

DCC Meeting on 5th August 2009 in the Guildhall

Contribution by Steve Mackerness, representing Bathford Parish Council

Members of the DCC, Good Evening

In my allotted time, I wish to concentrate on the procedural issues in which we are engaged, and their standing in law. Two points by way of background:

Firstly, on 25th May 2005 and again on 18th January 2006 the then General Development Control Committee (GDCC) considered applications to permit the carrying out of flood compensation works on Bathampton Meadows. On both occasions the GDCC, contrary to officers' recommendations, voted against a motion that they should be "minded to approve". The minutes do not record any voting on subsequent motions to refuse. Clearly, this was not considered to be necessary on these occasions.

Secondly, and following the Development Control Committee (DCC) meeting on 20th May 2009, five Councillors wrote to B&NES Standards Committee. Their letter included a question as to whether and how the DCC decision on Bathampton Meadows Park & Ride could be overturned. The reply from the Council's monitoring officer included the following statement: "*As a general principle of law, it is not possible for a decision-making body such as a Development Control Committee that had made its decision, to reconsider the same decision. This is on the basis of a legal principle known as "functus officio". The only way in which such a decision or decisions could be overturned would be were a court to order this to happen on application of an interested party by way of judicial review.*" The expression 'Functus Officio' means 'having discharged a duty'. As admitted by your Standards Committee, this DCC Committee is subject to this general principle. As far as we are concerned here, it means that once the DCC has formally issued its verdict – as recorded in the minutes of the meeting (which you earlier this afternoon, approved for the meeting on 8th July), the DCC is 'Functus Officio'. It has discharged its duty. It cannot reconsider prior decisions.

Turning to this Application being considered by you today:

At the DCC on 8th July 2009 this Newbridge Park & Ride/BRT application was considered. A motion that the Committee was "minded to permit" was defeated by 6 votes to 5. This fact is recorded in the minutes approved earlier this afternoon. On normal principles of law, that should be an end to this Application. The legal term for the status of the Application is 'Res Judicata', meaning 'a thing already determined'.

In the ensuing chaos, knowing that there is no right to appeal his decision, the case officer pushed members of the DCC for reasons.

The meeting was then advised that a formal motion to refuse, with reasons, was necessary. It is questionable whether or not reasons need to be provided since they are normally provided to allow the applicant to appeal an adverse decision. In this case, however, the Council cannot appeal against its own decision, and so the need to provide reasons, whilst providing clarity, is not strictly necessary. But in any case, if you wish to provide reasons, that is, of course, your prerogative. BUT – what is very clear is that you were not, and are not able to consider a further motion to refuse the application – It is 'Res Judicata', since you have already determined this when you failed to pass the motion 'minded to permit'. When an issue has two outcomes, as in this case – permit or refuse – it is not logical to consider two motions – first to permit, and if defeated – then to refuse. Let us say you did this, and defeated the motion to refuse – the matter would then be in eternal limbo, incapable of being determined – since it was neither permitted nor refused (and could not be further discussed under the principle of 'Functus Officio'). This is patently and logically absurd. The law can sometimes be an ass – but it is never logically absurd.

Let us look, therefore, at the motion to refuse giving reasons, which was neither passed nor defeated on the 8th July. It was not the 'refusal' which was undetermined by the tied vote – it was the 'reasons' which were not agreed. The 'refusal' had already previously been determined by the loss of the motion 'minded to permit'. The 'reasons' were outstanding – and it was these which this second motion sought to provide.

Today, therefore, you are not legally able to consider a motion to refuse or permit the application. This Application has already been determined. It is 'Res Judicata'. The DCC is 'Functus Officio' with respect to this decision. Your own Standards Committee have already advised that this principle applies. Your verdict has been reached. If you wish to waste your time, however, you could consider a motion to retrospectively provide reasons for defeating the motion 'minded to permit' – which you did on 8th July. If you choose to do this, it is also patently absurd to request all committee members to take part in such a discussion. Those who voted for the motion on 8th July, – clearly have 'no reasons'. They voted for the motion. The decision on the reasons can only logically be taken by those 6 members (or their substitutes today) who voted against the motion on 8th July – or more simply, by the member who moved the motion. This is precisely what happened in the case of the defeat of the 'minded to permit' motion in 2006 on the Flood Compensation works.

Members of the DCC, if my representations have raised matters not fully explained in your private briefings yesterday and today, I urge you to ferret out the veracity of my statements from your legal counsel. The process which occurred last month after you defeated the motion 'minded to permit' will not withstand legal challenge. In particular, you need to be convinced:

- a) That reasons need to be provided for your decision to defeat the motion 'minded to permit' last month; and
- b) Why the principle of 'Functus Officio' does not apply to this Committee against the stated advice of your own Standards Committee, and normally accepted legal practice.

Thank you