

Overview & Scrutiny Committee

Monday, 12th June, 2017

6.00 - 8.15 pm

Attendees	
Councillors:	Tim Harman (Chair), Jon Walklett (Vice-Chair), Colin Hay, Sandra Holliday, John Payne, Paul Baker, Max Wilkinson and David Willingham (Reserve)
Also in attendance:	Tim Atkins (MD of Place & Economic Development), Tracey Crews (Director of Planning), Councillor Flynn, Councillor McKinlay (Cabinet Member Development and Safety), Michael Morgan (Planning Solicitor) and Phil Stephenson (Development Manager)

Minutes

1. APOLOGIES

Councillors Mason, McCloskey and Hegenbarth had given their apologies. Councillor Willingham would substitute for Councillor McCloskey and Councillor Holliday would be late.

2. DECLARATIONS OF INTEREST

Councillor Willingham declared a personal interest in agenda item 5 (Call in of the decision on application for designation of a Neighbourhood Area and Neighbourhood Forum by the Springbank Neighbourhood Forum), as a previous application by the West Cheltenham Forum had included a significant amount of the ward he represents and he had attended a meeting with members of the steering group.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting had been circulated with the agenda. The Chairman highlighted that the wrong meeting date had been included on the agenda (20 January rather than 20 February) and noted that there were also exempt minutes of this meeting, which would be circulated for approval with the agenda for the upcoming meeting of the committee (26 June).

Upon a vote it was

RESOLVED that the minutes of the meeting held on the 20 February 2017 be agreed and signed as an accurate record.

4. PUBLIC AND MEMBER QUESTIONS, CALLS FOR ACTIONS AND PETITIONS

None had been received.

5. CALL IN OF THE DECISION ON APPLICATION FOR DESIGNATION OF A NEIGHBOURHOOD AREA AND NEIGHBOURHOOD FORUM BY THE SPRINGBANK NEIGHBOURHOOD FORUM

The Chairman explained that he had called-in the decision to designate a Neighbourhood Area and Neighbourhood Forum in the current Springbank Ward, following a request from Councillor Wendy Flynn and advice from Officers and Members. The process for dealing with the call-in was summarised on the agenda and possible options for the committee were set out in paragraph 4.1 of the discussion paper. He invited Councillor Flynn to address the committee.

Councillor Flynn thanked the Chairman for agreeing to call-in the decision, which she had committed to doing in her letter of objection, were the Springbank application approved. Whilst she acknowledged that it was the Springbank decision that had been called in, she wished to discuss the West Cheltenham application, which she felt would provide some context to the issue.

Between February and July 2016 the West Cheltenham Forum held four meetings and agreed the group membership, constitution, boundaries and application. The group used wards as a starting point, namely the four wards of West Cheltenham (St Peters, St Marks, Hester's Way, Springbank and surrounding areas) and finally agreed the boundary which formed part of the application which was submitted in July. After a six week consultation period in September, there were no objections. The application was scheduled for determination by Cabinet on the 6 December 2016, with Officers recommending approval, but the decision was deferred as Cabinet had some concerns. On the 13 December the application went before Cabinet again. Officers were still recommending approval but had included three options which aimed to address the concerns that had been expressed by Cabinet. Cabinet rejected the application based on it reducing community cohesion. Comments made by Cabinet included the fact that only part of the West Cheltenham strategic allocation was included and that the area was too big. She noted that the Springbank area designation also included part of the strategic allocation and that the decision was at odds with the Cheltenham Masterplan Briefing

which considered the four wards in question, as one area with much in common.

The Town and Country Planning Act 1990 states that a council must be satisfied that a Neighbourhood Forum is established with the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned. Councillor Flynn queried whether this was indeed the case based on the majority of the consultation comments; none of which, with the exception of that from Councillor Jeffries, referenced a neighbourhood plan. She suggested that members of the Springbank Forum had been entirely drawn from members of the West Cheltenham Greenbelt Group and as consequence, were almost entirely concentrated along the greenbelt area rather than, as prescribed in the regulations, from different places in the neighbourhood area and from different sections of the community in that area. The report that went to Cabinet on the 16 May stated that "The area proposed to be designated does not include any organisation currently seeking to be designated" but Cabinet had already refused an application from West Cheltenham and both herself and the West Cheltenham Forum had made clear in their letters of objection to the Springbank application, that they planned to make a further application. She suggested that no new proposal had yet been put forward by the West Cheltenham Forum as they were still awaiting a response to their letter dated 20 March 2016 which sought clarification on the reasons for non-designation and noted that no response had yet been received.

It was her opinion that in the interest of good governance and the reputation of the council, the Springbank application should be refused and the West Cheltenham application reinstated and approved. She felt that if the Master Planning exercise in the West was to work it would require community buy-in and that this community were feeling betrayed and unvalued after having put in months of hard work only to have it dismissed by Cabinet without a full explanation as to the reasons why.

The Chairman thanked Councillor Flynn for her introduction and invited the Cabinet Member Development and Safety to address the committee.

