

Item 5 - Public Participation and Councillors' Questions

From Councillor Ernie Clark, Hilperton Division

Question

Condition 10 of planning application (W)04/01389/FULES (as shown on the Notification of Planning Decision letter dated 22/8/06) clearly shows, amongst several others, an 'officer' condition stating that 'Zebra crossings will be provided on the new road adjacent to the Fieldways roundabout and the Wyke Road roundabout.' Reason – 'In the interests of highway safety...'

Despite contacting senior officers in the WC highways department I am unable to get any commitment from them that this condition is going to be enforced. On the contrary, I get the impression that they wish to vary the condition by taking a commuted sum from the applicant and not provide either crossing.

Can a written answer be provided by a senior highways officer confirming which of the above two scenarios is correct.

If neither scenario is correct, what is the intention of the WC highways department?

Response

Condition 10 of planning application (W)04/01389/FULES provides:

10 Notwithstanding the details shown on the submitted drawings no development shall take place until details of the pedestrian crossings where footways and footpaths cross the road, and details of the pedestrian and bridleway crossing at Middle Lane have been submitted to, and approved in writing by, the Local Planning Authority.

Zebra crossings will be provided on the new road adjacent to the Fieldways roundabout and to the "Wyke Road" roundabout. The development shall be carried out in accordance with the approved details before the road is opened to traffic.....

REASON: In the interests of highway safety, in order to safeguard amenity, and to facilitate access for all.

The statutory power to establish crossings for pedestrians on roads for which the council is responsible is vested in the council as the local traffic authority under section 23 of the Road Traffic Regulation Act 1984. Consequently it is for the council as the local traffic authority to determine and approve the details of any pedestrian

crossings required on the new road in the interests of highway safety. Whilst the council will have regard to the stipulation regarding zebra crossings in condition 10 of the above planning permission it is not bound to adopt this and will decide what is appropriate in accordance with relevant policy and guidance.

Section 23 of the 1984 Act requires the council to consult the chief officer of police and to give public notice of any proposal to establish a pedestrian crossing. This is an executive function that will be exercised by the Cabinet Member for Highways and Streetscene and Broadband in due course.

Supplementary Question – asked by Cllr Ernie Clark

Accepting that the answer supplied is correct, why did WCC Highways Department not raise this issue with WWDC before the conditions for this application were published eight years ago? Furthermore, why did WC Highway officers hold consultations with myself and Cllr. Oldrieve if Highways had predetermined their opinion on this matter?

Response – circulated 14/1/15

When applications are recommended for approval, reports to planning committee regularly set out a list of suggested conditions that are considered necessary to make the development acceptable.

There are a series of tests set out by the Government and laid down by the Courts which need to be applied to ensure that conditions are legally compliant.

When applications are debated at planning committee, it is often the case that officer recommendations are challenged by Members. This is a perfectly healthy and proper aspect of the decision making process.

It can also be the case that Members insist on the introduction of additional conditions as a by-product of that debate. When given the opportunity and asked for their professional advice, Officers will always advise whether such conditions are legally compliant, however Members have the option to accept or ignore that advice.

The planning permission in question (determined by the then West Wiltshire District Council) is a case where Members were advised that aspects of additional conditions that were introduced “on the night” were not legally compliant (and therefore unenforceable), however that advice was set aside. Although that aspect of the decision is not minuted, officers have a clear recollection of that being the case.

Once it became apparent in the summer of 2014 that there was a clear intention to implement the permission, it was considered appropriate to alert local Members (Cllrs Oldrieve and Clark) to the legal position.

Subsequent meetings were not intended as a consultation – they were to explain why officers considered a number of conditions were fundamentally flawed, sharing the legal background and procedural guidance which set out the tests to be applied.