

LAKENHEATH PARISH COUNCIL

Minutes of the Lakenheath Parish Council Extra-Ordinary Meeting held on Wednesday 10th April 2019
at the Methodist Church commencing at 6:30pm

Present

Councillors E Morley (Chairman), H Brown, J Hastings, R Norman, I Frost, W Newman, C Lucas, G Kelly, Clare Shimmon (Clerk) and 13 members of the public.

1 Apologies for Absence

Cllr Gentle

2 Declaration of Interest

Cllr Lucas - Sutton Services Ltd & Lakenheath Playingfield Committee (Elveden Estates)

Cllr Hastings - Lakenheath Keep Fit & Curling Clubs

Cllr Brown - Lakenheath Heritage Group Recorder & Christian Enterprise Foundation Trustee

Cllr Norman - Village Hall

Cllr Newman - Lakenheath News

Cllr Frost - Friends of Lakenheath Library Trustee

3 Representations from Members of the Public

A resident was surprised and disappointed by the money spent over a period of time. A number of things had been put to the Parish Council which were declined as too expensive but monies had been spent on legal advice. It is not a cost to the Parish Council but to parishioners and beyond the remit of the Parish Council. He asked the Parish Council to stop the legal action and move on.

A member of the public had seen comments on social media and had also attended the court case. The Parish Council had supported housing at the south end of the village close to the SSSI and blast zone. The District Council had a local plan working group who had consulted with RAF Lakenheath, a past chairman of the parish council had sat on the working group and agreed to 1200 additional homes in Lakenheath. Sites came forward, were agreed and planning permission has now been passed on some. He added that the Judge stated that it was to be a state of the art school. He asked the Parish Council to stop the legal action and move on.

A resident asked for the minutes of this meeting to be published prior to the elections.

4 Planning Matters – to consider:-

SCC\0021\18F – Lakenheath New Primary School, Station Road, Lakenheath

Phased Delivery of a 420 place Primary School, Pre-School, associated hard and soft landscaping works and creation of new access off existing road. First phase to be delivery of 210 places school.

Cllr Brown gave a report on behalf of the planning sub-committee:

Last Friday the judge ruled against the Parish Council in the High Court hearing and dismissed the case on all grounds. A very disappointing outcome for both Lakenheath Parish Council as the claimant and the legal team. Especially as he conceded on more than one occasion at the substantive hearing that Station Road was the worst site within the whole village for siting a school. In the start of judgement, he referred to the noise as "excessive noise".

Next steps

The legal team are of the view that there are good grounds to appeal but there are time constraints, to proceed an appeal must be lodged within 7 days i.e. this Friday 12/4/19. The judgment was handed down orally at court and the solicitors have requested an urgent copy of the transcript of the judgment. Set out below is a summary of the main reasons given by the judge for dismissing the case as recorded by the solicitor immediately following the hearing. This is subject to reading the judgment transcript and discussing the judgment with the barrister who was not in attendance due to other commitments.

Ground 1 the gist of this ground is that SCC granted the planning permission in circumstances (1) where SCC failed to have proper regard to the best interests of the child under Article 3 of the United Nations Convention on the Rights of the Child and to treat this as a primary consideration; and (2) SCC failed to have regard to, and/or interfered disproportionately with, the rights of future pupils at the New School under Article 8 ECHR. The judge accepted article 8 was engaged about the rights of children but reasoned SCC had regard to those rights.

His reason was that the new housing will bring children - those children need education therefore a school will be required. Great weight was placed on the need for housing. He referred to the fact that several hundred other houses will come forward where there is approval or a resolution to approve. The key factor on his judgement on discharge of duty on the Rights of the child is they need an education.

Ground 2 was that SCC failed to have proper regard to the Public Sector Equality Duty ('PSED') under section 149 of the Equalities Act 2010.

The Judge found the council discharged its duty to have due regard to the public sector equality duty by the condition attached to the consent to provide noise shelters, with an expected 5-decibel benefit. This would only bring overflight noise down to 75 or 80 db and not resolve how, with those noise levels, duty in regard to special needs had been discharged.

This is where the legal team consider the judgment is vulnerable to appeal since his opening remarks noted the logarithmic noise levels above the guidelines and he failed to explain how a 5dB decrease could have due regard to achieve the equality for children with protected or special needs given the excessive noise levels. He relied on the absence of hard evidence of harm to education health etc. from jet noise.

Ground 3 is that SCC breached regulation 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations in that the ES failed properly to assess the environmental effects of alternative school sites in breach of Article 5(3)(a) of Directive 2011/92/EU ('the EIA Directive'), as implemented under the EIA Regulations. This was the ground John Howell QC granted permission on.

The solicitor has urged that the Judge's reasoning will need to be very carefully studied when the transcript is available, because it was confusing how he dealt with the ground. He referred to the table in the Officers report which had the options and a note on each site but he agreed that there was no assessment in the ES that identified environmental constraints at other site options. It seems the judge reached the view that the committee was aware of the environmental effects of alternative sites 2, 3 & 6. He felt sure that they had in their mind environmental effects overall when exercising planning judgment.

