

## **Wickham Surgery Extension**

### **Local Government Ombudsman finds Winchester City Council (WCC) at fault**

On November 19<sup>th</sup>, 2020, the Planning Committee of Winchester City Council heard an application for an extension to Wickham surgery (reference 20/01484/FUL). There had been much local opposition in submissions sent to the Council and posted on the Council's planning portal. There were so many, in fact, that they were described by the Chair of the Committee as an "... inordinate number of objections...". Concerns expressed were mostly on grounds of increased traffic, fears about adequacy of parking provision and the indication that the additional consulting room capacity would serve "up to 14,000 new patients" from new residential developments, most notably Welborne.<sup>1, 2</sup>

On November 16<sup>th</sup>, 2020, a Wickham resident sent an email to Hampshire County Council Highways Development Planning Department pointing out deficiencies in the "technical note" (traffic impact assessment) that the Highway Authority had asked the applicant to produce, and which had appeared on the WCC planning portal on October 19<sup>th</sup>, 2020. It would seem probable that the email from the resident was the first inkling the Highway Authority had that the technical note existed because Winchester Planning had not at that time informed them of it, despite having had at least a month to do so.

Having been alerted to the existence of the technical note, the Highway Authority rapidly reviewed it and sent a scathing assessment of it in a letter<sup>3</sup> to the Case Officer late in the afternoon of November 18<sup>th</sup>. The author of the letter, realising the urgency of the situation, telephoned the Case Officer on the same day to ensure he knew the conclusions that the Highway Authority had reached. The letter was posted on the planning portal the following day, November 19<sup>th</sup> – the day of the meeting itself. It is not known at what time the letter appeared on the portal but as the meeting started at 09.30, with a very full agenda, it is entirely possible, even probable, that members of the Committee were unaware of its existence.

The letter concluded: "The Highway Authority cannot confirm that the development is unlikely to result in any material highway/transportation implications due to insufficient information being provided in the technical note, and recommends – A holding objection".<sup>4</sup>

A member of the public speaking briefly to the Planning Committee at the meeting on November 19<sup>th</sup>, stated that the Highway Authority had not commented on the technical note. He did not know at the time that the Highway Authority had in fact responded. Neither the Case Officer nor anyone attending the meeting who may have known of the letter's existence corrected this statement. At no time was the Highway Authority's verdict drawn to the Committee's attention. The application was approved unanimously without any reference to, or consideration of, the Highway Authority's objection. Because the letter from the Highway Authority appeared on the planning portal on the day of the meeting, and because it was not referred to the Committee for consideration, the general public only became aware of it after the meeting had closed. In view of the considerable number of objections to the application, it is not surprising that when the content of the letter was revealed, local reaction to the fact that it had not been brought to the attention of the Committee was one of understandable dismay.

The Council was asked to investigate what appeared to be a failure of proper process in the conduct of the meeting and the circumstances that resulted in the non-consideration of the Highway Authority's expert view. The prescribed stages for dealing with complaints were completed but the responses from the Council were insufficiently convincing. As a result, the matter was referred to the Local Government Ombudsman, who, upon reviewing the case, considered the circumstances were sufficiently concerning to warrant investigation.

Having completed the investigation, the decision of the Ombudsman was finalised on October 13<sup>th</sup>, 2021 and published at the end of November 2021<sup>5</sup>. The Council was found to be at fault in two respects:

1. "The Council consulted the Highways Authority in line with the regulations, but it did not send the technical note until 17 November.\* Although it was uploaded to the Council's website,\*\* I consider it would have been better practice to send it to the Highways Authority directly and can see no good reason why it was not sent sooner. I therefore find this was fault".<sup>6</sup>

(notes: \* the question arises: would the technical note have been sent by Winchester if its existence had not been alerted to the Highway Authority by a member of the public the day before it was sent by Winchester? Would it have been sent at all?

\*\* as noted earlier, the technical note was uploaded to the Planning Portal on October 19<sup>th</sup>).