Before taking questions from the committee, the Cabinet Member Development and Safety took the opportunity to respond to some of the points raised by Councillor Flynn in her introduction. The reason that the Leckhampton with Warden Hill application had been approved, despite the JCS position, was because the area applied for was a parished area and the original legislation was based on parish wards. The legislation did not, however, define what constituted a neighbourhood and as such, the Cabinet Member had taken the view that electoral ward boundaries should be used as a starting point for discussions on the appropriate size of a neighbourhood area and this had been included in the guidance that had been produced for applicants. He explained that he had taken this decision to avoid applications being submitted for very small/large areas or areas which only included certain parts of existing wards and to avoid what he perceived as a threat, that people associated with promoting development would apply for large un-parished areas, which would block the ability of anyone else to apply and could be used to try and block the designation of green space. The Cheltenham West application was rejected on two grounds; it was received at a time when there was a great deal of uncertainty surrounding the future of the JCS and did not include whole wards. Cabinet had outlined their concerns to the applicants and had even deferred their decision in the hope that a revised application based on certain revisions would be submitted, but it was not and therefore the application was not considered sound and was rejected. At this stage, it was reiterated to the applicants that Cabinet would welcome a revised application. Then the Springbank application was received at a time when the JCS position was clearer, the Cheltenham Plan was more developed and the application itself covered the existing Springbank ward only and with no other applications having been received, it was accepted. The Cabinet Member acknowledged that he had received a copy of the letter dated the 20 March but had not responded as it was not addressed

to him personally and sought clarification of discussions at a meeting at which he had not been in attendance.

The Cabinet Member Development and Safety gave the following responses to member questions:

- A decision notice, in the form required by law, had been sent to the West Cheltenham applicants on the 21 December 2016, which outlined the reason for refusal and this read “The submitted neighbourhood area application has been made for an area which is not appropriate as a neighbourhood area. The area cuts across ward boundaries and includes a number of separate communities, which would reduce community cohesion.”
- With regard to the West Cheltenham application, the Cabinet Member had concerns about how well people in the St Marks ward, would be able to relate to people living in Hester’s Way and more importantly that the boundaries set out in the application cut across existing wards, which would mean that some areas were not covered. He reiterated that the legislation did not include any detail on this and the decision to use wards as a starting point had been his and this was set out in the guidance produced by the council.
- He did not agree with the suggestion that Cabinet were not taking a wholly consistent approach to applications.
- The JCS was the primary document, with which the Cheltenham Plan needed to conform, though it would cover different issues and in turn, any Neighbourhood Plans would need to conform with the Cheltenham Plan.
- Cheltenham West were invited to reapply but no revised application was received. Had two separate applications been received at the same time, which included the same area, then the applications would have been weighted against one another, but this was not the case. Cabinet could only respond to what was before them and the Springbank application was duly approved.
- His concern about pro-development groups applying for large un-parished areas in an attempt to block the

designation of green space in an area was not a response to an actual threat but merely an uninformed concern, which the guidance that had been developed by the council aimed to prevent.

- The consultation process was set out in the legislation. The West Cheltenham application had received two responses in favour. The Spingbank application garnered more responses; ten residents and four developers supported the application and two objections were received, one from Councillor Flynn and the other from the West Cheltenham applicants.
- Parish Councils were seen by Government as the building blocks for this legislation but this was not necessarily appropriate. The scale of some smaller parishes and lack of resources meant that they were not engaging with the process, but by their very existence, others were blocked from applying.
- It was not for him to judge the motive of any applicants, he could only assess the validity of applications.
- The neighbourhood regulations require Cabinet to make a decision on an application within 13 weeks of submission. This date cannot be deferred and no decision within this timeframe results in automatic approval of an application.
- Cabinet made several attempts to get West Cheltenham to revise their original application and to resubmit when this was refused, but to no avail, so this application was not a material consideration of the Springbank application and therefore he did not feel it necessary to reconsider the Springbank decision.

There was some discussion between Members about whether it would be possible for the two groups (Springbank and West Cheltenham) to reach a compromise that would satisfy all involved. The Planning Solicitor explained that the Springbank application needed to be determined by the 27 June 2016, otherwise there would be a positive statutory obligation to designate the area and forum. The only options available to Cabinet, were it to reconsider the application, would be to make the same decision and approve the application, designate a smaller area or refuse.

With no further questions for the Cabinet Member, the Chairman called the next witness, the Development Manager.