After giving judgment the judge then dealt with other matters.

Costs Order

The adverse cost order was made to the cap limit of £15,000 payable to SCC within 21 days. The order is now sealed and this sets the date for payment as 26/4/19.

Appeal

There was a short discussion before the judge about granting an extension of time to appeal. SCC objected on the basis that the JR had held up the building of the new school and they want to get on with the development. However, there are several pre-commencement conditions so SCC cannot start development until these are signed off. Their website suggests they are still outstanding.

Advice on appeal prospects

Both the Solicitor and Barrister advise the Parish Council to take the case to appeal. In short, their view is that the Judge erred in the way he determined the grounds of claim in the case. Because of the way in which the Judge conducted himself in the hearing and at hand down, and the strong possibility of getting permission to appeal and ultimately having the High Court Judgment set aside, and the planning consent for the school quashed, they are prepared to work on a conditional fee agreement (CFA). A CFA means in lay terms *no win no fee*. This means they are working completely at risk for their fees in the Court of Appeal case and will only seek to recover these costs if they are successful in a substantive hearing when there is a final judgment from the Court of Appeal. In broad terms, the fees they expect to incur for their time to draft the petition and get to the permission stage would be £8,000 - 10,000 + VAT. Thereafter the fees for a substantive hearing are likely to be £15,000- £20,000 + VAT. There is no adverse costs risk at the permission stage.

To lodge the appeal the only costs Parish will incur are the disbursements namely:

- The court lodging fee £528 (no VAT).
- Bundle copy costs for the permission stage are likely to be £400 + VAT
- Postage is budgeted to be £70.00 + VAT.

Therefore, the total to be agreed to proceed with the appeal in round figures is £1,000.

If permission is granted

If permission is granted, there are further costs, namely:

- A further court fee of £1,199 to be paid.
- Solicitors then have to update the bundle and serve the court with 3 copies and the opponent (SCC) gets a copy and we send a copy to the barrister at an additional cost of £750- £850.
- Postage cost of £150.
- Finally travel for a one-day substantive hearing of £80.

There is an adverse costs risk but the legal team will apply for a cost capping order to limit this liability. The likely maximum would be a further £15,000 but they would apply for a reduction as they did in the case of JR.

Costs to date and Recovery of High Court Costs

If granted permission to appeal and the case is won, the order of the judge will be set aside and costs can be recovered for the high court case up to the cap of £35,000. The total case costs were just over £35,000 excluding VAT.

Also, the £15,000 payable to SCC as an adverse costs award is repaid. For this reason there is a very substantial financial benefit in proceeding with the appeal where the legal team says there is a strong case as if the case is won a total of £35,000 could be recovered from SCC.

As a gesture of good will, in the invoice received today for costs up to date from the Legal team, a reduction of £1,650 has been given - this reflects the solicitor's travel time to Court on 28 March and 5 April, for which they are not making a charge. Nor will there be a charge for a one and a half hour teleconference with the planning subcommittee last Saturday. In addition, the clerk to the Barrister, who attended the judgment hearing has agreed not to charge her fee of £1,250. But should an appeal be successful the solicitor would seek to recover the costs from SCC.

You are reminded as to why the current position has been reached. As far as the houses are concerned people can choose where they wish to live. But as far as education is concerned, the best position should be sought for village children.

In the beginning there was no acceptance of a noise nuisance by any of the planning authorities. It is now agreed and accepted that the twin track flight line will be directly over the proposed school site. The Defence Infrastructure Organisation informed that the existing (as of 2016) annual aircraft movements are 53,264, over a 220-day flying year, this equates to 242 movements per day on average. This takes into account touch and go exercises, visiting forces etc. A further fact that the F-35 is a much noisier aircraft than the F-15 is uncontested.

All of the noise assessment work to date has essentially agreed that internal noise levels can be controlled, both for the proposed housing and school developments, by providing enhanced sound insulation in the building construction, closing doors and windows and providing attenuated alternative means of ventilation and cooling for the school. The acceptability of these solutions is a pre-requisite for building design. This is claimed to be a benefit of any proposed school building which is designed as a hermitically sealed 'bunker' with attenuated mechanical ventilation. It is a function of having to revert to a non-naturally ventilated design solution because of the high external noise levels. It is not a 'benefit' of the proposed new school site. The noise environment is in reality a very serious dis-benefit of the proposed new school location and one that has been long known when SCC carried out its site selection exercise.

The external space in the school settings, is fundamentally compromised by the high levels of noise, exacerbated by its startling nature. No mitigation measures are feasible to combat the impact of very noisy activity directly overhead on an external amenity environment. The noise levels at the proposed school site would exceed design criteria by a HUGE margin, a point very plainly accepted by the Judge. The guidance relating to 30 minute average noise levels says that outdoor teaching/play areas for new schools should be less than 60dB, generally 55dB and with at least one area 50dB or less. It is clear that the aircraft noise would have a significant adverse effect during flight operations which could not be overcome. Many noise data assessments have been made where the sound levels have been recorded at just over 90 dB.

