

**SCRUTINY COMMITTEE held at COUNCIL CHAMBER - UTTLESFORD
DISTRICT COUNCIL, COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, CB11 4ER, on MONDAY, 25 SEPTEMBER 2017 at 7.30 pm**

Present: Councillor A Dean (Chairman)
Councillors H Asker, R Chambers, P Davies, M Felton,
G LeCount, M Lemon, B Light and L Wells (In place of S Harris)

Also present: Councillors R Freeman, A Gerard, S Howell (Executive member
for Finance and Administration), P Lees and H Rolfe (Leader of
the Council)

Officers in attendance: R Auty (Assistant Director - Corporate Services), S Pugh (Head
of Legal Services), P Snow (Democratic and Electoral Services
Manager) and A Webb (Director - Finance and Corporate
Services).

SC8 PUBLIC SPEAKING

Mrs S Tilstone and Mr R Tongue made separate public statements as residents of De Vigier Avenue about the Cabinet's decision to dispose of land originally set aside for use as public open space. Mr Tongue is chairman of the De Vigier Avenue residents' association. Their statements are set out in full in the appendix to these minutes.

Councillors asked a number of questions in clarification of points raised by Mrs Tilstone.

Mrs Tilstone said that the Walden Local had claimed there was no rat problem but this was not true. However, the problem had improved since her neighbours had moved because there was now less bird feed left on the ground. She confirmed that she did not want the wood to be cut down but wished it to be managed so that pigeons and rats could be controlled.

SC9 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies were received from Councillor S Harris.

**SC10 COVERING REPORT TO CALL IN OF LAND AT DE VIGIER AVENUE,
SAFFRON WALDEN**

The Chairman explained that the meeting was being held to consider the call-in request made by Councillors Asker, LeCount and Light of the Cabinet's decision to dispose of land at De Vigier Avenue, Saffron Walden.

He referred members to a flow chart tabled at the meeting explaining the options open to the Committee in considering the call-in request.

The Chairman invited Councillor R Freeman to make a statement as one of the two ward members for De Vigier Avenue.

Councillor Freeman asked members to reflect on the reasons for holding this meeting. Call-in was part of the democratic process of enabling checks and balances.

There were two factors he asked members to consider. First, there was the ecology of the site. The triangle of land forming part of phase 6 of the adjacent Ridgeons development site was home to many species of bat as detailed in the commissioned ecology report. There were also many species of reptile not identified in the report. The findings of the ecological reports justified taking a more careful look at the future uses of the land before anything was agreed.

The second factor was the question of morality. Councillors had a robust moral compass but this had now been skewed. The land was given over to the care of the Council 29 years ago but the Council had done nothing with it. The land was valuable as a building site able to accommodate between 10-14 houses and might be worth at least £1m. However, this sum would not be used for the benefit of the residents of De Vigier Avenue.

The problem with rats would vanish when the development took place. However, because something could be done there was no reason why it must be done. For these reasons the Council did not have a strong moral compass.

Councillor Dean referred to the original S106 covenant. He asked whether any part of the covenant inhibited the Council's actions now.

The Head of Legal Services said the Council was a beneficiary of promises made when the land was transferred. When transferred, the land had statutory protection under the Open Spaces Act 1906. However, the statutory procedure followed by the Council of advertising the intention to dispose of the land, and its consideration of objections, meant that the statutory protection would be overridden.

Councillor Chambers asked the Chairman to allow the Cabinet member to speak first. The Chairman agreed to this request.

Councillor Howell then spoke as the Cabinet member responsible for the disposal of the land at De Vigier Avenue. He said that he had proposed to Cabinet disposal of this land and this had been agreed. He had been a member of Saffron Walden Town Council for eight years and had had contacts with local residents about the land concerned.

The intention had been that the land would be transferred to the Town Council for use as allotments. A major difficulty was that access to the site could only be gained between numbers 16 and 18 De Vigier Avenue. It was also clear the land developer had not left the land in a good level condition. The site had been used as a spoil heap and the Town Council had refused to accept the proposed transfer of responsibility.

At this distance in time it was not possible to say why Uttlesford had not enforced the obligations on the developer to transfer the land in a suitable condition for open space use. Various attempts to make the land available for open space use were unsuccessful. Plans to turn it into an area for play equipment were abandoned.