2. "I would expect officers to have made members aware of the up-to-date view of the Highways Authority at the meeting as the issues in the technical note were relevant to a material planning consideration. I find it was fault not to do so".<sup>7</sup>

These findings are precisely consistent with the views expressed by local opinion and at odds with the conclusions reached by WCC to the original complaint made to it.

The Ombudsman goes on to consider whether the Committee would have reached the same conclusion even if members had been aware of the Highway Authority's concerns regarding the adequacy of the technical note. The decision states:

"Officers decided the highways comments did not alter their recommendation for approval or add any new material considerations. That does not mean the Committee would have taken the same view".<sup>8</sup>

This is a crucial statement. The defence by the Planning Department in its response to the complaint to the Council had been that the Highway Authority letter did not add anything new or material to existing information and evidence, and that traffic and parking concerns had already been flagged. But it cannot be argued that the Highway Authority's exposure of the shortcomings of the technical note was not new: its assessment had not previously been made known and so was both new and material. It disputed the "facts" about traffic and parking in the technical note that the Committee otherwise would have been justified in assuming were adequate for the purpose for which it was submitted – when clearly it was not.

The Ombudsman supports this view – and concludes that had the Authority’s exposure of the inadequacies of the technical note been placed before the Committee the course of the meeting – and possibly the outcome - might have been different.

In a similar vein the Ombudsman continues:

“The question for the committee was whether the impact on traffic, parking and highway safety was sufficient to refuse the application. It was aware of the objections on this point and that there were concerns about the technical note’s calculations...”<sup>9</sup>

This is true, but the Committee’s awareness was derived from a 90-second statement by a member of the public at the meeting. There is a world of difference, though, in impact, between a very brief statement of a layman’s concerns and a scathing letter from a statutory consultee with expertise in the subject under discussion.

The Committee was not made aware that the Highway Authority in its letter had forcefully expressed its dissatisfaction. The Authority’s concerns are worth elaborating in order to provide a perspective of the degree of criticism it levelled at the technical note. The major issues raised in the Authority’s letter are that the technical note failed to:

- correctly assess access and public transport to the surgery
- use appropriate trip generation parameters so that trip generation “...is likely to be more than shown in the note...”
- correctly assess peak hour traffic impact on the wider highway network and associated impact on parking in the vicinity
- allow for the fact that activity at the surgery was reduced at the time of data collection (October 2020) because Covid restrictions meant a large proportion of appointments were being conducted by telephone and not by attendance at the surgery
- calculate required parking provision because “...actual demand ...cannot be assessed by surveys carried out during Covid conditions”
- demonstrate that parking conditions would not impede emergency access to the surgery.

The member of the public speaking at the meeting raised similar concerns but no members of the Committee asked him any clarifying questions. Equally, none of them asked if the Highway Authority had responded to the technical note – even though it was the Highway Authority that had asked for it to be produced. It is curious that, even though in his statement to the meeting the member of the public mentioned that the Highway Authority had not given a response to the technical note (as noted earlier he did not know at the time that it had), no member of the Committee enquired whether one had been received. And neither the Case Officer nor anyone attending the meeting who had been aware of the letter, enlightened them. These strange circumstances raise further unfortunate suspicions that residents might well ponder.

In the summary to the report, the Ombudsman states:

“I find, on the balance of probabilities, that even if the committee had been aware of the Highways Authority response to the technical note, it would have approved the application. This means that even though there was fault it has not caused injustice to Mr. D as the planning outcome would have been the same”.<sup>10</sup> (Explanatory note: the Ombudsman anonymises the identity of complainants, hence “Mr D”)

This final conclusion regarding the probable outcome of the Committee hearing is conjectural and cannot be proved. Indeed, the Ombudsman had earlier stated the Committee, had it known of the Highway Authority objection, may have decided differently. This indeed is the whole point: the Committee was denied material information that might have led to a different decision. In this regard, fault has been found in the two important respects that were raised with the Ombudsman. These are of genuine public interest and the fact that fault in these matters has been found may affect public confidence in the operation of the planning system by elected representatives and unelected officers. As to “injustice caused to Mr D”, none has ever been claimed or felt and so the finding is not material.

