



# **Rutland County Council**

Catmose Oakham Rutland LE15 6HP.

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Minutes of the TWO HUNDRED AND SIXTY FOURTH (Special) **MEETING of the COUNCIL** held in the Council Chamber, Catmose, Oakham, Rutland, LE15 6HP on Monday, 11th September, 2017 at 6.00 pm

## **PRESENT:**

Mr I Arnold	Mr G Brown
Mr N Begy	Mr K Bool
Mr E Baines	Mr O Bird
Miss R Burkitt	Mr B Callaghan
Mr G Conde	Mr J Dale
Mr R Foster	Mr R Gale
Mr J Lammie	Mr A Mann
Mr T Mathias	Mr M Oxley
Mr C Parsons	Mr A Stewart
Miss G Waller	Mr A Walters
Mr D Wilby	

## **OFFICERS**

### **PRESENT:**

Mrs Helen Briggs	Chief Executive
Mr Dave Brown	Director for Places – Environment, Planning and Transport
Mrs Jennifer Harris	Senior Lawyer PCC
Mr Nick Hodgett	Principal Planning Officer
Mrs Debbie Mogg	Director for Resources (Monitoring Officer)
Mr Gary Pullan	Development Control Manager
Miss Sue Bingham	Acting Coordinator – Corporate Support Team
Ms Natasha Brown	Acting Manager - Corporate Support team

## **232 APOLOGIES**

Apologies were received from Mr Clifton, Mr Cross, Mrs Fox, Mr Hemsley and Mrs Stephenson.

## **233 DECLARATIONS OF INTEREST**

Members were invited to declare any disclosable interests under the Code of Conduct and the nature of those interests and/or indicate if Section 106 of the Local Government Finance Act 1992 applied to them.

Mr Oxley confirmed that he knew Emma Rose, member of the public in attendance to present a deputation.

Mrs J Harris, Senior Lawyer PCC, confirmed that those members present who had voted on the planning application at Item 4 of the agenda did not need to declare an interest in this item, when considering the referral members were being asked to consider the grounds for the referral and not the planning application.

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Mrs D Mogg joined the meeting

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## **234 REQUESTS TO SPEAK ON PLANNING APPLICATIONS**

The Chairman confirmed that in accordance with Rutland County Council Procedure Rules, Deputations relating to agenda item 4 would be taken at that item.

## **235 REFERRAL OF COMMITTEE DECISIONS TO THE COUNCIL**

Report No. 175/2017 from the Director of Places was received, the purpose of which was to consider the planning referral of application 2017/0419/FUL 13 Church Lane Morcott, which had been referred to Council by 4 Members of the Planning and Licensing Committee in accordance with Procedure Rule 110.

The Chairman briefed members on the procedure as follows:

The Council has been asked to consider whether we should accept a Referral of a decision made by the Planning and Licensing Committee regarding APPROVAL FOR demolition of a bungalow and the erection of single storey dwelling at 13, Church Lane, Morcott.

The decision was referred to the Council by Mr Baines, Mr Lammie, Mr Stewart and Mr Cross in accordance with the Constitution, Procedure Rule 110.

Before we begin to consider this, I would like to confirm the procedure for referral of any Cabinet, Cabinet Member or Committee Decision so that everyone in attendance understands what will happen at this meeting.

I will ask the Councillors presenting the referral to outline their reasons for the referral, for which 3 minutes each will be allowed.

Thereafter, I will ask lead officers in attendance to give a brief outline of the original report and decision and respond to the referral.

I will then ask any additional speakers who have registered to speak in support of the referral to come forward and make their statements. Each speaker will have a total of 3 minutes to make their statement. After this Members can then ask questions of the Councillors who made the referral and the speakers in support of the referral.

I will then ask any additional speakers who have registered to speak against the referral (In support of the application) to come forward and make their statements.

Again, each speaker will have a total of 3 minutes to make their statement. After this Members can then ask questions of the Speakers against the referral.

Only individuals that have registered their desire to speak in accordance with Procedure Rule 28 (4) will be entitled to speak at the meeting.

Once questioning has finished, the Planning officer will give a full presentation.

I will then invite Members to debate the referral.

When the debate has finished I will ask Members to vote on whether they wish to uphold the referral. If Members vote in favour of the referral then I will ask for reasons and recommendations to refer back to the Planning and Licensing Committee. After considering the referral and all relevant advice, Members may either not agree to the referral, when the decision shall take effect immediately OR If the Members agree to the referral, Members can refer it back to Planning and Licensing Committee.

