals Protocol, particularly to acknowledge the professional conflict faced by Officers when their recommendation has been overturned, and in relation to the management of appeals, might be helpful and provide greater assurance.*