There was never any intention that the land would be used as open space for the benefit of De Vigier Avenue residents. The land was intended to be an area of benefit for Saffron Walden in general, rather than specifically for the residents of De Vigier Avenue. The land had negligible value as a wildlife site but there was a potential value for the wider community.

Councillor Howell said he did recognise the duty to protect roosting sites for bats but there were no bats roosting on this site. The ground opened onto open countryside and had no particular value as either open space or as a wildlife site.

He confirmed the advice from the Head of Legal Services that the covenant in the planning agreement under which the land was transferred did not apply to the Council. The land had been transferred by the developer but it had not been put to its intended use. It was therefore entirely right to review the appropriate land use. He had listened to the objections raised. He would not respond to the comments made by Councillor Freeman about morality and did not question the value of checks and balances.

The Council had the right to dispose of the land and had taken an informed decision which would be of greater benefit to the wider community.

The Chairman asked whether the Cabinet had considered possible better uses for the land with public open space as the starting point.

Councillor Howell said that a recording of the Cabinet meeting had not made. His memory was that alternative land uses had been discussed at the meeting.

The intention now was for the Ridgeons site to accommodate 160 houses of which 40 would be affordable and there would be provision for a football pitch and additional open space land. There would be an assurance to preserve the tree line. The overall package would be to the greater advantage of all residents in Saffron Walden.

Councillor Asker said she would make no apology for the call-in as the decision made was fundamentally wrong. There had been no conversation with ward councillors at either district or town council level.

The S106 agreement had been made in 1984. It was a matter of integrity for the Council to ensure compliance with such agreements. Ward councillors were now different. The Council must be held responsible for upholding S106 agreements. The land had been fenced off with a gated entrance. This was the Council's fault and not the Town Council's or the residents. It was possible for the access to be improved by maintaining the driveway.

The Town Council had offered to take responsibility for maintaining the land as public open space for a nominal sum. She had established that 80% of houses in Uttlesford lacked open space requirements to acceptable standards.

In referring to wildlife on the site, Councillor Asker said that no badgers or greater crested newts were known to be present but there had been enjoyment of wildlife by the residents. No alternative solutions for the land had been discussed by the Cabinet.

Councillor Howell had said the land was a valuable asset to the Council but no monetary value had been mentioned. There was a shortage of green open spaces in Uttlesford and this must be considered.

Councillor Dean asked whether Councillor Asker was speaking on behalf of the town council. She replied that she was acting as a member of the Scrutiny Committee.

He then asked what the town council was seeking to achieve. The land had been available in the 1980s and had not been taken on. Was the original intention to use the site as open space or to leave in a wild state?

Councillor Freeman then said the culture of the town council had been not to take things on but this had changed. There was a groundworks team able to maintain open space areas. The land under discussion would be used predominantly for the benefit of the town.

Councillor Dean asked whether the open space would be maintained in the present location or elsewhere.

Councillor Freeman said that, together with Councillor Asker, he would ensure that developer obligations were met. He was less interested in trading this particular site for somewhere else.

Councillor Felton asked for information about when the Town Council had first expressed an interest in managing this land.

Councillor Asker conceded this was a recent interest as the matter had come to light following contacts from local residents and a petition sent to the Council. The building at Ridgeons had now been removed and replaced but the phase 6 land under discussion was still not included in development plans. For these reasons the town council had offered to take it on.

Councillor Rolfe was then invited to speak as Leader of the Council. He said he had been involved in discussions for a number of years and had visited Mr

Tongue. The options were to either create an open space area or for the land to be developed. The views of residents were mixed and some wanted to leave the land as it was. However, the land was impenetrable woodland so he was not sure that residents necessarily wanted an open space area.

The Council would always take section 106 agreements seriously. The provision of community facilities at Tudor Park had been taken up by the Chief Executive. He was also keen to address issues at Ashdon Road, and hoped to secure the provision of another zebra crossing, which he thought would be a significant benefit to local residents.

The open space land at the Ridgeons site faced open fields. He expected the outcome of this development to benefit Saffron Walden as well as the wider community.

Councillor Dean said that what Councillor Rolfe had said amounted to a partial commitment to invest some of the revenue from the sale of the land into community facilities.

The Leader said that he had a personal desire to see this happen. He could offer no guarantees and it would depend upon the outcome of negotiations with the land owner.

