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Extraordinary Balsall Parish Council Meeting

**Approved Minutes of Extraordinary Parish Council Meeting held on Wednesday 22 May 2019
at 7pm in the Westlake Room, The Village Hall, Station Road, Balsall Common CV7 7FF**

Minutes

Present: Councillor Andrew Burrow (Chairman), Councillor Elizabeth Macdonald, Councillor Marion Keeley, Councillor Kay Howles, Councillor Keith Tindall, Councillor Richard Drake, Councillor Richard Lloyd, Councillor Sheila Cooper, and 9 members of the public.

1. Apologies

There were no apologies.

2. Declarations of Interest

There were no declarations of interest.

3. Public Forum

A member of the public attended in order to make a complaint which was read out to the Council, paper copies were supplied to all members and the Clerk.

The resident's concerns with the NDP follow a formal complaint raised with the council on 2 May 2019, now expressed as follows:

"I would like this council to seriously considering retracting the Balsall NDP from Solihull, partly because I don't believe it to be sound and also because I don't believe it is a workable plan when viewed alongside Berkswell's NDP, which is about to go out to referendum. Retracting the NDP would at least give this council the opportunity to compare and contrast the policies in the two NDPs to assess any potential difficulties should the Balsall NDP continue to Reg 16 in its current form and potentially to adoption."

Material was presented to the council in support of this position.

The Clerk was asked to refer to the report to Council prepared as advice on items 4 and 5 which included advice from the council's planning consultant (see appendix).

(4.1) Proposal to approve the withdrawal of the NDP submitted for external examination and referendum to allow for further reflection, evidence gathering and possible amendment and a possible new Regulation 14 Consultation. The Clerk is delegated, within 2 working days of the Extraordinary Parish Council Meeting, to write to Solihull MBC withdrawing the NDP from the process of external examination.

Resolved to amend the proposal to read ‘Proposal to approve a pause of the NDP submitted for external examination and referendum to allow for further reflection and to seek advice prior to making a decision by full council to proceed or withdraw on the 12 June 2019.’

Resolved to approve the above amendment to the proposal.

Resolved to reject the proposal as amended to approve a pause of the NDP submitted for external examination and referendum to allow for further reflection and to seek advice prior to making a decision by full council to proceed or withdraw on the 12 June 2019.’

(4.2) Proposal to establish a working group of Councillors and residents to undertake the necessary staff work to create proposals for the Council to consider meeting the objectives in the first part of this motion. The working group will normally meet in public but have no decision making or delegated powers other than to make proposals to full Council.

Resolved reject the proposal to establish a working group of Councillors and residents to undertake the necessary staff work to create proposals for the Council to consider meeting the objectives in the first part of this motion.

5. Proposal to not withdraw the submission of the NDP for external examination and to allow the process to proceed.

Resolved to not withdraw the submission of the NDP for external examination and to allow the process to proceed.

6. Date and Venue of Next Meeting (Annual Parish Meeting):

Wednesday 15 May 2019, 7.00pm in the Westlake Room, Village Hall, 112 Station Road, Balsall Common CV7 7FF

The meeting closed at 8.25pm

SIGNED Andrew Burrow (Chairman)

DATE

Advice to Council

1. To consider the professional planning advice in full received from Neil Pearce, Avon Planning Services Ltd (APS) – Balsall Parish Council’s retained NDP consultant.
2. To consider the financial implications
3. To consider the procedural and legal implications
4. To consider the implications on delay and reputation

1. Planning advice from APS received 22.05.2019 – see attached email

2. Financial implications

Actual

Balsall Parish Council has spent a total of £26,601.09 (2017/18 £9,778.13 (gross) and 2018/19 £16,822.96 (gross)) on the NDP process of evidence gathering, consultation and plan production for Regulation 14, consultancy costs on plan amendments and production of a Submission version for Regulation 16. The bulk of the costs relate to the Regulation 14 stage.

Clerk costs in additional hours worked are **not** included in the above figures.

VAT of £3,247.87 is reclaimable.

Locality grant of £ 7,225.30 out of a total possible of £9,000 has been received. There is a balance of £1,774.70 grant remaining although I am unsure whether the funding rules would allow this to be drawn down for a repeat process.

Net cost to Council excluding staff costs and after vat reclaim and receipt of Locality grant is £23,353.22 – £7,225.30 = £16,127.92.

Future

Delay to completion of the Balsall NDP marked by a successful vote at referendum stage and being ‘made’ by SMBC may jeopardise the receipt of CIL money.

