

EXTRACT FROM THE DRAFT MINUTES CABINET 10 NOVEMBER 2011

Present: Councillors Randall (Chair), Bowden, Davey, Duncan, Jarrett, Kennedy, J Kitcat, Shanks, Wakefield and West

Also in attendance: Councillors G Theobald (Opposition Spokesperson) and Mitchell (Opposition Spokesperson)

Other Members present: Councillors Bennett, Fitch, Janio, MacCafferty, A Norman, K Norman, Robins and Wealls

PART ONE

110. PETITIONS

(ii) Blatchington Mill School Hockey Pitches

- 110ii.1 Councillor Fitch, in his capacity as a member of the public, presented a petition signed by 15 people requesting the Cabinet to reject the proposals and the granting of a lease for the creation of an all-weather surface and installation of fifteen metre floodlighting, on Blatchington Mill School Playing Fields. He advised that residents were very unhappy about the proposed evening use and the disturbance caused by turning the school into a business operating seven days a week. He questioned how the council could afford to loan money to the school and raised concerns about concreting over green spaces and the impact on pupils at the school.
- 110ii.2 Councillor Fitch left the meeting after presenting his petition and did not return.
- 110ii.3 Councillor Kitcat reported that more than twice as many letters had been received in support of the project than against it. He made the following comments:
- With only public service bodies and community groups involved, the facility would not be a private business.
 - The surface would in fact be made of sand-dressed artificial turf rather than concrete, and sufficient space would remain for a separate rugby pitch.
 - During consideration of the planning application by the Planning Committee, the Environmental Health Officer present stated that the light and noise issues would be within the national guidelines.
 - The project would involve absolutely no cost to the council; the governors of the school had made the decision to borrow their contribution to the funding and because of the technicalities, the council would borrow the money on the school's behalf, however the school was fully responsibility for paying back the loan from their own funds.

He stated that it was a positive project that would result in increased use of the school's facilities, which would improve security for the school and surrounding

properties. The financial case was considered to be robust and any shortfalls would be borne primarily by the hockey club. He added that the cross-party decision of the Planning Committee and the wishes of both the school and hockey club should be respected.

110ii.4 **RESOLVED** – That the petition be noted.

111. PUBLIC QUESTIONS

111.1 The Chairman reported that two public questions had been received.

111.2 Ms Melanie Roberts asked the following question:

“As you are considering a lease agreement are you aware of the restrictive covenants for this site and the Lawyers letter to the council regarding this development?”

One covenant states the site should not be used in any way that will cause disturbance to the owners of neighbouring properties. At the planning meeting it was agreed by the council’s environmental health officer that this development would cause disturbance to neighbours.

Another covenant says this area should not be used as a sports ground. This will be the designated home for Brighton Hockey Club and therefore, by definition, breaches this restriction.”

111.3 Councillor Kitcat gave the following response:

“Thank you for your question. Yes, the council is aware of the restrictive covenants and I can confirm that we have received the letter from the law firm Bennett Griffin, who are representing some of the residents in the area, and that our lawyers are dealing with it.

There are restrictive covenants referring to nuisance, disturbance and use of the land as a sports ground. However, based on the legal advice that we have received so far, the site in question is already in use as a school sports playing field, and when one looks at the restrictions on nuisance and disturbance, that has to be considered as something over and above normal and reasonable use. The council does not believe that the use of the land by the school and the hockey club would constitute unreasonable nuisance or disturbance. Based on that advice, the council’s view is that the restrictive covenants, which are those originally imposed in favour of the Marquis of Abergavenny are no longer enforceable; I also believe that the Marquis doesn’t have any living descendents. As an additional precaution, we are seeking Counsel’s opinion and the recommendation will be amended to say that the decision we’re taking today will be subject to Counsel’s final opinion, which we are hoping to get next week.

With regard to your statement about Environmental Health, I asked officers to check the webcast of the Planning Committee meeting and the Environmental Health Officer said that, going through the technical recommendation from the Institute of Lighting Engineers and other associated institutes, the figures in relation to lighting and noise would fall within the recommended allowable amounts for such a development, based

on national guidelines. Therefore, we are satisfied that we are doing this responsibly and within the legal requirements, but to make absolutely sure we are seeking Counsel's opinion on the covenants."

111.4 Ms Roberts asked the following supplementary question:

"Are the council aware that it appears the planning department were deceived by the applicant regarding the lighting? I have documents that were supplied by Phillips lighting and the applicants own consultants that show that the lighting exceeds what was presented to planning by 20%. The applicant had received this information before the planning meeting and withheld it. Is the Cabinet aware that if the lease and loan is granted today the development will never meet planning regulations as set down at the planning meeting jeopardising the schools financial position?"