Councillor Chambers said that he well understood the passion to achieve the best outcome for Saffron Walden which he shared. He had a personal passion to look after the countryside and the district generally as it was a beautiful and unspoilt place in which to live.

The particular land in question had been used a spoil heap filled with clay and rubbish from the land developed at De Vigier Avenue. It was true that nothing had been done to manage the land as intended. However, there were bats and greater crested newts in all parts of the district and they would survive whatever happened to the land at De Vigier Avenue. For example, motorway verges were often rich in wildlife.

The Council was acting legally and correctly. If no provision had been made for open space on the Ridgeons land it would be different but suitable provision was being made. He supported what Councillor Howell was putting forward and this would result in money being diverted for the benefit of the district.

Councillor Chambers then proposed to do nothing further and to take no further action in respect of the call-in. The motion was seconded by Councillor Felton.

Councillor Light then asked to raise a number of points mentioned in the debate. She said that the MKA Ecology report had stated there was significant scope for biodiversity enhancements but this had been ignored. A new zebra crossing would be no substitute for the loss of the open space land.

It was wilfully negligent not to take enforcement action. She considered this could be done with no limit of time. She therefore disputed that the decision taken had been reasonable. On the contrary, it was unreasonable as it failed to

meet the principles laid down. There was no mandate to take such a decision. The expedient course of action was to ensure that no further green spaces were lost.

The covenant had not been met. This was an indication of bad faith as the decision affected the residents and the value of their properties.

Councillor Light proposed that the decision to dispose of the land should be sent back to the Cabinet with a recommendation the land should be improved as a wildlife site.

Councillor Dean asked the Head of Legal Services whether the further motion proposed could be put to the vote. He advised that there was no reason why an alternative proposition could not be considered.

Councillor Dean then said that, in his view, there was a political dimension to the decision which should be considered separately. However, it was important for the Committee to establish whether the right procedures had been followed.

The Head of Legal Services advised members there was nothing to suggest the decision taken was unlawful and he was satisfied the right procedures had been followed.

Councillor Dean then asked members to agree that the proper procedures had been taken. He then put this proposal to the meeting and it was agreed by seven votes in favour to one against.

When the debate resumed, Councillor Asker said the decision was not about building houses. Rather it was about the wildlife value of the site which had laid undisturbed for a long time. She had abstained on the vote about procedure. She did not agree the correct procedure had been followed as there were other solutions.

Councillor Dean said it was possible to argue with the substance of the decision but it had now been confirmed as procedurally correct.

Councillor LeCount asked about the size of the land and whether the moneys achieved would represent best value for the local residents.

Councillor Rolfe said the land measured 0.52 of a hectare. Any discussions about the value of the land were in commercial confidence. The decision to sell the land was not political but was part of the Council's responsibility for good administration and for making the best use of assets.

Councillor Davies asked about restrictions on development and referred to the minutes of town council meetings. The land could either be offered for disposal or managed as public open space land within the overall site. It had been fenced off for 30 years and there were difficult access problems. He felt the land should be used for the best overall benefit of the whole district.

In speaking again, Councillor Light expressed agreement that the land should be used for the benefit of residents and the town. There was a social, not just an economic, value and the quality of life should be considered. She urged that residents should be asked to give feedback about their preferred outcome.

Councillor Light then proposed that the land should be left in its present state but then improved for use as public open space. She was used to a great deal of open space as a former resident in London and this was a good model to be followed.

Councillor Dean said, if it was members' wish to do so, he was willing to add advice to the Cabinet from this committee that the Council should seek to maximise the benefit to local residents as well as to the wider community by investing capital receipts in social housing and in protecting the green barrier between the new development and De Vigier Avenue.

Councillor Chambers pointed out that no decision had yet been made about the future use of the site. Releasing the land would benefit the residents of Uttlesford as social housing would be provided in due course and there would be improvements throughout the district. Uttlesford could not be compared to London. The decision to dispose of the land for housing use was the right decision for the district.

Councillor Rolfe clarified that there was as yet no master plan for the whole site. The sale of the land at De Vigier Avenue would free up more space for the whole development. This ultimately benefitted the district. A sum in the region of £1.3m would have a number of benefits including for education, sport and broadband speed.

Councillor Dean then put the original motion to the vote which was agreed by majority. The effect of the vote was to take no further action on the call-in of the Cabinet's decision to approve the disposal of the land for planning purposes which would now come into effect.