CIL is a charge on developers that provides parish councils with infrastructure cash to spend within a 5 year time band of receipt. £7,434.76 has been received by Balsall Parish Council since SMBC implemented the scheme, based on a 15% proportion (capped at £100 per household in the parish) of the developers total contribution (the remainder being retained by SMBC). This has been derived from the development of 20 flats and 1 house.

With an NDP in place, the parish council is entitled to CIL receipt of 25% without the cap.

CIL scenario (figures based on SMBC CIL rates, draft housing site allocations, %

affordable homes target and English Housing Survey Floor Space in English Homes)

In 2019/20 the CIL cap would be at £281,100 with the current chargeable rate of £176.01 psm on net additional gross internal floorspace of the development.

“For outline permission the calculation of the amount of CIL payable will take place at the point where planning permission first permits the development. What is the meaning of ‘the day planning permission first permits development’? In most cases, this will be the day that planning permission is granted. However, there are some caveats outlined in Regulation 8 for different types of permission. For example, if there is a Charging Schedule in force when outline planning permission is granted, then ‘the day planning permission first permits development’ relates to the final approval of reserved matters, for each phase of that outline permission”.

Currently proposed strategic housing sites in Balsall and estimated housing capacity:

Site ref.		Housing capacity
60	Land at Wootton Green Lane)
158	Land RO Kenilworth Road, Balsall Common)
159	Land fronting Wootton Green Lane) Trevallion Stud (total capacity 300)
160	Land adj. 32 Wootton Green Lane)
161	Land at Wootton Green Lane)
75	Land at Frog Lane	110
138	Land at Kenilworth Road and Windmill Lane(c75%)	220 (165)
Total Balsall parish		575

The national average net floor space of houses in Britain is 152m² as an average for detached properties and 92m² for all houses (English Housing Survey Floor Space in English Homes – main report 2012).

Assume an average house size for Balsall is 122m² x
345 houses/units (575 units less 40% affordable) = 42,090m²

42,090 x £176.01 = £1,852,065/4 (25% of CIL). If the developments are delivered over a period of 4 years then this is equivalent to £463,016 pa compared to £281,000 pa without the NDP being in place a potential financial loss of £728,065.

It is likely that planning applications from housing site developers will be made as soon as the Solihull Local Plan reaches draft stage, currently likely to be the latter part of 2019. SMBC officers have indicated that pressure from house builders may well result in planning applications being submitted before the SLP is in draft, particularly if further delayed, in the knowledge that the land is likely to be made available in the near future.

3. Procedural and legal

The change to an NDP policy on the basis of a representation that the council has already responded to, but is now ‘changing its mind’ on would make the process open all individuals who made representations to the same treatment. Developers in particular may be very interested in contesting. All the representation responses will be considered

by the examiner at Regulation 16 and all residents will be able to submit their representation to SMBC to be looked at and adjudged by the examiner. I do not see that the complaint received by the council from a single resident could kick start a process separate to Regulation 16 without undermining the legal planning process of policy development of the NDP.

4. Delay and reputation

Balsall Parish Council has taken a decision as Qualifying Body to submit its Plan. As a Council it is advised to have **sound evidence** that sufficient omission has been made in order to reverse its own decision and retain credibility and avoid challenge.

If the decision is reversed the Council must be assured that they are then following the correct process in order to avoid challenge and judicial review. This means taking the advice of the Council's planning consultant that with fundamental or significant changes to the Pre-Submission Version, a full Regulation 14 consultation must take place – not solely a 're-visit' of the responses already made to the Regulation 14 consultation already completed.

Evidence supporting any fundamental or significant plan changes would need to be presented in a second draft Plan and tested with the Council's planning consultant, Green Space notifications repeated, a repeated Strategic Environmental Assessment/Habitat Regulations Assessment screening by SMBC, a 6 week consultation, assessment of responses, Plan changes made in consultation with the Council's planning consultant and SMBC, revision to the Basic Conditions Statement – around 4-5 months.

J Parry-Evans
Clerk to the Council

Balsall NDP

Neil Pearce <neil@avonplanning.co.uk>
To: Balsall Parish Council <balsallparishcouncil@gmail.com>

22 May 2019 at 11:54

Dear Judith,

I have reviewed the documents you have sent me and would make the following points:

- Complaints should be dealt with in the normal way like any other complaint by the PC under the PC's complaints procedure.
- At all times the Council's Standing Orders must be followed. To deviate from these would leave the Council vulnerable to complaint and challenge.
- There is no legal requirement for the PC/QB to consult the public on a draft Submission Version of the NDP before it is formally submitted to the Planning Authority unless there are fundamental or significant changes to the Pre-Submission Version in which case a further formal Regulation 14 consultation must take place.
- In my opinion the changes made to the Pre-Submission Plan (as a result of the Reg 14

consultation) to the Submission Version would not trigger a further formal Reg 14 consultation.

