

Independent Review of Blakelands Planning Application

Author and contact: Paul Simpson, Deputy Chief Executive, tel: [REDACTED]

Executive Summary:

To provide the Committee with an update on the Independent Review of the factors leading up to the decision of the Development Control Committee, to grant a planning application for a warehouse development at 1 Yeomans Drive, Blakelands.

1. Recommendation(s)

To note the report.

2. Background

- 2.1 At the Audit Committee meeting on the 5th March 2019, the Deputy Chief Executive confirmed to the Committee that the Council was commissioning an Independent Review of the factors leading up to, and subsequent to, the decision of the Development Control Committee to grant planning permission for the Blakelands warehouse development.
- 2.2 This report provides an update to the Committee, in terms of the person appointed to undertake the review, the anticipated scope of the review and the timelines for its completion and reporting.

3. Rationale for an Independent Review

- 3.1 The decision to undertake an Independent Review of the 'Blakelands' issue was taken following a meeting of Development Control Committee members on the 7th February 2019, (it was not a formal DCC meeting), and effected residents, which was attended by both the Chief Executive and Deputy Chief Executive (who from February assumed line management responsibility for the Planning Service).
- 3.2 At this meeting, both Councillors and residents raised serious concerns about the issues leading up to the decision to grant planning permission for the development, and highlighted subsequent concerns following the decision. In addition, further information had come to light, which appeared to show the Council had been aware of the 14 missing planning conditions, some months prior to the original date when officers had highlighted their concerns.
- 3.3 These factors led the Deputy Chief Executive to conclude that the most appropriate way to understand how the DCC had arrived at this decision would be to commission an Independent Review, undertaken by a suitably qualified and experienced individual; the Deputy Chief Executive confirmed this decision at the Audit Committee meeting on the 5th March.

4. Person Appointed to undertake Independent Review

- 4.1 Senior Officers have worked with the Local Government Association to identify suitable candidates, and they provided a number of names. Factors such as availability and candidates home location were taken into consideration (in order that the person appointed could easily meet with residents, Councillors and other stakeholders).
- 4.2 Officers subsequently decided to appoint Marc Dorfman. Marc is a very experienced Planner, and he has undertaken reviews at other authorities, including Westminster City Council. Due to his other existing work commitments, Marc won't be available until late July/Early August, and he expects to undertake at least 20 days of fieldwork, meeting residents, Councillors, Officers and other interested parties.

5. Review Scope, Methodology and Timeline

- 5.1 We have agreed a detailed Scope of work, also with input from residents etc. As previously stated, the review will examine how MKC undertakes Planning Decisions in their widest sense, to determine if this accords with 'best practice'; the steps for this element of the review are set out at Annex A. The review will also at the same time, consider specific questions and issues relating to the Blakelands decisions, which have been drawn from the input provided by residents, Councillors and other Stakeholders, and these are shown at Annex B.
- 5.2 We envisage that Mr Dorfman will have a preliminary visit for a full week to get to know the service and understand how Development Management functions, including meeting with relevant staff members. This will be interspersed with formal meetings with senior managers, councillors, and residents. At this stage, we do not have definitive dates, so it may not be until August/September, but these will be planned appropriately to ensure all interested parties have the opportunity to contribute to the review.
- 5.3 Mr Dorfman also expects to attend some Development Control committees and officer/member briefings, Development Management team meetings and review MKC's "Planning Training for Committee Members". He will look in detail at the Development Management process, how applications get to Committee and how reports are produced and cleared and how members and the community are involved.
- 5.4 After a "full immersive week", he would hope to be in a better position to consider how long the process might take and how best to proceed. There will then be further time spent in August and September.
- 5.5 Our initial expectation was that we would be able to report to Audit Committee in September, but unfortunately, given Mr Dorfman's prior commitments, we have had to delay the start date of the review. Nonetheless, we would still hope to be able to provide an update to September's meeting, with perhaps a special meeting arranged for October to hear the final report.

