

Request / Report To Overview and Scrutiny For Call In & Complaint City Bradford In the Matter of Appropriation Land Wibsey Fair Tennyson Road

Members in Attendance

Councillor Susan Hinchcliffe (Chair) Labour

Councillor Val Slater Labour

Councillor Imran Khan Labour

Councillor Alex Ross -Shaw Labour

Councillor Sarah Ferriby Labour

Councillor Abdul Jabar Labour

For avoidance of doubt the wards relevant to the South Bradford Area Panel are given to be

Tong - Queensbury - Great Horton - Wyke - Low Moor, Royds - Wibsey - Odsal,

Background & Process

In the matter of executive Committee Meeting 14th June 2016 . Agenda item E was raised dealing with process of appropriation of Wibsey Fair, that being properly a lawful process administered by the office of the **City Solicitor**.

Under the Councils Constitution normal process on Land Disposal or proposed change of use is mediated through **3.3.3** which enables constituents to Find out from the Forward Plan what key decisions the Executive will take and when it is proposed they are taken.

In the report the reason given by the receiving directorate for determining the decision under executive Rules are given under **Sections 3:1 to 3:3** which indicate any LTP funding not expended within this period could be reprofiled.

The receiving Directorate , who had material reasons to prejudice process of any asset and funding associated with it , considered it impractical to defer the decision until it has been included in the published Forward Plan. It is not properly the role of the Receiving Directorate to Act *ultra vires* and prejudice decision by misrepresenting fact or *critically* acting on behalf of legal services on a duty to be conformed by the SS 122 of the Local Government Act 1872

In the matter of objection duly made under the act and its higher requirement to engage , inform and involve , No objector was contacted or provided with information as a matter of course or when requested on numerous occasions. The first statutory objectors new of it was the meeting recommending its approval two days before executive meeting via an end of week morning edition of the T&A and thereafter by letter indicating a recommendation in a process that did not address the material concerns of the objectors in accordance with the act s 122 LGA 1972

During the meeting and throughout The City Solicitor refused to provide response to the Wednesbury Points thereat duly made below which would significantly place the City in Jeopardy

In matters of acquiring Open Space for subsequent planning applications 97 % of all LPA's require that the process of appropriation occur before grant of planning permission. More over the City of Bradford allocated a 3 year - year on funding allocation circa £ 60 K and as indicated is the fundamental. In short the Council through poor legal understanding failed to engage legal process in the correct order

As a point it is unclear how sequestering money in a safer roads budget can contribute to immediate or effective road safety which is to which monies acquired was properly ascribed

In the matter of appropriation generally . Failure to engage process has been a significant error by the council Legal and Democratrice Service . I refer to the similar matters and to which elected members refused to represent constituents over (see code of conduct complaint

In short , The Matter of Woodside Play Area an area of open space which attracted a £60 K Governement Playbuilder Grant and part thereof subsequently sold at auction for £50 K with Planning permission for n = 15 houses the council has refused to provide detail ls of the Lawful appropriation of Land required and the City would remain in jeopardy as a consequence.

The recommendation relates to whether the advertisement was clear it does not deal with the material facts of which it is a component . It has been acknowledged that there was an error in making the advertisement order and as stated in the Principle of Wednesbury it is not reasonable to assume that anything containing an error in law is acceptable . It is not for the legal and Democratic to accept in balance the failure to adhere to the letter of law, that is properly a matter for challenge

The motion must also satisfy itself that the rigour applied to this unusual agenda item has been met . In the matter of question by Chair and Objectors , the City Solitor refused to provide material fact throughout relating to the process during the period of determination and specifically the Comimittee meeting

Wednesbury Test On Reasonableness

Under the Wednesbury Principle , it is unreasonable to expect objectors duly made , to make representation on information that has been with held or not given as part of due process, the requirement of the act is to give notice clearly , it is not reasonable to advertise a lawful process with an error and ask to comment on a lease which is not written or available or in the alternative a contract made outside process. It is also unreasonable not to have consulted objectors or provided reason by exhaustive document as to why the land is no longer required . In the context of the requirement of the Act it was unreasonable not to have offered any alternative in lieu as required and unreasonable to have excluded objectors during the entire course of determining material

fact to which they are a lawful party in raising . No involvement or input was sought from the Council throughout the process. It is not reasonable on both to have precluded public engagement *either* through officer led decision for the purpose of funding procurement when the Council Constitution affords the right to representation under the LDF *or* the requirements of satisfying the Act "LGA 1972 " which are known and obligate to the council as a duty , a duty being that required in law. It would be unreasonable for an executive member with a previous history of involvement either on a panel (approving an area plan , granting planning permission or attaining funding for the site) to participate in a decision influencing the outcome of appropriation when they have had a previous involvement with matters associated with it

Request To The Chair of Corporate and Scrutiny Overview For Call In

The Chair of the Corporate Overview and Scrutiny Committee must call-in a decision when requested to do so by one Member of the Committee or a Member of another Committee or by the Committee Member representing the third largest group on the Council. A Member for this purpose includes a voting co-opted Member but not an Alternate Member. (b) The request to call in must be in writing, give the reason for the request and be signed by the Member and sent to the Chair of the Corporate Overview and Scrutiny Committee who will deliver the request to Committee Secretariat, Room 111,

