

Two Questions to the Leader of Council and Board Members

5. Question from Nigel Gibson

Policy CS21 in Oxford City Council's Core Strategy states quite clearly that "Planning permission will only be granted for development resulting in the loss of existing sports and leisure facilities if alternative facilities can be provided and if no deficiency is created in the area. Alternative facilities should be provided in a location equally or more accessible by walking, cycling and public transport..."

Oxford City Council still owns the Temple Cowley Pools site – ownership will not transfer to Catalyst Housing until you grant Catalyst Housing planning permission for housing that is twice your permitted housing density, and they pay you £3.6m. Up to that point, you have an obligation through your policy CS21, to keep the building standing so that if a planning application fails there remains the possibility of the community actually getting what it wants, health and fitness facilities where we want and need to use them.

Will you recognise your core strategy policy obligations under CS21 and tell Catalyst to defer demolition until after a successful planning application for their proposed new development?"

Response from Councillor Ed Turner to addresses 1a, 1b, 1c and question 5

An application for approval of the process for the demolition of the structure located at the old Temple Cowley pool site was made to the Council (as Local Planning Authority) by Catalyst Housing. In making this application, Catalyst relied on permitted development rights granted by the Secretary of State. The only matters which an LPA can properly consider in regard to such an application relate to the method of the demolition proposed and site restoration. The Council's policy CS21 has no bearing on Catalyst Housing's application for approval of the process of demolition of the old Temple Cowley pool building on Catalyst's development site. This was not a substantive planning application for their proposed housing development, and the consideration of factors such as the availability of alternative sports and leisure facilities would fall entirely outside the Council's proper considerations – which are constrained to matters concerning the demolition process and site restoration. If, therefore, the Council had refused to approve the demolition application on grounds that relied on policy CS21, the Council would be acting improperly, and the decision would be open to challenge. Policy CS21 applies to the consideration of whether or not to grant planning permission. It does not provide the Council with any general power to prevent the demolition of buildings.

After considering Catalyst's application, the Council has now approved the demolition process proposed.

As from 24th December 2014. Catalyst was granted a 999 year lease to the old Temple Cowley pool site. Since that date Catalyst has been the sole occupier of the site and has sole control over the site. The Council is not in a position to grant or withhold access to the site, as it holds only the residual freehold interest, which it will transfer to Catalyst on the granting of substantive planning permission. By way of the December 2014 agreement, a "Long Stop Date" of 31st December 2017 was agreed with Catalyst, for obtaining substantive planning consent for the site. It is expected that Catalyst will submit a substantive planning application in the first few months of 2016.

In April 2014 the old Temple Cowley pool building was registered as an asset of community value, and as a result of holding such status, the sale of the site was delayed to allow time for any interested community group to submit a bid to acquire the site. In this case a bid was submitted by a community group, but it fell far short of the bids received from other bidders, in regard to capital receipt, design and housing unit numbers, and the Council (as land owner) took the decision, after a competitive selection process, to enter into an agreement with Catalyst, whose offer best met all of the Council's requirements. For the avoidance of doubt, the old pool building holds no additional protection from demolition due to its having been granted asset of community value status in 2014.

It is very pleasing to note that the Council's new, competition standard swimming facility at the Leys Pool and Leisure Centre has had a very successful first year. Not only has usage exceeded target, but user numbers have significantly exceeded the combined previous usage of the Temple Cowley pool and the Blackbird Leys pool. Some 90% of Temple Cowley pool members requested transfer to the new facility. In addition, the Council has been very active in creating leisure and fitness opportunities in and around the area of the old Temple Cowley pool site. There has been significant investment in the gym at the Oxford Spires Academy, and the East Oxford Community Centre, Cowley Marsh Park and other sites have been improved and made available for community use. Furthermore, Oxford University's Iffley Road facility offers community access to their sports facilities.

6. Question from Rosemary Harris

With reference to the East West Rail/Chiltern Railways noise mitigation, if residents accept a noise insulation package, residents have to waive their right to claim for future acoustic glazing for any additional window, including those Network Rail claims do not require acoustic glazing, even if the actual noise from operating trains is higher than predicted. This means that Network Rail will avoid providing the proper level of compensation required under Condition 19, should its noise predictions turn out to be too low. Will the Council ensure that Network Rail removes this requirement from its noise insulation package and provide extra acoustic glazing to all affected houses if the operational noise is higher than predicted for non-statutory insulation?

Response from Councillor Hollingsworth given at the meeting, and in writing below.

In summary; the planning permission includes provisions for noise levels to be predicted in an approved way, then for noise mitigation to be offered where appropriate. They include a requirement to check the performance of noise mitigation measures (including noise insulation) and correct them if found to be defective in construction or performance. Once these provisions are met the conditions of the permission are discharged and the Council could not, therefore, require Network Rail to offer further insulation packages to cover a change in the circumstances of buildings. And since it has approved the noise predictions, as contained within the relevant Noise Scheme of Assessment, it could not require further measures if these proved to be under-estimates. However, our officers see no reason for this situation to occur, given the robustness of those predictions and the adequacy of mitigation measures.

In full:

The eligibility for a noise insulation package for properties near the East West Rail Route arises from two places.

- The Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996 require the proposer to offer noise insulation in a prescribed form to the occupiers of buildings where predicted noise levels exceed relevant levels set out in regulations.*
- The Noise and Vibration Mitigation Policy ("The Policy"), approved at Public Inquiry and incorporated into the planning permission granted by the Secretary of State for Transport, contains the provisions for noise insulation offered by the proposer (now Network Rail). These apply to properties at predicted noise levels which are lower than those set by the Regulations. They also apply where peak noise levels (as opposed to overall day/night levels) are above agreed trigger levels – something not contained in the Regulations.*

Condition 19 of the planning permission covers operational noise. It requires the Policy to be applied, as approved. The intention of the Policy is that noise mitigation measures, including insulation will be installed prior to the track being brought into use. It also includes a commitment to monitor the effectiveness of noise mitigation measures, first at 6 months then at 18 months after commencement. In the words of the Policy:

"If any defects in construction or performance are found in the (first or second) survey, these will (also) be corrected in a timely manner by the contractor"

The prediction of future noise levels is a fundamental part of the Noise Scheme of Assessment (NSoA), one of which is required to be submitted for each Track Section. As a check on the validity, or robustness, of predictions each NSoA is to be accompanied by a report from an Independent Expert, approved by the Council as Planning Authority. Each SoA also must contain measure sto mitigate noise where it is predicted to exceed the trigger levels contained in The Policy.

Since the Council must determine each application, it has to consider whether the predictions and the mitigation measures are robust. If it agrees and approves them it must discharge that part of the condition. Once discharged the condition may not be revisited. There is, therefore, no mechanism by which the Council could require further noise insulation packages to be offered once the condition has been fully discharged.