111.5 Councillor Kitcat gave the following response:

"I can't comment on the detail of what happened at the Planning Committee and we're not here to discuss planning regulations, but whatever was approved at the Planning Committee is the development they'll have to bring forward. I couldn't comment on any such allegations; it will have to be dealt with through normal Development Control procedures and is not something we can explore here. You can take it up with Development Control if you feel there is cause for concern."

111.6 Ms Sarah Wilks asked the following question:

"Are you aware that the parents of registered pupils of the school haven't been consulted by the governors? This is a legal requirement.

I was present at the FAB meeting when the deputy head stated he would organise a meeting with parents and local residents but has not done so. He also stated to all members of FAB that the school were not happy about the lease and would not proceed with a lease agreement with the Hockey club.

Please note that I am the author of the letter in the Argus referred to in 3.8 of this agenda."

111.7 Councillor Shanks gave the following response:

"There is a legal requirement for the school to consult in the Education Inspections Act 2002. The Department for Education (DfE) received a letter from a parent suggesting that the school hadn't carried out this consultation and the DfE then wrote to the school asking for their comments on this allegation and the Chair of Governors prepared a response, which we have seen, outlining the consultation that they did.

It was the responsibility of the school to consult, not the council, but we're happy that the school did consult. The parents make up the largest group on the Governing Body in any case. Parents were sent information via a newsletter asking them for their responses and there was also consultation with students. There were two public consultations at the school where people could go along and look at the plans. The sports partnership that has been set up with the school and neighbouring sports

facilities was fully involved in this and they organised it and consulted on it. Then it went to Planning Committee where it was given a really good going over in terms of discussion about the impact.

We are happy that the school did what it should have done in this case.”

111.8 Ms Wilks asked the following supplementary question:

“It appears that the council are viewing this development more in terms of ‘provision of all-weather pitches for the city’ The focus should be on the risk of my children’s school borrowing £350,000.

Parents have not been consulted. Many feel that if substantial money is to be borrowed, they may have suggestions of their own on how to spend this money. They may conclude that 1 unfloodlit pitch would cost far less, be used by the students, and is better use of funds for the school and council.

Therefore my question is should the council be loaning the school £350,000 to be paid back with interest with no guarantee of revenue, to effectively subsidise the activities of outside organisations?”

111.9 Councillor Shanks gave the following response:

“The reason that the school has gone into partnership with the hockey club is because they can raise more money to build the pitches. There has been a history in this area for a long time of looking for all-weather surfaces for children, young people and older sports people. They will be used not just as a hockey club in the evenings, but there will be community use for different projects.

It will be an asset to the school as well; young people will be able to use it when the weather is not so good. In terms of the borrowing, the school’s Governing Body have looked at whether they can afford to do this and have decided that they can, and they are able to take that decision.”

112. DEPUTATIONS

112.1 The Chairman reported that one deputation had been received.

112.2 The Cabinet considered a deputation presented by Mr Dave Smart concerning the granting a loan facility to Blatchington Mill School for the development of artificial hockey pitches and a 20 year lease to Brighton & Hove Hockey Club. Mr Smart stated that a finance package should have been developed to enable the school develop its own facilities because the proposed scheme focused on the requirements of the hockey club and was geared towards hockey rather than a range of school uses. He highlighted the restrictive covenants on the land and loss of green space and stated that serious concerns from residents had been ignored, causing them to seek legal advice. He called upon the council to prevent the development from going ahead for the reasons given and in order to avoid a legal challenge from residents.

112.3 Councillor Kitcat advised that the Governing Body were the driving force behind the project and, although the council had some responsibility, it was not a council project and the governors had made the decision to proceed. He made the following comments:

- The Planning Committee had considered the details of the development, including the impact of green space, and had approved the scheme.
- Public funds were not being used; the school had chosen to borrow money, but it would not come from the council's revenue budget.
- The school had advised that it was difficult to deliver the sports curriculum without access to all-weather pitches. The pitches could be used for a number of sports, including football, and there would be space for a separate rugby pitch.
- The facilities would not be used as a commercial enterprise as the hockey club was a community group, and time would be set aside for school use outside of the normal school day.
- The area was not being concreted and the surface used would enable the facility to be used all year round and would include drainage provision.

He stated that as the land was already used as a sports ground, the enforceability of the covenants was questionable; however, Counsel's opinion had been sought in order to confirm the council's position.