CALL IN PERIOD ENDS TUESDAY 21 JUNE 2016 AT 1700

Matters of Prejudice and Mis-representation by the Receiving Directorate

It is clear in **Section 6:1 – 6:16** that the receiving Directorate has provided a number of material facts that are irrelevant or misnomers to the Order made in Nov 2015 They are dealt with in brief and can be expanded at length if necessary . The statements of partial truths I believe are misleading

Statement 6:2 The officers statement is contradictory. The agenda clearly identifies the matter of business to be the Appropriation of Land at Wibsey Fair but provides or implies or relies on a consultation made on a Planning Matter some years previously not connected with lawful process , and not expressly worded in relation to the Appropriation of Land is relevant . (the probity of such a petition is questionable as it was taken around ale houses of wibsey late in the evening)

Statement 6:3

The statement is confusing and irrelevant. Business relates to the matter of appropriation and legal requirements to be met under the Act . The legal assessment or process around Appropriation denied through process and presentation at executive committee. The council failed to discuss the matters relevant to the determination under SS 122 of the Local Government and the conditions required to satisfy it

Statement 6:4

Senior officers in the receiving directorate did not act impartially and failed to acknowledge in written documents to Committee that aside from the 4 statutory objections there were n=57 signatories of residents who did live in the village who opposed the loss of open space

In the matter of appropriation . Failure to engage process has been a significant error by the council Legal and Democratic Service . I refer to the similar matters and to which elected members refused to represent constituents over (see code of conduct complaint In short

The Matter of Woodside Play Area an area of open space which attracted a £60 K Government Playbuilder Grant and part thereof subsequently sold at auction for £50 K with Planning permission for n = 15 houses the council has refused to provide details of the Lawful appropriation of Land

Statement 6:7

The Council's planning service refer to the site as "open informal recreation This cannot be relied upon as a legal definition of the use of the land. The evidence on balance including designation under the Cities RUDP and other documents is clear. Moreover nay Grant of Royal Preoragive or reference to it in the Domesday Book as A "Fairre" is clear. If that was the case in fact , it would not therefore be necessary to appropriate the land

Statement 6.8 Objectcrs where excluded from this material determination and not provided with documents as part of the process of consideration by both parties and as such are not in a position to comment on matters as they have not been provided with documents or facts relating to the matter. Objectors are taking legal advise on the making of objection relevant to the material circumstances on the site and any alteration of the same (redacted covenants) outside the procesesc of appropriation without engagement to establish what material circumstances are relevant to any judicial review , In any case , the points raised are not the only reason why the site would be designated as the same

Statement 6.9 It should also be noted that the holding department has concluded that the land is no longer required for its current use as open space. Objectors where not provided with any exhaustive report or in the alternative as required by the act where not given alternative in lieu . The authority has not satisfied the requirement of the Act

Statement 6:12 No legal appraisal has been provided to documents held in markets relating to use under pre-ogative granted by Royal Charter which would provide a#n unusual twist in challenge

Statement 6:14 – 6:15

Statement 6:16 Undisputed. The significant matter is the lawful appropriation of land which would become legally challengeable on making of the order

The matter before the Committer was one of appropriation dressed as planning matter and facilitated through members associated with conflict or vested interest but will comment in passing

The receiving departments report from Highways to the Planning Committee omited . the 3 Material planning objections ,made (confirmed as material planning materials by 5 Independent Highway Officers in each of 6 authorities surveyed who indicated they would have reported at least two (or more) as an officer report to planning

- (i) The access route would be within 2 m of a junction or in the alternative main street
- (ii) The access and egress would interefer with a tactile paving route which technically would be a ROW Diversion (Equaliites Act)
- (iii) The site is circumvented by a TRO (Traffic Road Order) which would cost circa £3000 – 5000 to redact or amend

Additionally it is unclear how the year on year on funding sequestered through Bradford South Area Committee on the basis of Safer Roads would contribute to its intended purpose by being withheld and being given to this project whose impact on the high street might be to the contrary at this location

Unitary Development Considerations

The site is an allocated recreation open space on the RUDP and as such the proposal is subject to assessment against Policy OS2, which stipulates that the development will not be permitted unless....

It is also noteworthy, that s.122 LGA 1972 provides that the Council may not appropriate land constituting or forming part of an 'open space' or land forming part of a common

'Open space' is defined by s.336(1) TCPA 1990 (adopted by the LGA) as "any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground" this impliedly includes de facto open space land not formally dedicated under the Open Spaces Act 1906.