Members will need to base their decision on the facts and evidence presented to them.

Members are reminded,

- We can ONLY discuss the reasons for the referral given to us by the members who made the referral and information relating to the decision made.
- We have to decide whether there are grounds for the referral but we cannot substitute our view for those of the Planning and Licensing Committee.

I shall now confirm the procedure for referral as set out in our constitution.

Procedure Rule 110 states that a decision of a Committee having delegated powers may be referred to Council by one-third of the Members of that Committee giving notice either verbally at the meeting or by submitting a notice in writing to the Chief Executive within five working days of the decision being made. A notice to refer a decision taken by a Committee exercising a regulatory function must be made by any four Members of that Committee and must be received within two working days of the meeting. The proposer of a motion may also request that the decision be referred with the agreement of a seconder.

In the case of a referral of a planning decision, a ward member who is not a member of the Development Control and Licensing Committee may be one of the four members who give notice of the referral provided that the member attended the meeting of the Committee when the decision was made and subject to only one ward member in a multi member ward who is not a member of the Committee being permitted to exercise the right of referral in any one case.

The Council will then consider the referral to decide if the referral will be accepted, in which case the decision will be referred back to the Committee that made the decision, or to uphold the decision, in which case it can take effect immediately. It should be noted that when a decision of a Committee has been referred to the Council and it has been referred back to the Committee for reconsideration there shall be no right of referral to the subsequent decision of the Committee on the matter.

The Chairman invited Mr Baines, Mr Stewart and Mr Lammie (Mr Cross being the fourth member of the referral was not present at the meeting) to briefly outline their reasons for referring the application:

- Mr Baines stated that he did not take the decision to refer this application lightly, but that he felt that as only 8 members of the Committee were present at the meeting on 29 August 2017 and taking into the account the heritage impact, there should be another opportunity for the Committee to debate the item in full.
- Mr Lammie stated that he had referred the application due to the lack of conservation advice given to the members at the meeting on 29 August 2017, he felt that the conservation issues raised by this application warranted a specialist officer being present at the meeting where the application was considered in order that Members questions could be answered fully.
- Mr Stewart agreed with both Mr Baines and Mr Lammie in that the heritage issue had not been adequately considered and issues raised by Morcott Parish Council and neighbours had not been adequately explained at the meeting.

Mr N Hodgett, Principal Planning Officer, gave a brief introduction showing the existing outline of the property and the proposed outline along with views from various aspects. Mr Hodgett explained that the proposal was for a contemporary modern build using materials that were appropriate to the village and conservation area.

The Chairman invited the speakers in favour of the referral to address members in accordance with Procedure Rule 28:

i. Mr C May

Good Evening Councillors

I am Chris May, a partner of Howes Percival solicitors who specialises in town and country planning law. I speak on behalf of local residents Mr and Mrs Ferry.

We have raised serious legal issues with this application, only some of which have been addressed by Officers. Approving the application without addressing legal errors can lead to judicial review which clearly has financial implications to the Council.

My clients' main concerns relate to the failure of the Council throughout the application process to have sufficient regard to the importance of the heritage assets affected by the development.

Firstly, the Planning Officers failed to require the applicant to submit a Heritage Impact Assessment. This is contrary to national policy and it is the only time, in over 10 years of practice, that I have known a planning authority not to require an Assessment for a site in a Conservation Area and within the setting of listed buildings. In fact, part of the site is a listed barn which the Officers did not even acknowledge in the presentation to the Planning Committee and tonight the same error has not been corrected.

Secondly, the Officers originally failed to consult Historic England which is a serious oversight and, in my view, indicative of the approach of the Officers in failing to appreciate the seriousness of the impacts of the development on heritage assets.

Thirdly, there appears to have been no formal consultation with any heritage expert. There are no comments or responses uploaded to the Planning File and no formal reporting of any responses within the Officer's Report, but passing reference to a "conservation advisor" to the Council. It is unacceptable to approach impacts on conservation areas and listed buildings in this way and again highlights the lack of proper regard to heritage assets, which are, of course, protected by statute. It also highlights a serious lack of transparency and undermines the ability of members of the public to understand how the Council has reached its conclusions on such important matters.