112.4 Councillor Bowden reported that many organisations across the city had expressed an interest in using the proposed facilities, particularly as the city had a very limited amount of all-weather surfaces. The school would have considerable access to the pitches after school and many sports could be played on them all year round, including netball, cricket, tennis, touch rugby and football. He stated that the project was a welcome addition to the city's campaign to encourage sport.

112.5 **RESOLVED** – That the deputation be noted.

122 BLATCHINGTON MILL SCHOOL HOCKEY PITCHES

122.1 The Cabinet considered a report of the Strategic Director, Resources seeking permission for a land transaction to enable the funding for and construction of two all weather hockey pitches within the grounds of Blatchington Mill School for use by the school and leased to Brighton & Hove Hockey Club.

122.2 Councillor J Kitcat advised that the recommendations would be amended to make the decision subject to the opinion of Counsel, which had been sought in order to clarify the situation with regard to the restrictive covenants on the land. He advised that residents concerns had been considered and reported that twice as many letters of support for the project had been received from residents than those against it.

122.3 Councillor Mitchell raised concerns about the risk to the school of taking out a loan to fund their contribution to the project and that community use of the finished facilities would be squeezed in favour of commercial use in order to pay back the loan. She noted the legal issues raised during Public Questions and asked whether the Cabinet had seen the school's Business Plan and could therefore confirm that there was no risk to the school; the council had a responsibility to ensure the school could afford the

loan. She stated that the Business Plan should have been attached to the report, as a Part Two document, and that she considered the decision to be a matter for call-in.

- 122.4 Councillor J Kitcat confirmed that the council's finance officers had checked the Business Plan and that the Cabinet relied on their advice; release of the Business Plan was a matter for the school and the hockey club. He advised that the council's view was that the decision was legally sound, but was obtaining further legal advice in order to be certain.
- 122.5 The Chair advised that the Cabinet had not seen the Business Plan, but that they satisfied with the school's decision and the advice from council officers; he did not deem it to be a matter for call-in as all aspects had been carefully considered. He advised that Sport England were investing in the project and considered it to be robust.
- 122.6 Councillor Bennett raised concerns that the school would concentrate on commercial use at the expense of community groups, and also about the financial risk to the school, particularly if the build costs were to exceed the budget or struggled to repay the loan. By offering the hockey club a 20 year lease, she felt that the school would be precluded from considering better development opportunities for some time and urged the Cabinet to reject landlord's consent.
- 122.7 Councillor Janio acknowledged that the Business Plan had not been a material planning consideration, but stated that he considered it to be relevant to the decision before the Cabinet because the council would be financially responsible if the school could not pay back the loan. He requested to see the Business Plan and asked whether the Chief Finance Officer (CFO) could confirm whether it had changed following the restrictions placed on the development by the Planning Committee, and therefore whether it was still robust. He was concerned that the proposed development was not the best use of the site and that residents had been ignored throughout the process.
- 122.8 The Director of Finance (CFO) advised that she would provide a written response with regard to any changes to the Business Plan. She explained that schools were unable to borrow money themselves and therefore approached the council when seeking to undertake capital investment, with the council ensuring that the school could afford any loans. The council was not reliant on the school physically repaying the loan as it was able to top-slice the grant pass-ported to the school; consequently the council was confident of getting the money back. The management of school finance was legally the responsibility of school governors, and the approach taken on the development in question was not unusual.
- 122.9 The Chair noted that the project would be a resource for the city and welcomed the investment it would bring. He gave assurances that community groups would have dedicated time set aside to use the facilities.
- 122.10 Councillor Jarrett advised that the respective roles of governing bodies and local authorities were set out by the Government and that the council should not interfere in decisions made by governors.

122.11 Councillor G Theobald urged the Cabinet to take the views of ward councillors and their residents into account and warned that parents and children would lose out if the school was unable to repay the loan.

122.12 **RESOLVED** - That, having considered the information and the reasons set out in the report, the following recommendations be accepted:

- (1) That Cabinet authorises the council to grant a lease to the Hockey Club for 20 years at a peppercorn rent, when the Conditional Funding Agreement conditions detailed at paragraphs 3.3 and 3.4 are met, **subject to Counsel's opinion**.
- (2) That Cabinet agrees that the Council loans Blatchington Mill School £350,000, funded through unsupported borrowing on the repayment terms set out in paragraph 5.1.

Note: This Item was considered immediately after Item 112.

The meeting concluded at 6.30pm

Signed

Chair

Dated this

day of