As I am given to understand that every authority will as an end point be required to be signed off under due diligence by a Planning Inspector assigned to each Local authority. As such when requested by the Chair would there be any implications with the Inspectorate the Highway Officer Replied "no" As part of that test on due diligence the Inspectorate would determine whether full public consultation was engaged throughout. Determination through delegated Executive Powers and outside of the Forward Plan would as is the case pre-clude Public inclusion and substantially delay any Unitary Development Process for the City or in the alternative call its probity into question

Procedure

A local authority must ensure that there is a proper paper trail in place showing that an unequivocal resolution to appropriate land for planning purposes has been made and minuted. In addition, the memorandum executing the appropriation must be signed and dated by an officer of the council who is authorised under the council's standing orders to make the appropriation. This is something that should always be checked. The council have refused to provide details as to whether Mr Hartley, Mr Smith or Mr Geldard have the relevant authorisation and training to so do under Officers Delegated Powers.

Land Surplus to Requirements

In terms of the substantive requirements, the council has to resolve that a particular piece of land is no longer required for the purposes for which it was used immediately prior to the appropriation. In reaching this decision the council must consider the public need within the locality for the existing use,

Authority to Acquire Land by Agreement

The council will also have to show that the purpose of appropriating the land is in the interests of the proper planning of the area. In demonstrating this, the council must be able to show that there is a nexus between their inhabitants and the appropriation *of the land other than a purely financial*

motive . It is clear from the Executive Report that one of the principle reasons for bringing appropriation to the executive was to prevent the re-allocation of funding relating to the sitederived a 3 year year on budget 3:1 ii

Challenges

A decision of a local authority relating to the appropriation of land or its subsequent disposal can be challenged if the local authority has acted ultra vires that is to say beyond or outwith its statutory powers, or has not carried out the correct legal procedures in making the order. A claim should be made by judicial review (under [Part 54 of the Civil Procedural Rules](#)) no later than six weeks from the date on which the grounds for the claim first arose.

Matters Of Prejudice - Conduct of The meeting

A request to the chair was made to withdraw , albeit, on agenda item “E” because they had a material conflict of interest, that is to say (i) any member who had served on a Planning Panel granting permission for the Site , (ii) Served on a Panel endorsing any Future Plan for the Site (South Bradford Area Panel) or in the alternative (iii) served on any Panel deriving Funds in anyway for the site or infrastructure project associated with it or (iv) Any member in arrears with council tax and likely to

The Chair considered only pecuniary interests to be relevant direction is clear *Members may remain in the meeting and take part fully in discussion and voting **unless** the interest is a disclosable pecuniary interest **or** an interest which the Member feels would call into question their compliance with the wider principles set out in the Code of Conduct*

It would be unreasonable for A member with a previous history of involvement either on a panel approving an area plan , granting planning permission or attaining funding for the site to act impartially or without bias

Chronology of Conflicting Interest Committees

Members Code of Conduct - Part 4A of the Constitution

*Members may remain in the meeting and take part fully in discussion and voting **unless** the interest is a disclosable pecuniary interest **or** an interest which the Member feels would call into question their compliance with the wider principles set out in the Code of Conduct.*

Officers must disclose interests in accordance with Council Standing Order 44.

Secretariat where contacted and asked to provide overview over for the three years as to what committees the members sat on that given to include committees additional to South Bradford Area Committee that might have procured any element of funding relevant to the site . Assistance was not forthcoming

- Councillor Susan Hinchcliffe (Chair)
- Councillor Val Slater

Bradford South Area Committee 2013

Bradford South Area Committee 2015 Alternative

Member or association of Wibsey Village Urban Action Group (Por Car Park)

- Councillor Imran Khan
- Councillor Alex Ross -Shaw
- Councillor Sarah Ferriby

Bradford South Area Committee 2013

Bradford South Area Committee 2013

- Councillor Abdul Jabar

Councillor Abdul Jabar (Reserve)

Cllr Abdul Jabar Bradford South Area Committee 2013

Cllr Abdul Jabar Bradford South Area Committee 2015

The Standards Committee about a complaint that involves an allegation that a councillor has acted in breach of the Members' Code of Conduct.

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Complaint Against Agents of the Bradford Council Under The Members and Officer Code of Conduct

To Follow

Obstruction

The objectors have identified a number of key areas where where questions were directed to the relevant service directorate in accordance with process given in the council constitution and been obstructed , stonewalled . These matters will be detailed in full complaint

HR Department refused to provide the authorities disciplinary procedure when requested , and the process of complaint on Officer Code of Conduct. In one instance calls were prematurely hung up and on no less than 3 occasions was a request from the HR Director to return the call made

Legal Democratic Service – a number of service denials originated from this department including requests to provide material facts on whether land in similar circumstances has been duly appropriated and advertised . In particular the Office of The City Solicitor was contacted on a number of occasions both by writing and by email to obtain matters of material fact communication was not forthcoming and ranged from the provision of SRA numbers required to be given to details of process . The convetancing departance and the Propert Solicitor was contacted on matters of advertisement LGA , appropriation best value and other material issues

The CEO and the CEO s Office was wholly informed throughout the process of the difficulty in being treated openly and fairly in accordance with the Cities

There is a substantive lack of leadership , discipline accountability and process ensuring officers are properly managed often resulting in matters being delegated down to administrative staff her are not qualified to take complex enquiries . This is not assisted by a culture of bullying This is a significant failing that must be addressed