Next, the Officers failed to have regard to the Heritage Impact Assessment commissioned by my clients. In fact, rather than properly considering the contents, the Officers sought to reduce the weight the members of the Planning Committee gave to it by criticising the authors and focusing on the fact that it was paid for by my clients. Such an approach is wholly unacceptable and appears to be driven by a desire of the Planning Officers to retain their original position on this application irrespective of the information that came to light during the application process.

These failings of the Council should concern you and can only be addressed by the application being referred back to Planning Committee.

It is also important for you to consider the heritage impact of the application. It is not a matter of whether you like the design of the proposed development but of whether the "unashamedly contemporary design" and the substantial size and scale of the new building is appropriate for such a sensitive location in a Conservation Area and the setting of many listed buildings including the oldest dwelling in Morcott.

ii. Mr A Johnson

Good evening

I am the Chairman of Morcott Parish Council and am here to speak on behalf of the Council who are concerned that our views about our village seem to have been completely ignored.

I have spoken at length to those residents most affected by these plans. They confirm that no contact has ever taken place between them, the Applicants, or the Architect, other than Mr & Mrs Ferry who were shown the plans by the Architect two days before being sent to Planning. This serious lack of notice precluded any time for potential discussion and modifications which, with some give & take, may have resolved the matter without further recourse.

It is important for me to emphasise that both the Parish Council, and the affected residents, are not opposed to a modest development on this site of the size originally indicated in Mr Thrower's letter to Richardson's, the selling agents. I trust that you have all seen this.

The Parish Council have been surprised and astounded that proper consideration does not appear to have been taken of the numerous letters of objection to the proposed development. In the face of these objections it was

equally surprising that one of the two letters of support was picked out for special mention at the planning committee. This does not represent a fair and balanced appraisal.

We feel very strongly that the absence of an in house Conservation Officer, within Rutland County Council, to assist in protecting our heritage is a grave weakness. The absence of an expert appraisal by a Conservation Officer, as in this case, could be seen as the Council being negligent in its duties to protect our invaluable Rutland heritage.

In 2014 members of Morcott Parish Council spent some considerable time working with the then Conservation Officer, David Trubshaw, to jointly produce a document entitled "Morcott Conservation Area - Character Appraisal and Management Proposals". The radical, modern, style of building proposed at 13 Church Lane does not accord with the design criteria set out in this document. Morcott Parish Council would respectfully remind members that this document states the following:

That the Council will undertake to apply the relevant guidance to ensure that any new development pays special attention to the preservation or enhancement of the character or appearance of Morcott Conservation Area; and,  
That this must be taken into account when considering applications such as the one before you.

As Chairman of Morcott Parish Council I urge you to act in the spirit of localism and refer this application back to the Planning Committee for further consideration. It is hoped that this might allow time for all interested parties to properly consult and come up with a mutually acceptable compromise to this controversial proposal.

Thank you.

The Chairman invited Members to ask questions of the Councillors who had referred the decision and the speakers in support of the referral:

- Mr Oxley asked for clarification from Mr Stewart whether he had been present for this application at the Planning and Licensing Committee on 29 August 2017 and if not how he had come to the conclusion that the heritage impact had not been adequately explained. Mr Stewart confirmed that he had not been present for this item of the 29 August Planning Committee meeting, but that he drew this conclusion following consideration of the papers for the meeting and those provided at the meeting.
- Mr Gale asked the 3 Councillors present who had referred the application, why they had not raised concerns at the meeting. Mr Baines, Mr Lammie and Mr Stewart all clarified that it was only after consideration and reflection of the meeting that they had developed concerns and therefore referred the item.
- Ms Waller asked Mr Lammie to confirm whether it was the absence of a conservation officer which resulted in him being unable to make a fair balanced and thoughtful judgment. Mr Lammie responded that he did feel he had enough information to vote, but that a conservation officer may have been able to provide more clarity.

