



AGENDA ITEM:

SUMMARY

Report for:	Finance and Resources Overview and Scrutiny Committee
Date of meeting:	8th November 2016
Part:	1

Title of report:	Berkhamsted Multi-Storey Car Park Petition Review
Contact:	Elliott Brooks, Assistant Director (Housing) Author/Reviewing Officer
Purpose of report:	For Overview and Scrutiny Committee to consider the recommendation of the Reviewing Officer following a review of the outcome of the Berkhamsted Multi-Storey Car Park petition
Recommendations	That Overview and Scrutiny Committee agree the following conclusions and recommendations of the Reviewing Officer: 1) That the process followed by full Council in considering the Berkhamsted Multi-Storey Car Park was procedurally correct and carried out in accordance with the Petition Scheme. 2) That no additional steps be required to respond to the Petition.
Corporate Objectives:	The Petition Scheme recognises the importance of giving residents an opportunity to communicate their concerns about issues in their local area and as such it supports all of the Council's corporate objectives.
Consultees:	Mark Brookes, Solicitor to the Council and Monitoring Officer Jim Doyle, Group Manager (Democratic Services) and Administrator for the Petition Scheme
Background papers:	Petition Scheme (Annex 1) Minutes of Council meeting dated 13 th July 2016 (Annex 2)
Glossary of acronyms and any other abbreviations used in this report:	MSCP – Multi-Storey Car Park “DCC” Development Control Committee “The Scheme” The Council's Petition Scheme “The Council” Dacorum Borough Council

Background

1. Dacorum Borough Council (“the Council”) adopted a Petition Scheme (“the Scheme”) on 14th July 2010 made under Section 11 (1) of the Local Democracy, Economic Development and Construction Act 2009. A copy of the Scheme is attached at Annex 1 to this report.

2. A petition was submitted to the Council under the terms of the Scheme which contained over 1,000 signatures (1415 signatures in total as at 5th July 2016). The petition was entitled “stop high rise car park in historic Berkhamsted conservation area”
3. The Scheme is clear that if a petition has, or acquires 1,000 valid signatures, the issue will be debated at a meeting of the full Council.
4. The petition was referred to the full Council meeting of 13th July. As noted in the minutes of the meeting (copy annexed), three Berkhamsted residents spoke in favour of the petition, and five councillors made statements on the petition in response.
5. Full Council resolved that “the Council continue to proceed with the proposed development and refer the matter to a future meeting of the Development Control Committee”. The planning application was referred to the Development Control Committee on 29th September 2016 and the committee resolved to approve the planning application subject to referring the application to the Secretary of State and to the prior completion of a S.106 planning obligation.
6. The Scheme provides that if a Petition Organiser is not satisfied with the Council’s formal response to the petition, he or she may request a review by a senior Council Officer. This senior officer will be given wide scope to reconsider whether the Council should, in all the circumstances take additional steps to respond to the petition. This will normally include reference to the Overview and Scrutiny Committee which will itself consider the adequacy of the initial response.
7. A request for review was received by the Petition Organiser on 27th July 2016. The reasons put forward by the Petition Organiser for requesting the review were as follows:
 - (a) As the petition had more than 1000 signatures the Council was under an **obligation** to discuss this matter at a meeting of Full Council, under the terms of its own petition scheme and therefore the Council did not do anything more anything other than the Council complying with its own rules – it wasn’t something additional the Council chose to do in a spirit of engagement with the petitioners.
 - (b) Although representatives of the petitioners were at the Council meeting, we were not allowed to participate in discussion or debate with the members. I fail to see, therefore, how that could be construed as a ‘meeting with’. Meetings usually entail dialogue.
 - (c) Referral to the DCC is also not a decision or choice the Full Council made as the planning application must go through that process anyway.
 - (d) Referring to DCC also does not deal with the matters raised in our petition which are about the wider issues of use of Council funds, consideration of alternative approaches and consultation with the community on the issue of concept rather than detail.