6. Implications

6.1 Policy

This report does not have any policy implications.

6.2 Legal

The issue does relate to legal implications that arise from the planning decisions and its missing conditions.

6.3 Other Implications

Findings and recommendations from the review may lead to changes in the way the Council deals with Planning Applications.

7. **Resources and Risk:**

Officers estimate that the independent review will cost in the region of £20,000, and the Council will fund this from within existing resources.

1. **PRE - APPLICATION PROCESS:** What is the pre - application process for – and how can the community and members be sure officer advice is consistent with agreed planning policy and standards? Why is pre application advice often confidential? How can the community and members be assured officers are not ensuring the scheme will be approved even when there are likely to be many objections?
2. **WHEN AN APPLICATION ARRIVES – WHAT HAPPENS?** How do officers make sure the application is processed efficiently and all the right people informed about it?
3. **CONSULTATION:** What are the values and purpose behind consultation on planning applications in Milton Keynes – how can the community and members be sure that all their concerns are taken into account? What are “relevant” planning comments? Why can’t the impact on neighbour property prices be taken into account when a big new development is proposed?
4. **CASE ALLOCATION:** On what basis are planning application cases allocated to officers?
5. **ASSESSMENT – CONSULTATION COMMENTS:** How should officers consider consultation comments by the community; members and advisors – what weight should be given to each?
6. **ASSESSMENT – POLICY & STANDARDS:** How do planning officers assess planning applications? What balance should officers give objections from the community compared to comments by professional advisors?
7. **ASSESSMENT – REPORT QUALITY:** How should reports on application be written – what should they take into account, and how do they find the right balanced and justified recommendation? How are officer reports checked and signed off at Milton Keynes Council?
8. **DECISION – DELEGATED / COMMITTEE:** Which applications are delegated to officers to decide and which to Committee? How should Development Control Committee make decisions on planning applications before them – and what weight should they give to the officer’s report and community comments? Can a Committee overturn an officer’s recommendation – what are the rules?
9. **DECISION NOTICE:** Once a decision is made, how does the Milton Keynes Council ensure the correct decision is sent out?
10. **MONITORING:** When a mistake is made – how does the Planning Service review and learn from mistakes and from good practice?

Specific Questions to be asked re the Blakelands Review
Review original s106 agreement. Public Art contribution negotiated after DCC decision and DCC not informed. Alleged agent email 25/9/17 requesting to pay less than policy
Review other planning permissions with missing conditions, (Olney and Blakelands cases). Note Tongwell 16/03084 of concern. Check permissions issued over the last few years.
<p>Environmental Health seem to be ignoring residents' complaints of problems from construction noise, light and dust – why is this? Is it true?</p> <p>How many complaints and investigations?</p> <p>Need commitment from the MKC to investigate EH and Planning complaints and contraventions.</p>
HGV hours restriction condition. Council to commit to support no relaxation of the condition
<p>Linda Wardlaw/Blakelands Residents' Association - Proposals for ToR Blakelands Inquiry:</p> <ul style="list-style-type: none"> - Accuracy and objectivity of case officer's original report and recommendations - Response of officers to investigate and address concerns raised by residents with regards to accuracy of submitted drawings and docs relating to noise, shadowing and traffic - Reason for the case officer change - Whether there was any undue pressure on officers to support the scheme – and in particular Chief Planner and Corporate Director - Adequacy of process/IT systems that led to issuing of incorrect permission – that did not reflect DCC decision - Adequacy of the response by Planning and Legal to the mistake – and if these were timely, legal and in the public interest - How sensible/correct was it for MKC to seek to rectify the mistake by requesting a second application, in view of the applicant having already started the development? - Application 18/00223/FUL – did officers act improperly and or against council policy in dealing with this application and supporting its recommendation for approval? - Review the Council's representations to PINS in the s73 appeal - Did the mistake (missing conditions) and subsequent discussions with agent/applicant unduly influence officers – Env Health to act against council policy and statutory requirements? - Findings of inquiry to be reported asap
Review and check whether the correct procedures were followed with regard to DCC May 2017 meeting. Planning Officers "objection to the draft minutes and subsequent change which was agreed"
Review the reasons Jeremy Lee (JL) was removed as the Blakelands Application case officer. Alleged that JL said in email he would recommend for refusal. Following agent complaint and contact with Brett Leahy - JL replaced with Samantha Taylor.
<p>Concerns that "officers are misinforming DCC"</p> <ul style="list-style-type: none"> - Quality, accuracy and clarity of officer advice to members/committee - Review format of report - Review written updates <p>Review the following:</p> <ul style="list-style-type: none"> - Blakelands May 2017 meeting where resolved to grant pp with 23 conditions - Blakelands April 2018 report – subsequently withdrawn - Blakelands November 2018 report and meeting - Timing and content of all correspondence between officers/agent - List of officers reviewing and approving reports - MKC Blakelands statement of case to JR
<p>Review all stages of the Blakelands application. In particular:</p> <ul style="list-style-type: none"> - Missing planning conditions - Allegation that kept conditions benefited the Council and those left off would have protected residents - Belief that Cttee was seriously misinformed by officers - Whether officer advice to DCC was balanced, objective and professional – including other applications and officer proposals to revise scheme of delegation/public speaking