- Mr Conde asked the 3 Councillors present who had referred the application, if they would have acted differently had a conservation officer been present at the meeting on 29 August 2017. Mr Lammie confirmed he may have voted differently, Mr Baines confirmed that the presence of a specialist officer would have provided more clarity.
- Mr Walters asked Mr Baines to confirm that the meeting on 29 August was in fact quorate in spite of low numbers and if so did the referral set a dangerous precedent. Mr Baines responded that the meeting was quorate, but that he felt that there were significant heritage implications affecting the whole County which should be considered by a greater number of members.
- Mr Walters referred to paragraph 21 of the report which confirmed advice from the conservation officer and asked Mr Lammie why this had not been sufficient. Mr Lammie responded that information raised as part of an independent heritage assessment would have been better explained by a conservation officer at the meeting.
- Mr Stewart confirmed that he would not have instigated the referral had he not been approached.
- Mr Oxley asked Mr May to clarify his statement that officers had not identified listed buildings in the presentation. Mr May pointed out that the plan being displayed on the overhead projector did not identify that the barn adjacent to the application site was listed... Mr Oxley replied that it was not normal practice to do this in his experience and that officers had in fact verbally clarified the position of listed buildings in relation to the application in their presentation.
- Mr Baines asked Mr May to clarify the qualifications of the independent heritage assessor. Mr May confirmed that the assessment had been done by a person who had all the required qualifications to undertake an assessment of this type.

The Chairman invited the speakers against the referral to address members in accordance with Procedure Rule 28:

i. Emma Rose

This is the relative size of the boundary that the nearest nay-sayer shares with No13.

Compared to the relative size of the boundary that I share.

Multiply this by the fact that I alone share the access route with No.13, and that I look over the entire property from my garden. I suggest the impact of No13 on me is commensurately greater

Add with the extensive boundary of the Martins, between us there is at least 8 x the impact, than the nearest naysayer. So yes, I support the plan to build a single story dwelling, it's a single storey now.

I support the plan to build a single property it's a single property now.

I understand that, even in complex planning matters there are at least 3 main points to consider:

Fit, loss of privacy, the effect on traffic

No13 currently has no special character. It's not listed. So it must be elements such as the view of Morcott on the approach, historic layout of roads, paths and boundaries and characteristic building and paving materials that contributes to the 'familiar and cherished local scene' we wish to conserve. Our conservation area was extended to protect what can be seen of the village on the approaches.

Conservation is not about replication, cookie-cutter properties, and arresting cultural heritage. Morcott grew out of the economic prosperity and, as stated in the Morcott Appraisal 2014 'transformation established the distinctive character'.

If we want conservation to mean 'nothing new' should we revert to drawing water from a well and no electricity, evident less than a lifetime ago.

The plans for No13 are sympathetic.

Sympathetic in:

Materials

Aspect

Height

View

Privacy

Access

Traffic

The plans protect the view of Morcott, use sustainable and environmentally friendly materials, and design innovations. Aren't these things that we wish at least to conserve, but at best to encourage?

I have little understanding of the rules of engagement in challenging a planning application but I have been surprised at the level of challenge, bolstered by agents unaffected by the plan.

In Morcott There is a broad and open debate about renovating the pub and building more than a score of new houses elsewhere in the village. There have been no attempts made to openly debate No13.

Given the extent of the impact upon me, no one has discussed this application with me, nor with the Martins. The only conversation that I have had was when I once intercepted people on my driveway.

So this deputation is the only opportunity to represent the views of the happy. Regardless of the consternation of the unhappy bolstered by a campaign of door-knocking and influence peddling. Regardless that people happy with the plan have been discluded from: discussions, meetings, chance encounters, or any form of contact by anyone informally, or formally,

I was compelled to speak when the plans already passed became subject to a further derailment. And so we find ourselves here. We wish to lean against the process of planning, and of governance. To rely on the objectivity of the democratically elected. Not to be swayed by narrow interpretations of conservation. Or to twist what we try to conserve.



Yes, I am impacted –

quality of life  
shared access,  
privacy,  
and traffic

But impacted in my trust of process too.

Is it naïve to think that an orchestrated, self-serving, one-sided campaign by one agent should not win out 'just because'?

ii. Mr Colin Westermann (Thomas Wilson Architects)

I am speaking for the applicant, exercising the right of reply on behalf of my client. It is difficult to add to what Ms Rose has already said. The application is in accordance with the National Planning Policy Framework and has been approved in a democratic meeting. Historic England and an independent conservation advisor have been consulted and to suggest that the planning authority has not carried out their duty is nonsense, if not disrespectful.

The Chairman invited Members to ask questions of the speakers against the referral:

- Mr Conde asked Mr Westermann to confirm whether in his experience similar properties had been constructed on similar sites. Mr Westermann confirmed that although he did not have the information with him to cite specific examples, there was a wealth of similar examples.
- Mr Foster asked Ms Rose to clarify who the other neighbours were that she spoke on behalf of. Ms Rose was able to identify the neighbouring properties whose occupants opposed the referral, on the plan for the benefit of members.