- (e) I would contend that the Councillors who spoke in response to our presentations, did not engage with the specific issues we raised; for example: why there has been no consideration of alternative solutions to perceived parking issues, why the Council can ignore its own planning and parking/transport related policies, the allocation of £3.5m to this proposed project, why the undertaking to consult with the community about the concept rather than the detail of the proposed MSCP was never fulfilled.
8. Elliott Brooks, Assistant Director (Housing) was appointed to carry out the review of the outcome of the Petition on 27th September 2016.
 9. It is noted that the Scheme provides for a 28 day period for the review to be completed from the date the request for review was received. This period has passed and an explanation of why this has happened has been provided by the Scheme Administrator. The reasons for delay have been accepted by the Reviewing Officer as they do not prejudice or influence the outcome of this review but such delays should be avoided in the future.
 10. During a meeting which took place between the petition organiser and the Reviewing Officer on Thursday 20th October it was confirmed that points 7 a – e were the basis of the organiser submitting a review. In addition, specific discussions took place regarding the designated roles within the Scheme being communicated and receiving a formal statutory response.
 11. Following review of communication between the Council and the petition organiser the Reviewing Officer found that whilst it may not have been formally confirmed, Jim Doyle, Group Manager (Democratic Services) was acting as the Scheme Administrator, as stated in Section A paragraph 5 of the Scheme and Responding Officer (Annex 1). Jim Doyle was in regular contact with the petition organiser following the submission.
 12. Regarding the statutory response following the full Council meeting 13th July, an email was sent by Jim Doyle by way of a statutory response directly to the petition organiser on July 19th and then following a request for clarification a further email was sent July 21st. The Reviewing Officer is content that these two pieces of communication act as the statutory response. The Scheme states that the statutory response shall be sent by the Chief Officer. The Reviewing Officer is content that in this instance it was appropriate for the response to be sent by Jim Doyle as the line of communication had been established.
 13. It is acknowledge that the Council should have explained better the individual roles of Scheme Administrator, Responding Officer & Chief Officer soon after the submission of the Petition. This will be an area for consideration moving forward but ultimately the Reviewing Officer is confident that the petition organiser did receive the appropriate information from the appropriate Council Officer.

Petition Review

14. The Scheme (paragraph 4) sets out the guidance which the Council should follow when it receives petitions with over 1,000 signatures.
15. The key elements of this guidance are as follows:
 - If a petition has over 1,000 signatures, the issue will be debated at a meeting of the full Council

- The Petition Organiser, or someone nominated on his/her behalf will have a right to speak about the petition
- The Mayor will decide upon the amount of time to allow for the debate on the petition
- The Council accepts that it will not normally be sufficient for such a meeting merely to 'take note' of the petition, and that there should be a decision taken as to what other steps (including, but not restricted, to the actions specified in Paragraph D2) should also be taken as a response.

The steps referred to in paragraph D2 referred to above are:

- Taking the action requested in the petition
- Considering the petition at a Council meeting
- Holding an inquiry
- Commissioning relevant research
- Organising a public meeting
- Mounting a wider public consultation
- Meeting with the Petition Organiser or representatives of the signatories
- Providing a written response outlining the Council's views on the subject
- Referring the issue to one of the Council's Overview and Scrutiny Committees, or
- Referring the issue to one of the Council's relevant ordinary Committees
- Consulting statutory partners and local service providers
- Instituting discussions with the voluntary and community sectors
- Make representations to commercial or other interests

16. This review focusses on two key issues:

- Has the Council followed the terms of its own petition scheme?
- Was the decision taken by Council to continue with the MSCP scheme a reasoned and justifiable response to the issues raised by the Petition Organiser and fellow speakers and should any further steps be taken to respond to the petition?

It is important to note that it is not the purpose of this review to review the subjective judgements of councillors or to review the full process or decisions that have lead the Council to decide to progress with the MSCP scheme to date. The purpose of this review is to ensure that a fair process was followed in accordance with Scheme, that a reasoned response was given to the petition and that no further steps were appropriate.

Has the Council followed the terms of its own petition scheme?

17. The petition was referred to full Council on 13th July 2016 for debate as it was required to do so. This enabled the petitioners the opportunity to speak and be heard by full Council. Three of the petitioners took this opportunity and their statements are clearly set out in the minutes.