The existing school may be closer to RAF Lakenheath, but it is not on a direct overflight route. As a consequence, the existing school experiences higher ambient noise levels, but not the high disturbing overflight noise of fast jets directly overhead, to be experienced at the proposed school site. As a consequence, the external noise at the new school will be significantly more disruptive to students and teachers than noise from fighter jet operations experienced at the existing primary school. In fact, the 'peakiness' of sudden fast jet noise reaching higher levels of dB values in the 80s and 90s against a quieter ambient condition serves to make these events even more startling and disturbing and therefore more disruptive to the teaching environment.

Noise levels will occur suddenly, unpredictably effecting external teaching and playgrounds from multiple military aircraft overflights. They are much louder than the very modest protection of a 5dB external shelter can offset. Even if teachers were inclined to either compel students to spend time outdoors under the 5dB shelters; or take cover under them whenever returning aircraft were overhead, the protection would be inadequate to render communication and instruction viable. The shelters seem pointless.

The noise assessment that SCC relied upon and provided by their own consultants reads:

On the proposed school site however, daytime noise levels during school hours are predominantly influenced by relatively short periods of high noise levels due to overflying aircraft, with relatively low and constant residual noise levels at other times.

'Given the high short-term noise levels during aircraft overflights, it is unlikely that a teacher would be able to address a group of children for the duration of the overflight and it is unlikely that the short-term noise in any external area could be mitigated sufficiently to allow this. Teaching would therefore, need to be paused for short periods during aircraft overflights.

In the context of a teacher attempting to teach in an outside covered area, the noise levels of these flyovers may reduce by circa 5 dB, but not to a level where they would be able to continue their lesson over the noise.

In this example around 6-7 minutes of lesson time is lost in the half hour period.

The interruption is compounded by the unpredictable operation of military aircraft, which are not scheduled and unpredictable, obviating any possibility of planning outdoor teaching to coincide with quieter periods.

Cllr Brown proposed on behalf of the planning sub-committee that the CFA agreement should be signed and instruction given to the legal team to lodge the appeal because there remains a very serious risk to the children of this parish if the school is built in this location. The costs of seeking permission are minimal at this stage because the legal team are willing to work on a CFA (no win no fee arrangement) and there is the further added benefit that if permission is granted although there may be a further adverse costs risk, if the case is won on appeal £50,000 will be recovered from SCC. There is therefore a significant benefit to the Parish to proceed with an appeal.

Cllr Hastings advised that she had not been in situ at the start of the legal process and was mindful of the advice given. She asked if there would be anymore costs if the case did not go to appeal.

Cllr Norman thanked Cllr Brown for the time and effort she had dedicated with no remuneration. He added that social media comments made about Cllr Brown had been disgusting. The action had been taken by the Parish Council, not Cllr Brown individually. He had attended the hearing and it seemed that the Judge had changed tact after the lunch break.

Cllr Newman raised concerns about the legal team when the Judge had ruled against the Parish Council. He asked if the case should be continued or had the time come to draw a line.

Cllr Frost agreed that Cllr Brown had worked hard but the ruling was legally conclusive.

Cllr Lucas said that the report said a lot and that if the legal team were willing to work on a CFA, there is a case to pursue.

Cllr Kelly said that at the starting point the village had agreed to legal action. The social media campaign had been appalling to such an extent that the police had been involved. He agreed that there was an issue of confidence in the legal team as there is a difference between pursuing and winning. He felt uncomfortable about continuing.

Cllr Brown advised that a CFA is normally granted on a 35% risk to the client, however the legal team feel so strongly that a wrong decision was given and are sure that an appeal will be won, that they have offered a 100% CFA, indicating their certainty. She added that it was for individuals to consider how the new school will affect children of the village. OFSTED promote outdoor learning and the existing school's Early Year's doors are permanently open, which would stop the ventilation and noise prevention working at the new school. A teacher will not be heard if there is an incident when teaching outside. The best should be demanded for children.

Cllr Newman said there comes a time to draw a line and that the new Parish Council should be passed a clean slate. If the school isn't run properly, it would have to be addressed by the relevant authority.

Cllr Norman expressed concern about teaching placements that cannot be filled. He added that children with learning difficulties have problems coping with high levels of noise.

Cllr Hastings assured the Parish Council that they had come a long way and they had not failed. Even if legal action was stopped, so much good had already come from it and they would continue to ensure things happen correctly.

The chairman agreed that comments on social media had been diabolical and it wasn't to be forgotten that the legal process started with a village poll. There is always more than one issue affecting the village and the Parish Council had a responsibility to the residents to commit time to planning.

The motion was seconded by Cllr Lucas. Voting 3 in favour and 4 against.

- 5 To note date of next Meetings - Monday 13th May 2019**
Parish Meeting - Monday 20th May 2019 (Peace Memorial Hall)

There being no further business the meeting closed at 7:10pm.