

BIRMINGHAM CITY COUNCIL

PLANNING COMMITTEE
10 JUNE 2021

MINUTES OF A MEETING OF THE PLANNING COMMITTEE HELD ON THURSDAY, 10 JUNE 2021 AT 1100 HOURS IN THE COUNCIL CHAMBER, COUNCIL HOUSE, BIRMINGHAM

PRESENT:- Councillor Karen McCarthy in the Chair;

Councillors Mohammed Azim, Bob Beauchamp, Maureen Cornish, Peter Griffiths, Mohammed Idrees, Saddak Miah, Gareth Moore, Simon Morrall, Kath Scott, Saima Suleman and Mike Ward.

INTRODUCTION

- 7946 The Chair notified the Committee, that this was a quasi-judicial meeting and no decisions had been made in advance of the meeting. She highlighted Members who sat on this Committee were sitting as representatives of the Council as a whole and not Ward Councillors.

NOTICE OF RECORDING

- 7947 The Chair advised, and the Committee noted, that the meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and members of the press/public could record and take photographs except where there were confidential or exempt items.

DECLARATIONS OF INTEREST

- 7948 The Chair reminded Members that they must declare all relevant pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared, a Member must not speak or take part in that agenda item. Any declarations will be recorded in the Minutes of the meeting. The Chair noted that Members should also express an interest if they had expressed a view on any of the applications being considered at the meeting and take no part in the consideration of the item.

Councillor Gareth Moore referring to agenda item No. 9 indicated that he had expressed an opinion so would be withdrawing from the meeting when that item was considered.

Councillor Mohammed Azim indicated that he was on the Commonwealth Games Committee so would be withdrawing from the meeting for agenda item Nos 7 and 8.

APOLOGIES

- 7949 Apologies were submitted on behalf of Councillors Diane Donaldson, Julie Johnson and Martin Straker Welds for their inability to attend the meeting.
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CHAIR'S ANNOUNCEMENTS

- 7950 The Chair advised that meetings were scheduled to take place on the 10 June 24 June and 8 and 22 July 2022 at the Birmingham Midland Institute and details would be circulated to Members in due course.
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MINUTES

- 7951 The Chair indicated that the Minutes of the meeting of the Committee held on 27 May 2021 would be submitted to the next meeting
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The business of the meeting and all discussions in relation to individual planning applications including issues raised by objectors and supporters thereof was available for public inspection via the web-stream.

REPORTS OF THE DIRECTOR, INCLUSIVE GROWTH (ACTING)

The following reports were submitted:

(See Document No. 1)

The Chair indicated that there was public speaking in respect of agenda item No.6 but as the objector had not yet arrived, she was going to move on to agenda item Nos. 7 and 8.

PLANNING APPLICATIONS IN RESPECT OF THE SOUTH AREA

REPORT NO. 7 – UNIVERSITY OF BIRMINGHAM, SPORTS AND FITNESS CENTRE, EDGBASTON, BIRMINGHAM, B15 2TT – 2021/02309/PA

Councillor Mohammed Azim withdrew from the meeting.

The Area Planning Manager (South) confirmed that there were no updates.

Upon being put to a vote it was 10 in favour, 0 against and 0 abstention.

- 7952 **RESOLVED:-**

That temporary planning permission be granted subject to the conditions set out in the report.

Councillor Mohammed Azim remained out of the meeting.

**REPORT NO. 8 – WARWICKSHIRE COUNTY CRICKET GROUND,
EDGBASTON ROAD, EDGBASTON, BIRMINGHAM, B5 7QU -
2021/01919/PA**

The Area Planning Manager (South) confirmed that there were no updates.

Upon being put to a vote it was 10 in favour, 0 against and 0 abstention.

7953

RESOLVED:-

That temporary planning permission be granted subject to the conditions set out in the report.

Councillor Mohammed Azim returned to the meeting.