The Committee also voted to approve submitting advice to the Cabinet about the need to achieve maximum benefits from the sale of the land by investing capital receipts and to ensure a barrier was maintained between the new development and De Vigier Avenue.

RESOLVED that no further action be taken in respect of the Cabinet's decision to approve the disposal of land at De Vigier Avenue, Saffron Walden for planning purposes.

PUBLIC STATEMENTS

Appendix to the Scrutiny Committee Minutes of 25 September 2017

Statement made by Mrs S Tilstone

I moved to 24 de vigier ave in may 2014 and within two months saw rats run along my fence and garden.

A group of people had congregated on the green opposite to sign a petition of which neither myself or my neighbour at no 26 had been invited, we were the people most affected by the wood as we actually lived directly in front of it

Contrary to the papers claim that there was no rat problem, i contacted the environmental health as the rats were hanging off the trees, on the fences and going across gardens getting under sheds and decking. i sent e mails and photographs to the council

As a new resident I contacted cllr esker who as a new mayor was on holiday, she said she would come and see me but did not and i was forced to contact cllr rolfe

I have kept a taped recording from cllr rolfe saying they were dealing with the problem and that a neighbour had been shooting the rats, in fact shooting thirty of them. my neighbour said they were bagging them up and disposing of them in the dustbin

The council sent out the pest control people who baited the area with traps placed where they were allowed and without bait.

The council also ordered people to clear waste dumped and stop putting out feed and they cut back the overhanging trees etc

I was so distraught at it all i put my house up for sale after only one year but removed it when my immediate neighbours moved away

The problem was greatly improved with my new neighbour and when faced with rats in her garden last year we asked to join this residents association, to be told that it did not really exist other than a couple of people those that had signed the petition originally had in fact only been asked for that purpose and had had no other contact

The situation has definitely improved this year as there have been no sightings of the rats but i would like assurance that if this wood is left alone it will continue to be cut right back and baited from our property

It must not be left dormant for another thirty years to get even more overgrown and unmanageable and the maintaining must be carried out by people who are authorised not by residents

The rat problem will grow as they will not only go into our estate but into the new one at ridgeons

If it is to be built on then the builder should make it a more pleasant open

space for all to enjoy

I am not against the survival of the woodland but against the claims that there were no problems

Statement by Mr R Tongue

The decision you will be looking at tonight should have been decided on whether the land "is no longer required for the purpose for which it is held"; i.e. as Public Open Space. This does not mean the same thing as deciding whether the land is redundant as public open space. It is, in simple terms, a decision whether the broad public interest is in keeping the land as Public Open Space or in appropriating it for planning purposes as a prelude to its disposal. Part of Mr Howells own brief to the Cabinet.

The residents feel that the public interest is to keep as open space, it was sectioned 106 exactly for that purpose, that UDC's decision is not based on local public interest but on monetary gain, that Mr Howell's arguments for disposal are flawed and biased to obtain this monetary gain regardless of anything else. That UDC had every intention right from the start in 2014 to dispose of this regardless of residents views.

We have read the only now provide to us Surveys, although dated June 2017 and under took on one day in April as stated. Surveying on one day of the year is not an acceptable method by any means.

Its stated in them:

Outline planning permission has been granted for the phased re-development of the site to provide residential and commercial properties. The development of the wider site is underway with the construction of a new Ridgeons store complete and clearance work beginning in other areas. This report refers to Phases 1c, 1d, 3, 5 and 6 which concern residential development.

Phase 6 on the Outline Planning granted is at the very back of Ridgeons on the other side of the site to the Open space in question, The Public Open Space was not part of any outline planing granted, Where is the Outline Planning permission granted if this company are referring to the Public Open space as being phase 6. It is clear to us that this Company has under taken surveys of the Public Open Space having been told this was part of the Out line planning given, miss informed either by UDC or Ridgeons as they do not say whom.

It is also noted that no survey has been carried out for what is under the top soil of this land with regard to hazardous substances which was a concern of the residents from the very start in 2014. something we were informed had been done and nothing found by Cllr Rolfe, IF this has been done where are the results of this.

We consider this Cabinet has failed in its obligations to enable a true decision to be

made on this

Public Open Space and ask you tonight to refer it back to them.