- The Submission Version of the Plan will be subject to a formal 6 week public consultation which will be carried out by Solihull Council. No-one therefore has been denied the opportunity to make representations on the Submission Version of the Plan.
- To the best of my knowledge, the PC/QB has followed the correct procedures throughout this process.
- The objections to the plan by X manifest from a simple disagreement over content. This is quite common when producing a Plan.
- X along with everyone else will have the opportunity to comment on the Submission Version of the plan when Solihull carries out the Reg 16 consultation.
- All responses to the Regulation 14 consultation have been read and considered. As is always the case, not all responses have been accepted by the Steering Group and QB. Where suggestions made are not taken forward, the Steering Group has explained their decision.
- Just because a suggestion is not taken on board does not automatically mean the suggestion has not been considered, or the plan is flawed as a consequence or the plan has been prepared unlawfully or otherwise.
- All contributors to the process should be treated fairly but more importantly equally. No one contributor should be given elevated status or preferential treatment.
- It is imperative that the PC acts appropriately and does not allow personal circumstances and relationships (good or bad) taint their judgement. To do so would compromise the credibility of the PC and open any decision/resolution up to challenge.
- I remain disappointed that a Joint NDP could not be produced. It is inevitable that there will be differences between neighbouring plans on a variety of issues. This could have been avoided if a joint plan had been progressed but this was not to be.
- There is no requirement for adjoining plans to have the same or similar policies even where there is a cross boundary strategic allocation by the planning authority.
- Consistency would always be advisable and desirable but may not always be possible for a variety of reasons.
- It is misleading to suggest that Balsall PC has failed to work with Berkswell PC prior to the Reg 14 consultation. The NDP started life as a joint plan. Given the breakdown in the relationship between the two PC's, moving forward in a positive collaborative way was always going to be challenging. Both PC's made the decision to move swiftly on with their own NDP's independent of the other.
- I am not privy to all of the discussions that have been held between the two PC's but I am well aware that the relationship between the two councils has been strained for a number of years. It is not for me to point fingers or blame but it is often the case that each party is

culpable.

- I do not think it is appropriate or right to mention specific incidents between individuals which have taken place in the past.
- It is important to keep an open mind prior to any debate and decision/resolution on what happens next with the NDP.
- I remain concerned that Solihull Council have suspended the Regulation 16 consultation for reasons previously mentioned.
- I am concerned that the circulation of emails in advance of this evenings meeting may have prejudiced the authors of those emails ability to make a fair and un-bias decision/resolution.

It is apparent that some new members of the PC are uncomfortable or unhappy with the current position in respect of the NDP. It is probably right therefore for a discussion to be had but I am conscious that given the change in personnel on the PC, the debate will be one sided (and in light of my reading of the content and tone of the communications sent in advance of the meeting – may well degenerate into an attack against individuals previously involved in the process) particularly if those who have been intrinsically involved in the preparation of the plan are not there to give their views.

From a purely planning perspective I would not support the provision of a policy specifying a 30m standoff zone between existing and new houses. This is onerous and unreasonable. Each application should be looked at on its own merits. There have been many examples, and there will continue to be many examples, of where new development can be located next to existing development without harm. There is also a strong argument that such a standoff zone would be counterproductive in terms of achieving the necessary social integration and community cohesion which is the heartbeat of all communities. A physical barrier or space separation can achieve the opposite and divide communities.

In any case, the current Berkswell Policy is written in a way which will not actually deliver this standoff zone. The word “normally” means that the 30m buffer is not always required. Developers will use this as a way of circumventing this requirement. I note that Mr Matheson in February 2019 queried this aspect of the NDP. I understand that Mr Matheson’s report is yet to be published.

In light of the above I would recommend that the NDP remains as per the version Submitted to Solihull. All contributors will have the opportunity to make further representations during the next public consultation under Regulation 16. The Examiner will then be able to see those comments and decide whether to make recommended changes.

Kind regards

Neil

Neil Pearce BA(Hons) DipTp MRTPI

Avon Planning Services Ltd - Planning & Development Consultants