The Development Manager gave the following responses to member questions:

- There were three different sources of relevance to this issue; the 1990 Town and Country Planning Act, the Planning Policy Guidance which expanded on the National Planning Policy Framework and also a decision made by the court of appeal. It was necessary for the neighbourhood Plan to support strategic development needs and decisions needed to be taken in accordance with the Development Plan. The Cheltenham Plan is nearing the statutory consultation stage but before this is in place any neighbourhood plan should aim to agree how its strategies and policies fit in with the emerging plan. The JCS is a long way towards being adopted and the Neighbourhood plan should not contradict the strategic plan
- Both the West Cheltenham and Springbank applications were compliant with the regulations, though the regulations were intentionally easy to meet so as to enable and encourage non-parished areas to apply. Whilst it was for officers to advise on compliance, it was for Cabinet to decide if an area constituted a neighbourhood. He referenced a particular case (Daws Hill Neighbourhood Forum v the Secretary of State for Communities and Local Government [2014] EWCA Civ 228), in this case the council were considering whether to designate an entire area or only part. The court decided that: The Town and County Planning Act does give the Local Planning Authority a 'broad discretion' when considering whether the specified area is an appropriate area to be designated as a neighbourhood area.to In the same case, Lord Justice Sullivan described the regulations in the Town and County Planning Act which set out the requirements for bodies who seek to be designated as a neighbourhood forum as 'relatively basic'."

- Therefore it is a matter for the Council, delegating authority to Cabinet, to decide if an area applied for is appropriate. In deciding this they can take into account the particular circumstances existing at the time and draw on a wide range of planning considerations to come to their view.
- The application from West Cheltenham was more detailed than that from Springbank but also covered a much wider area. He also identified that Planning Practice Guidance refers to electoral ward boundaries as a useful starting point for discussions on the appropriate size of a neighbourhood area. Therefore he considered it appropriate and reasonable that Cabinet base their decisions on ward boundaries. It was true to say that this approach could result in a large number of neighbourhood areas but if cabinet were so minded, it would also be possible for a number of forums and areas to be represented whilst working collaboratively on a single plan.
- Designation as a neighbourhood area or forum would not result in any specific planning policy powers. Once designated however, areas and forums had the right to put together a neighbourhood plan but this was required to take account of the strategic planning policy for the Borough. Neighbourhood forums would consult with Planning Officers about plans for development and/or designation of green space and whether this fits with the strategic planning policy and if so, a plan would be finalised and consultation undertaken. If supported, then there would be a referendum and assuming there was a majority within the area, the neighbourhood plan would be adopted and considered alongside the JCS and Cheltenham Plan.
- Once designated, neighbourhood forums become a statutory consultee for planning applications, and also for Planning Policy document.
- Members were advised that the neighbourhood portion of CIL (that part of CIL receipts that would be spent in the locality of the development that generated the CIL receipt) increased from 15% to 25% in areas with a neighbourhood plan but authorisation of a forum does

not result in that funding being passed to the forum for it to expend. In parished areas these funds went straight to the parish council whereas in un-parished areas, the borough council would remain the responsible authority.

- Once designated, a neighbourhood forum would have 5 years to progress a neighbourhood plan. After this time the forum could be de-designated. The council had a statutory obligation to support Neighbourhood Plan development and then arrange a referendum and this would provide an opportunity for Officers and the public to scrutinise progress.

Members had no questions for the Director of Planning but she did take the opportunity to reiterate that the legislation relating to the designation of neighbourhood areas and forums was intentionally basic to make it as easy as possible for neighbourhood groups to engage. This reflects the governments ultimate aim being to delegate more powers direct to communities. There was a clear distinction between the process, which Officers gave advice on and the decision, which was a Cabinet function.

The Chairman thanked the various members and officers for their input and referred members of the committee to 4.1 of Agenda Item 5, which set out the options available to the committee.

The Democracy Officer reminded the committee that the decision that had been called-in related to the Springbank application and not the West Cheltenham application and the Planning Solicitor reiterated the three options available to Cabinet in relation to the application; make the same decision, designate a smaller area or refuse.

A member queried the assertion that the West Cheltenham area was too large and questioned what this would mean for central Cheltenham which was a cohesive community made up of a number of wards. He suggested that Cabinet should be given the opportunity to reconsider their decision on the Springbank application, in the hope that they would reject it

and instead broker a compromise between the two groups (Springbank and West Cheltenham), which he felt at the very least, would give more clarity regarding what applications were and were not acceptable; those including a single ward, multiple wards, part wards, etc.

The Planning Solicitor expressed caution on recommendations by this committee on wider decisions for the Cabinet. If this committee was of the view that a wider policy review was required then it should be raised as a policy matter rather than using this call-in meeting concerning particular applications as a vehicle to do so.

One member was minded that, instead of proposing an alternative decision, the committee instead make adverse comments on the process but not the decision itself which had been proven to be lawful. He suggested that Cabinet should be asked to review boundaries at a later stage. Other members disagreed.

A member reminded the committee that the overarching objective of Neighbourhood Planning was for communities to be able to have their say and in this situation two communities were being pitched against one another, which he found regrettable.

A number of members spoke in support of the proposal to recommend that Cabinet reconsider the Springbank application. The hope was that, having heard the debate, understood the intent behind the recommendation and taking account of this, that a different decision would be reached and the application rejected, thus allowing for negotiations between the two applicants and a compromise that suited all.

Upon a vote it was

RESOLVED that Cabinet be asked to reconsider the Springbank application

(Voting: 7 For / 1 Abstention)

6. DATE OF NEXT MEETING

The next meeting was scheduled for the 26 June.

Tim Harman
Chairman