A full presentation was provided by Mr Nick Hodgett, Principal Planning Officer, a summary is provided below:

- Proposal was to demolish an existing bungalow and erect a new single story building.
- The barn within the curtilage was not listed in its own right, but, depending on the precise circumstances at the time of listing, may be considered a curtilage listed building to Number 17, there was no cause for concern that this application will have any impact on the barn.
- One of the objectors (a neighbour) had withdrawn their objection today.
- The height of the existing bungalow was higher than the proposed building.
- View from the village will be of the local limestone wall.
- All elevations and surrounding buildings were described by Mr Hodgett with reference to the plans/drawings.
- It had been raised that the proposed building would be visible from roads and footpaths. Mr Hodgett displayed photos taken from footpaths and roads which demonstrated that the property was not prominent from views outside village at this time of year.
- Mr Hodgett clarified that contrary to Mr May's deputation, the conservation advisors comments were set out on Page 12 of the report and para. 21

summarised the comments of the conservation officer. Also Historic England had been consulted, even though there was no obligation to do this as the existing building was not a historic building. Historic England had responded that they were happy for the council's Conservation Advisor to advise.

- The independent assessment commissioned by a neighbour did not set out the qualifications of the assessor; there was not a question as to whether these qualifications were in place, only that they were not clear from the report.
- The proposed building was considerably lower than existing dwelling. It was positioned 21m minimum from Sundial House and 3.5 – 6m from the boundary.
- There is statutory duty to ensure that the setting of listed buildings and the character of the conservation area are preserved. The Conservation Advisor had concluded that there was a neutral impact.
- Officers consider the proposals included a good example of local materials and sympathetic to the surrounding area.
- There was no impact on residential amenity, there were no windows facing any neighbours and the building would not be tall enough to overshadow neighbouring properties.
- Access and possible damage from construction traffic was not a planning consideration.

The Chairman invited members to debate the item. During debate the following points were raised:

- Mr Oxley confirmed that this item had been fully debated at the meeting on 29 August 2017 and all the questions raised at that meeting had been considered tonight. There had been a site visit and Mr Oxley was reassured that everything had been done to minimise the impact of this proposal and that in fact the proposed building would be an asset.
- Mr Lammie confirmed that he felt that it would have been preferable for a conservation officer to have been present at the meeting in order to explain some of the information provided under the heading of "Heritage Impacts" paras. 15 – 21 of the report and provide clarity on the issues identified in the independent assessors report.
- Miss Waller highlighted that the Parish Council clearly did not think the proposal would enhance the conservation area and as it is subjective, she would be minded to support the referral on the ground put forward by Mr Lammie that the conservation officer ought to have been present.
- Mr Conde confirmed that in his view he had made an objective decision based on national policy guidelines and the findings of the conservation officer.
- Mr Walters was in favour of processes which allowed decisions to be challenged and scrutinised where there was good reason, but felt there was no merit in referring this decision.
- Mr Callaghan enquired regarding the possibility that there could be deviation from the design proposed after it had been approved. Mr Hodgett confirmed that the standard conditions require the property be in accordance with approved plans and any alterations would involve some form of new application.
- Mrs Burkitt felt that the feelings and views of the Parish Council and residents should be carefully considered.
- Mr Wilby highlighted that the views of people living very close to the site had been heard in support of the application. The proposed build may have a

- positive impact on conservation in years to come due to being energy efficient and use of materials.
- Mr Mathias confirmed that he had voted in favour of the approval on the 29 August 2017 and he had heard nothing to convince him that the application should be referred for further consideration.
  - Mr Baines confirmed that members were not being asked to consider the planning merits, but whether a sound democratic decision had been made. He felt that was a matter of opinion, the question of design was very subjective and as such would like the opportunity for the Committee to look again at the application.

The Chairman reminded members that the decision must be based on the facts and evidence that had been presented.

After considering the referral and all relevant advice, they had the following options:

- a. refer it back to the Planning and Licensing Committee for reconsideration, setting out in writing the nature of our concerns; or
- b. decide to take no further action, in which case the original executive decision will be effective immediately.

## **RESOLVED**

That the referral be **REFUSED** and the decision of the Planning and Licensing Committee on 29 August 2017 regarding application 2017/0419/FUL be implemented immediately.

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**The Chairman declared the meeting closed at 7.36pm.**

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