

At the Scrutiny Committee Meeting held at the Council Offices, London Road, Saffron Walden on Tuesday 2<sup>nd</sup> September, a resolution was passed, forming a Working Group to respond to allegations from residents arising from

1 Complaints to the Local Government Ombudsman about the Council's response to reports of unauthorised development at the site known as Cranwellian, Takeley Parish, and about its handling of a subsequent Planning Application for a Gypsy Site in the grounds of Cranwellian.

(It is now noted that Cranwellian has been excluded as a location for a Gypsy Site in the Proposed Local Plan.)

2 Complaints to the Information Commissioner about the Council's Response to a request for relevant information.

Members who volunteered to form the Working Group were Cllr Graham Barker, Cllr Paul Davies and Cllr David Morson. Cllr Morson was nominated to Chair the Group.

They were tasked with bringing back a Recommendation to the Scrutiny Meeting of Tuesday 25<sup>th</sup> November with the following terms of reference;

To find out, if anything, what went wrong.

If something went wrong what, if anything, could be done to remedy it.

What, if any, further procedures should be put in place.

Councillors G Barker, P Davies and D Morson received papers from Mr Snow. They also received considerable and detailed information from the residents, predominantly from Dr Johnson.

All three Councillors have spent large amounts of time individually reading and making notes on what has been sent.

The three Councillors met at Dunmow on Monday 22<sup>nd</sup> September to discuss the papers and files sent by Mr Snow.

They then met residents and Cllr Jones for a two hour Meeting at Takeley Community Centre on Thursday 16<sup>th</sup> October. Rebecca Dobson, Democratic Services was in attendance to make notes. Finally, Cllr G Barker and Cllr Morson spent five hours on Wednesday 5<sup>th</sup> November interviewing Officers involved.

With regard to the terms of reference the Task Group makes the following observations(

### **With regard to the Ombudsman's report**

We agreed that the Ombudsman's Report lacked clarity. The Ombudsman states that he did not possess technical expertise in planning decisions and acknowledged that Officers of the Council made professional judgements. He then implies these could have been made differently, but does not elaborate with further detail. Nevertheless, for reasons that are not clear to the Task Group, he concludes that the Council was at fault.

Mr Snow stated for the first time in his experience, he needed to ask the Ombudsman for clarification. This resulted in a focus on drainage issues. Officers claim, however, that the Ombudsman's comments on drainage lacked specific expertise and relevant understanding. These were largely based on Dr Johnson's understanding in a communication to Phil Hunt of 2007,

believing that the ditch which had been removed, drained water away in to a central system. Subsequent investigations by the Council concluded that this was not the case. The ditch had a holding function for water, but not a drainage function.

In this context, the Task Group is aware that residents would like the ditch to be re installed as they believe that such a holding function would prevent flooding on their properties. This has been discussed with Officers, who accept that this may be the case. The problem is that there is no definitive proof that the water flow comes from Cranwellian. Residents argue that because of historic circumstances and the level of land this is the most likely source. If approved, the ditch would have to be re constructed on Mr Jones' land. If he did not agree, Essex County Council would have to be involved, but only would only become so if there was definitive proof which the Council believes is not possible to ascertain.

The Task Group feels the Ombudsman misinterpreted this issue and also failed to acknowledge that the Council had taken action to resolve matters with the Conditions imposed in the Temporary Planning Consent.

In relation to the Ombudsman's criticism that the Council should have carried out a full investigation of drainage before the initial Planning application was considered. Mr Harborough however, states the Councils' actions were in perfect accordance with Planning law. He acknowledged that this may not have been best practice, but nevertheless was accepted practice.

When the Task Group asked why the Council accepted the Ombudsman's findings of it being at fault and in paying the recommended compensation, it was clear that the Officers felt uneasy. The Task Group was told that as the Ombudsman refused to retract findings and would publish the Report regardless and that it was therefore, "expedient" for the Council to accept the findings.

The Task Group feel that if the Council was not at fault it should not have accepted this decision.

The Task Group has seen a letter from the Ombudsman written to Dr Johnson, apologising that he "could not have done more", but which was, however a clear statement that he now considered the matter closed..

### **With regard to the issue of land contamination**

The Task Group is satisfied that Mott Mc Donald's Landfill Waste Assessment Report and the HESI Report did not identify the deposited waste as being hazardous. They are also satisfied that the samples taken in both Reports were sufficiently widespread and of sufficient depth to satisfy issues of representative-ness throughout the site.

We were also informed by Ann Lee Moore of a significant typing error on page 42 of Mott Mc Donald's draft Land Waste Assessment Report which should have read substances "do not breach the threshold", rather than "do breach".