18. The councillors present at the meeting then debated the issues raised and resolved to continue with the proposed development and refer it to the Council's Development Control Committee. The Petitioner has made the point that the debate was inadequate as they were not given the opportunity to participate and debate with councillors once they had made their statements; however, there is nothing specific in the Scheme regarding members of the public having a further opportunity to make comment once statements have been made and therefore the Reviewing Officer cannot find any fault in the process that was followed.
19. The Scheme, at paragraph D2, sets out a range of options which the Council may take in response to a petition. Arguably the most significant step that the Council could take in response to a petition is to refer the matter to full Council for a debate as this step ensures that all Dacorum councillors hear the concerns of residents and have an opportunity to comment or reconsider the proposed actions of the Council. In this case as over 1,000 signatures were received the petition was automatically referred to full Council due to the level of public interest. However, if Council, having properly considered the petition, decides that no further actions as set out in paragraph D2 are appropriate, the Reviewing Officer does not believe that the Scheme requires further steps if this is the decision of Council.
20. It is of note that full Council did resolve to refer the matter to a future meeting of the Development Control Committee (DCC) and it is noted that the Petitioner comments that this was not a choice of full Council as the planning application would go through this process anyway. The Reviewing Officer agrees that the planning application would go to DCC as part of the planning process; however, the Petition called for the MSCP scheme to be stopped and therefore full Council did decide to continue with the MSCP scheme and refer it to DCC. Council could have decided to withdraw the MSCP application and therefore it would not have gone to DCC.
21. It was also appropriate for full Council to refer the planning application to DCC to consider because some of the issues raised by the Petitioners related to issues of need for the MSCP, highway issues, and lack of alternative options. Full Council would not have had sufficient information before them to have made a full judgement on these issues and it was right that DCC should consider them as this is the normal forum for deliberating such issues and where consultants reports and expert evidence would be available, presented and challenged. The principle of continuing with the development was however agreed by Council with the detailed planning issues to be determined by DCC.
22. It is important to note that the primary aim of the Scheme is to ensure that residents have an opportunity to communicate their needs and concerns about issues in their local area (see introductory paragraph to the Scheme). Having reviewed the petition process the Reviewing Officer is satisfied that the Council has complied with the terms of the Scheme.

Was the decision taken by Council to continue with the MSCP scheme a reasoned and justifiable response to the issues raised by the Petition Organiser and fellow speakers and should any further steps be taken to respond to the petition?

23. The Reviewing Officer has considered the minutes of the Council meeting on 13th July. The issues raised by the speakers fall into 4 broad areas; failure to consult on the principle of the development, lack of proven need for the development, failure to consider alternative options and highway issues.
24. Councillor Matthews (Councillor for Berkhamsted West Ward) commented that there have been meetings with residents, employers, council officers and Portfolio Holders on a regular basis to try and come up with a solution. He also commented that there is support for the scheme from many residents.
25. Councillor Marshall concluded in her comments that she believed there was a need for the development due to the current occupancy rates of the existing car park. Councillor Marshall also commented on the location when she commented that "having parking away from the town centre would be pointless" and that DCC should assess the plans.
26. Councillor Mahmood said he also believed there was a need for further parking based on his own personal experience, although he accepted that this was not a scientific approach.
27. Councillor Anderson supported the previous councillor's comments regarding need and supported the scheme.
28. Councillor Williams commented that the car park meets a proven need and he believed that there was a more balanced opinion from residents than just those presented by the petitioners. He commented that projected population increases are likely to increase the demand for further car parking in the future and that the budget for the car park is capital funded which cannot be moved to other projects. Councillor Williams also commented that the Council is working with Herts Highways to satisfy their requirements.
29. The comments and responses by councillors do, in the opinion of the Reviewing Officer, seek to address the issues raised by the speakers and do provide a reasoned justification for their decision to proceed with the scheme. It will always be difficult for councillors to cover off every issue raised by speakers when they were not aware precisely what the speakers were going to say; however, I do believe when one considers the minutes that consideration was given to the main points raised that an acceptable and reasoned response was given.
30. The matter was referred to Development Control Committee because this was required for the planning application to be approved but also because that was the appropriate forum for detailed planning issues to be considered. Council could have decided, for example, to refer the matter back for further public consultation, or referred the matter to a Scrutiny Committee for reconsideration; however, there was no motion moved by any councillor to do anything other than proceed with the scheme and this was a unanimous decision of all the councillors. The Reviewing Officer does not find that any further steps were or are required to respond to the petition.

Conclusion of Reviewing Officer

31. The Reviewing Officer was appointed to ensure that the Scheme was appropriately followed and that the Council came to a reasoned and justifiable decision to proceed.

32. In doing so the Reviewing Officer has given due consideration to the original purpose of the Scheme which is to give an opportunity to residents to communicate their needs and concerns about issues in their local area. The Petitioners were given an opportunity to present their petition to full Council. This is the most comprehensive Council forum that could have heard the petition and the petition was properly debated before a reasoned decision to proceed with the MSCP scheme was made. Accordingly, the Reviewing Officer can find no fault or procedural error with the process that was followed, and he does not find that any additional steps should be taken to respond to the petition.