As the speaker for agenda item No. 6 still had not arrived, the Chair indicated her intention to move on to the agenda item No.9.

PLANNING APPLICATIONS IN RESPECT OF THE CITY CENTRE AREA

**REPORT NO. 9 – LAND BOUNDED BY MOSELEY STREET (SOUTH),
MOSELEY ROAD (EAST) AND CHEAPSIDE (NORTH), DIGBETH,
BIRMINGHAM, B12 – 2020/07829/PA**

Councillor Gareth Moore left the meeting having already expressed a view on the application.

The Area Planning Manager (City Centre) confirmed that there were a number of further representations that had been previously circulated to Members and proceeded to summarise them.

First Cleary's legal representative had stated the following:-

- Noise emanating from Cleary's Bar together with associated activities would lead to potential noise nuisance claims against the premises.
- The ability of mitigating noise without restricting the business to the level it would not be viable had not been demonstrated which was contrary to paragraph 182 of the National Planning Policy Framework (NPPF) and the 'Agent of Change' policy.
- The conditions proposed are considered unlawful as it was intended to deal with noise after the granting of planning permission and could affect more than the 46 apartments stated in the report.
- Examples of other planning consents do not relate to the application and do not assist the Council in consistency of decision making. The examples provide are case related and not new material planning considerations. Noise and related matters are fact sensitive.

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- Objections had been withdrawn in one example and another had errors in the noise report.
- It is felt that to indicate that there are no grounds to refuse the application on the basis of adverse noise impact or unreasonable restrictions on Cleary's Bar was manifestly misleading to Members and Paragraphs 180 and 182 of the NPPF were referenced.

Secondly Sustainable Acoustics have made the following points:-

- They do not believe sufficient information had been submitted to demonstrate that suitable living conditions would be provided and Birmingham City Council's Regulatory Services maintained their objection on technical grounds.
- It is clear that more than 46 units would experience noise from Cleary's Bar.
- Noise could form a reason for refusal where the impact was likely to remain significantly adverse such as in this case.
- Two reasons for refusal were suggested; first based on the number of sealed units and second based on the impact of the development on Cleary's Bar.
- Commentary on each of the schemes cited is made and it is noted each scheme should be considered on its merits.
- An example of a dismissed appeal on the grounds of 'Agent of Change' policy was also given.

Thirdly Cleary's Bar had written to Members highlighting the above comments from their representatives and making the following points:-

- Noted that no grounds for refusal are offered relating to potential restrictions on their business as a consequence of noise.
- The application should be refused for the two reasons put forward by Sustainable Acoustics.
- Noted that there was no further contact made by the applicant to explore alternative solutions.

The Area Planning Manager (City Centre) indicated that the developer had made the following representations:-

- There had been several noise surveys conducted.
- The noise level at the façade as agreed with Regulatory Services was 69 decibels which is disputed by Cleary's who have a figure 89 decibels.

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- Suitable noise mitigation at the façade can be achieved by Acoustic glazing, Mechanical ventilation and, if necessary, sealed units.
- The pre-commencement conditions provide safeguards to validate the conclusion of further noise assessments which will ensure appropriate mitigation is in place and a satisfactory living environment is provided.
- 12% of units in the development would be non-opening in the worst-case scenario and other applications had been approved recently with higher percentages 18% at the Digbeth bus depot scheme and 24% at the Timber Yard scheme. In this scheme the noise at the façade had been measured as 88 decibels. Approval would therefore be consistent with other approvals.
- The Regulatory guidance recommended mitigation at source if possible but negotiation with Cleary's Bar was unsuccessful as the bar could not close the front door which was the main source of noise outbreak and Regulatory Services agreed that noise could not be mitigated against at source if the doors could not be closed.
- Public benefits of the scheme include redevelopment of a brownfield site in accordance with the Rea Valley Supplementary Planning Document (SPD), delivery of high quality homes, a wide range of units which all meet space standards, 33 on site affordable homes and provision of a new pedestrian route through the site.