Questions inevitably arise about why the Highway Authority letter was not brought before the Committee. Disturbingly, without evidence to the contrary, the possibility exists that a response from the Highway Authority to the technical note was deliberately not sought or, when it was belatedly received, not shared with the Committee, for fear that it might affect the outcome of the application in a way inconvenient to vested interest. It is not pleasant to contemplate this possibility but in view of the number of local objections to the application it would help local trust in the integrity of the local planning system if the Council would prove that this fear is unfounded and not just ask the public to accept its word that it is.

There is an opportunity, in the interests of transparency and good governance, therefore, for those involved to communicate the exact circumstances surrounding this matter and once done, to apologise for any errors of judgement or process, or to admit any deliberate failure to inform the Committee of the Highway Authority’s letter – whichever is found to be applicable.

Since the publication of the Ombudsman’s decision, the Chief Executive of the Council has been asked what action it has taken/intends to take over the matter. The reply received is as follows: “The comments made by the Local Government Ombudsman have been reviewed and they concluded that, on the balance of probabilities, even if the committee had been aware of the Highways Authority response to the technical note, it would have approved the application. This means that even though there was fault, it has not caused injustice to Mr D as the planning outcome would have been the same. I would like to assure you that one of the Director team has already discussed the procedural matters referred to with the Planning team.”<sup>11</sup>

There is no attempt in this response, leaning as it does only on the conjecture of the Ombudsman, to acknowledge the possibility that the Ombudsman’s assessment “on the balance of probabilities” might have been wrong. No one knows the answer to that question. The response ignores the core issues that were the subject of complaint to the Ombudsman, and on which the Ombudsman found fault. The fact remains that, had the

Highway Authority letter been produced to the Committee, they may have decided, justly and logically, to support the holding objection and require that a properly conducted technical note be produced before the application, on the basis of valid evidence, could be decided. Armed with such a document the Highway Authority would then be in a position to lift (or not) their objection. As it is, a freedom of information request to Hampshire Highways has revealed that the Authority has not withdrawn the holding objection contained in its response to the technical note. The matter therefore remains of public concern and cannot simply be laid to rest by quoting the “balance of probabilities”.

That the Committee were denied the opportunity to consider the Highway Authority view for reasons that have not been explained, is of concern to the general public. It is surely entirely unlikely that the Committee could have taken a completely dismissive view of the Highway Authority’s demolition of the adequacy of the technical note. But unfortunately, they did not have that opportunity.

The fact that the Ombudsman found that no injustice has been done to the complainant is irrelevant: it was never claimed that an injustice had been done. The issue requiring attention is not “personal injustice” but the damage to trust in the processes that should be seen to be done and be seen to be done with integrity and rigour.

As to the assurance that “one of the Director team has already discussed the procedural matters referred to with the Planning team” tells the public nothing and reassures no one. What was said? Was any reprimand given? Was any investigation undertaken into how and why the faults were committed? It is these issues that interest the public.

The fundamental questions that arise in the pursuit of transparency and good governance remain:

1. Why was the technical note not passed in good time to the Highway Authority as it should have been?
2. Would the technical note have been sent to the Highway Authority at all if a member of the public had not informed them of it?
3. Why was the existence and content of the Highway Authority’s objection not brought to the attention of the Committee?

Finally, it must be stated that the work of the local surgery and all who work there is greatly appreciated and health gain for residents is valued. It is hoped that through negotiation with local Care Commissioning Groups, the surgery is able to ensure, as stated in its revised Planning Statement<sup>12</sup>, that the extension is not for the benefit of Welborne patients. And, if it is not for them, but will be sufficient to serve 14,000 new patients, one is left to wonder why an extension of that size is needed to meet the needs of growth in the local population - as was suggested by at least one member of the Committee at the hearing on November 19<sup>th</sup>, 2020?