<ul style="list-style-type: none"> - Timeline of missing conditions. Could MKC have noticed sooner and taken early action to rectify - Decision to change case officers from Jeremy Lee to Samantha Taylor
Review both the detail of the Blakelands decision and the wider system that allowed this to happen.
Review how and why the Blakelands case officer was changed.
Was there pressure on either case officer to make a particular recommendation? Did the officers feel any pressure? Detail and explain.
Review the roles of the Chief Planner and Corporate Director in the making of the Blakelands decision – and decisions in general.
Review if and how the DCC meeting could have been “misled” by planning officers in making the Blakelands decision – and in general
How is the quality, accuracy, clarity and planning balance of planning application reports checked and confirmed by DM management?
What is the system that checks and ensures an accurate Decision Notice is sent out?
<p>When did officers know about the Blakelands error to send out a decision Notice with 14 conditions missing? How/who uncovered the mistake?</p> <p>Did officers know about the error in the period when MKC could have done something about it i.e. judicially review the decision?</p>
Did legal and planning officers react in a timely way when the problem/mistake was uncovered?
Residents have asked that the Review/MKC looks at the Section 78 Appeal. This is beyond the Decision Notice (DN) and relates to the removal of the condition restricting lorry movements. (May help confirm if MKC knew about the flawed DN).
A councillor has requested that MKC’s statement of case is reviewed for the Judicial Review. (Need to clarify with councillor the purpose).
Residents are questioning the role of MKC Environmental Health officers and asking whether EH performance has been affected by the planning application, as EH and Planning Enforcement seem not to be responding to complaints and issued raised. Discuss with Neil Allen Head of Regulatory Services and report back to Director and Review
What was the Officer response to the concerns raised by residents in relation to the accuracy of the submitted of the submitted application drawings and information on noise, shadowing and traffic. How were these comments and the application submissions themselves assessed? What is the criteria for assessment? How checked by senior officers?
What was the reason for the change in case officer?
What role did the Chief Planner and Corporate Director play in the Blakelands decision/
Was the officer report accurate and objective in terms of content and recommendations?
Were the section 106 obligations in line with policy – and specifically public art? How were these negotiated and when?

Did officers act in accordance with the MKC Code of Conduct, appropriate legislative requirements and Council Policy?
Were the decisions taken after the identification of missing conditions, including the request for a second planning application, timely, robust and appropriate?
Has MKC checked other planning permissions to see if the Blakelands mistake is a one off or part of a bigger systematic failure – IT/process failure or staff procedure failure?