The Area Planning Manager (City Centre) in response to the further representations received explained that although the objector did not believe there was a technical solution to the noise based on the information to date the applicant felt there was. Regulatory Services, the independent advisor's position was not there was not a technical solution to the noise but the fact that they did not support non openable windows. He continued by emphasising that there was a pre occupation condition that requires testing of the success or not of the noise mitigation scheme. This would eliminate risk to Cleary's Bar and Regulatory Services would expect the bar to be inaudible when inside the development when considering the discharge of conditions. The Area Planning Manager (City Centre) noted that Regulatory Services had accepted that the worst-case scenario was 46 sealed units and officers had considered that acceptable when looking at the planning balance when considering the public benefits of the scheme. The report highlighted other approvals involving a greater number of units with non-openable windows. When supported by mechanical ventilation sealed units could provide a satisfactory living environment. Officers were of the view that a reason for refusal on that basis would not be successfully defended on appeal.

Members commented on the application and the Area Planning Officer (City Centre) and Interim Assistant Director Planning responded thereto.

The Chair put the reason for refusal at paragraph 1.8 in the report to the vote and it was, by 3 in favour, 7 against and 0 abstention, declared lost.

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The Chair put the original officer's recommendation to a vote, and it was 7 in favour, 3 against and 0 abstention-

7954

RESOLVED:-

- (i) That planning permission be granted subject to the completion of a Section 106 legal agreement and conditions as set out in the original report;
- (ii) that in the absence of a suitable legal agreement being completed to the satisfaction of the Local Planning Authority by 14 June 2021, or such later date as may be authorised by officers under powers hereby delegated, planning permission be refused for the reason(s) set out in the original report; and
- (iii) that the City Solicitor be authorised to prepare, seal and complete the appropriate legal agreement.

Councillor Gareth Moore returned to the meeting.

As the speaker for agenda item No. 6 still had not arrived, the Chair indicated her intention to move on to the agenda item No.10.

PLANNING APPLICATIONS IN RESPECT OF THE EAST AREA

REPORT NO. 10 – 24 CHESTNUT DRIVE, ERDINGTON, BIRMINGHAM, B24 0DP – 2020/05933/PA

The Householder Planning Manager confirmed that there were no updates.

Members commented on the application and the Householder Planning Manager responded thereto.

Upon being put to a vote it was 7 in favour, 4 against and 0 abstention.

7955

RESOLVED:-

That planning permission be granted subject to the conditions set out in the report.

PLANNING APPLICATIONS IN RESPECT OF THE SOUTH AREA **(continued)**

REPORT NO. 6 – 21A ELVETHAM ROAD, EDGBASTON, BIRMINGHAM, B15 2LY – 2020/08985/PA

The Chair, in noting that as the objector who had indicated a wish to speak was still not present, indicated that the Committee would now consider the report and, in line with the Committee's procedures, the supporter who had indicated a wish to speak would not now be allowed to.

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The Area Planning Manager (South) confirmed that there were no updates.

Members commented on the application and the Area Planning Officer (South) responded thereto.

Upon being put to a vote it was 8 in favour, 3 against and 0 abstention.

7956 **RESOLVED:-**

That planning permission be granted subject to the conditions set out in the report.

OTHER URGENT BUSINESS

7957 The chair was of the opinion that the following item could be considered as matter of other urgent business in order to instruct officers to act if necessary:-

Annual Committee Training

Councillor Moore enquired when the Annual Committee Training would be held and would it be before the next meeting. The Chair indicated that it was being considered and she did not think it would be before the next meeting.

AUTHORITY TO CHAIR AND OFFICERS

7958 **RESOLVED:-**

That in an urgent situation between meetings the Chair, jointly with the relevant Chief Officer, has authority to act on behalf of the Committee.

The meeting ended at 1147 hours

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CHAIR