We understand that Dr Johnson was copied in to an e mail to this effect from Peter Kirton on 27<sup>th</sup> January 2014.

The Task Group understands that the land contains presumed building waste, but believe reports show it not to be "hazardous", "harmful" or "toxic".

The Residents complain of rainwater flooding their gardens and are concerned that this water may be contaminated by leachate from the waste. The Task group believe that this water should be analysed.

### **With regard to Enforcement Prosecution Matters,**

The Task Group is satisfied that the Council has done everything in its power to enforce the recommendations of the Environment Agency following its decision not to continue with their prosecution because of insufficient evidence. The Task Group is convinced that the Council was strongly determined to prosecute, but similarly lack sufficiently robust evidence regrettably resulted in UDC not to be able to do so.

As a result, the Prosecution file was closed by Sonia Williams and Roger Harborough in April 2011.

During late 2012, following a meeting with the Chief Executive, a number of complaints about planning issues were made by Dr Johnson. These were investigated by the UDC Chief Executive and the Head of Planning. These were then investigated by Planning and Enforcement who concluded that they related to minor matters which did not result in a “planning harm” and after visits by Sonia Williams (Enforcement), were signed off by Nigel Brown in 2013 as not being “expedient”.

The use of the word “expedient” was debated by the Task Group and Officers. It relates to wording used in planning law to describe potential harm as a result of Planning considerations, but it was agreed that it was not a very precise description

### **With regard to complaints in relation to the Information Commissioner:**

Following a request for information, from Dr Johnson, under Environmental Information Regulations, the Council supplied of the information but some items were withheld on “data protection grounds”.

The Task Group believes Dr Johnson was correct that the Council did not provide all the information, albeit as Mr Perry stated, that information withheld related to data protection issues.

As a result, Dr Johnson asked for an internal review which Mr Perry states upheld the Council’s decision on the exceptions. Dr Johnson subsequently appealed to the Information Commissioner who found in the Council’s favour.

Dr Johnson then made an appeal to the First Tier Tribunal. This was opposed by the Information Commissioner, as it introduced new grounds which he had not adjudicated on and bore no relation to his original decision. However, the Tribunal indicated that it would accept the appeal, but suggested that rather the Parties may wish to mediate.

Subsequently, Dr Johnson and Cllr Jones met with Mr Perry. At this Meeting, Mr Perry accepted that the Officer dealing with the request for information had been “overzealous” in redacting information. He promised a revision of procedures, ensuring a robust audit trail to demonstrate that all data request exceptions were approved by UDC legal services.

Additionally, there would be retraining of staff on the handling of exceptions. As a result, Mr Perry stated that Dr Johnson agreed to withdraw her appeal to the Tribunal, it thus being dismissed by consent. That is, as a result of the proposals being accepted as an agreed remedy by both parties in order to prevent a repeat of these occurrences. The Task Group has been informed that this Training Programme has commenced.

### **Conclusions**

1. The Task Group concludes that on all substantive outcomes, there was no wrong doing by the Council or its Officers.

2. The Task Group strongly believes that closer communication with residents about process, could have led to an improved relationship with the Residents, but is uncertain if anything would have changed the outcomes

3 Residents' criticisms of the alleged unprofessional practices of UDC Staff on site in the early stages of the development if founded, were regrettable. However, the decision of the Council to prosecute enforcement, illustrated their determination to deal with any wrong doing.

4 There could have been closer relationships between the Council and the Environment Agency. However, the Task Group accepts the premise that whilst the Environment Agency was proceeding to prosecution, there was no role for UDC Officers. There is also a robust email trail of evidence showing that the Council did a great deal to contact and work with the Environment Agency. The decision by the Environment Agency not to prosecute appears to have only been communicated to UDC after a chasing email from Sonia Williams

5 The Council should not have accepted the Ombudsman's findings for reasons of expediency.

6 However, the Council has apologised to the Residents and has paid them the sums of money suggested by the Ombudsman to compensate.

7 We note that the Reports' commissioned are satisfied with the lack of hazardous toxicity and that sampling has been representative. However, the Task Group recommend a water sample test be carried out on residents' land.

8 The Task Group acknowledges alleged issues of redaction, but is satisfied, as it seems is Dr Johnson, that subsequent procedures have now been put in place to avoid such a reoccurrence.

As a result, the Task Group recommends to the Scrutiny Committee that no further action be taken by Scrutiny in this matter and it should be closed as far as the Council is concerned.

Cllr David Morson.

Cllr Graham Barker

Cllr Paul Davies.

11<sup>th</sup> November 2014