To put that assertion to the test, the population of the whole of the Winchester District<sup>13</sup> in 2020 was 128,124. The population forecast for 2027 is 142,166 – strangely close to 14,000 people (14,042 to be exact). Are all these people to be located in the Wickham area?

Examination of population statistics from 2001 to 2019<sup>14</sup> further points to the improbability that the additional consulting rooms at Wickham will be required by growth in the local surrounding population.

Population growth: Wickham and surrounding parishes				
	2001	2019	Inc number	Inc %
Boarhunt	485	855	370	76.3
Droxford	646	702	56	8.7
Shedfield	3901	4161	260	6.7
Soberton	1565	1622	57	3.6
Southwick	1583	1764	181	11.4
Swanmore	2884	3379	495	17.2
Wickham	2594	4728	2134	82.3
Total	13658	17211	3553	26.0

The surgery currently serves approximately 13,000 patients<sup>14</sup>. If the growth in local population using the surgery in the 18-year period 2019 to 2037 was to match that of the previous 18 years (26%), the additional population using the surgery would be only 3,380. Why then would a doubling of capacity at Wickham be needed – if it was not for the benefit of 14,000 Welborne patients as indicated by the care commissioning group in the original justification for the extension? An additional 14,000 people represents an 81% increase in local population numbers compared with only 26% in the previous 18 years and so is extremely unlikely in that context and that of total Winchester District forecasts. Perhaps the extra consulting rooms will be used for purposes other than GP consultations, but even so, the additional capacity seems far too great to cater just for those purposes for local people and raises the concern that the extension is for Welborne patients after all.

In planning terms, it is surprising that these statistics were neither sought nor presented to guide the Committee's deliberations. They may not even be relevant to whether a planning application is approvable – but they are relevant to the general public's confidence in the decision, and it would be pleasing to see exactly what is now intended for the additional capacity – could it still be Welborne?

This summary is being sent to the Chief Executive of Winchester Council, local Ward Councillors and Wickham Surgery. Readers of the Wickham Parish Magazine, having been made aware of the Ombudsman's investigation from a letter sent to the editor for publication in the February edition, would be interested to read their responses in a subsequent edition.

**Nic Holladay**

January 10<sup>th</sup>, 2022

References:

1. Letter to Wickham Surgery from Fareham & Gosport and South East Hampshire Care Commissioning Group, July 3<sup>rd</sup>, 2020 (source: Winchester Planning Portal)
2. Letter to Wickham Surgery from West Hampshire Clinical Commissioning Group, July 8<sup>th</sup>, 2020 (source: Winchester Planning Portal)
3. Letter from Hampshire Highway Authority November 18<sup>th</sup>, 2021  
<https://planningapps.winchester.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QDIB01BPLJ100>.
4. As above, page 3
5. Local Government Ombudsman decision October 13<sup>th</sup>, 2021  
<https://www.lgo.org.uk/decisions/planning/planning-applications/20-011-720>
6. As above, para 31, page 4
7. As above, para 32, page 5
8. As above, para 35, page 5
9. As above, para 36, page 5
10. As above, para 38, page 5
11. Email Mrs L Taylor to Nic Holladay, Dec 21, 2021
12. Revised Planning Statement, October 6<sup>th</sup>, 2020 (source: Winchester Planning Portal)
13. <https://www.hants.gov.uk/landplanningandenvironment/facts-figures/population/estimates-forecasts>
14. <https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/populationandmigration/populationestimates/adhocs/12324parishpopulationestimatesformid2001tomid2019basedonbestfittingofoutputareastoparishes/parish110119popest.zip> <https://api.cqc.org.uk/public/v1/reports/5ace2bf0-f6a0-499e-ab93-e6d020ff8006?20210112230440>