

**NORTH DEVON COUNCIL**

Minutes of a meeting of Planning Committee held at Barnstaple Rugby Club Main Room - Barnstaple Rugby Club on Wednesday, 26th April, 2023 at 10.00 am

PRESENT: Members:

Councillor Ley (Chair)

Councillors Chesters, Crabb, Davies, Gubb, Jenkins, Mackie, Prowse, D. Spear, L. Spear, Tucker, Yabsley and Walker (substitute for Councillor Leaver)

Officers:

Service Manager (Development Management), Senior Planning Officer, Solicitor and Legal Advisor

Also Present:

Councillors Henderson and Worden

**141. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Fowler and Mack. The Senior Corporate and Community Services Officer advised that Councillor Walker would be substituting for Councillor Leaver.

**142. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIR SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY**

The Chair advised the Committee that there would be an opportunity following the conclusion of the meeting for those Councillors that were not standing for election to make any remarks.

**143. DECLARATION OF INTERESTS**

The following declarations of interest were announced:

Councillor Gubb – planning application 76410, non registerable interest as the applicant was a friend and a colleague.

Councillor Mackie – planning application 76410, non registerable interest as the applicant was a friend and a colleague.

Councillor Prowse – planning application 76410, non registerable interest as the applicant was a friend and a colleague.

Councillor Yabsley – planning application 76106, other registerable interest as a Devon County Councillor

**144. 76106: LAND OFF NORTH ROAD, SOUTH MOLTON, DEVON.**

The Committee considered a report by the Senior Planning Officer (RB) (circulated previously) regarding planning application 76106.

Nicole Stacey (applicant) and Graham Hutton (supporter – Baker Estates) addressed the Committee.

Councillor Worden (Ward Member) addressed the Committee.

Councillor Henderson (Ward Member) addressed the Committee.

In response to questions from the Committee, the Senior Planning Officer advised the following:

- The trigger point for the provision of affordable housing was 180 dwellings. If the developer walked away from the site, then the additional affordable housing would not be provided. Of the 115 dwellings, 20% were affordable housing. The remaining 65 houses were open market. The requirement to secure 20% of the 65 dwellings as affordable could not be provided through the current Section 106 agreement.
- The District Valuer had included the costs of £312,000 for the provision of the strategic link road, however the applicants had contested this and considered that the costs would be higher and around £400,000.
- No discussions had taken place with the applicants regarding providing £300,000 funding to the Community Land Trust to be used for the purposes of providing affordable housing.

In response to questions from the Committee, the Service Manager (Development Management) advised the following:

- The errors that had occurred in the previous viability assessment were not the responsibility of the Local Planning Authority.
- The District Valuer was present at the meeting to answer any questions that the Committee may have.
- This application sought the modification to the current section 106 agreement in connection with the approval of application 61953. The applicants had requested the modification of the section 106 agreement as it does not require the delivery of the Gunswell Lane link road until the occupation of 225 dwellings. The applicants had advised that only 220 dwellings would be constructed and therefore would not meet the trigger point.
- The District Valuer had undertaken a review of the viability assessment and considered it to be viable for the original scheme with the provision of 20%

affordable housing. The developer had advised that if the section 106 was not modified that they would only construct 180 dwellings and this would result in the strategic link road not being provided.

- The modification of a section 106 was not a planning application. There was an option for the Committee to consider the approval of the proposed changes and modifying the section 106.
- If the developers walked away from the site, then the provision of the strategic link road could not be delivered under this scheme.
- There were legal implications if the triggers, requirements and provision of the link road were not provided in accordance with the section 106 agreement.
- It was a complex application and there were learning points for officers in relation to trigger points included within section 106 agreements. This issue had not been raised before. Officers had recommended refusal following the advice of the District Valuer which the Council had employed. No compromise had been offered by the applicants.
- There were strategic implications for South Molton should the Gunswell Lane link road not be provided.

Mr Rob Gill, District Valuer addressed the Committee. He advised the Committee of the following:

- As a District Valuer, he had been instructed by the Local Planning Authority to undertake a review of the viability assessment.
- The District Valuer had not been involved in the original viability assessment which had been carried out by other parties for both the applicant and for the Local Planning Authority.
- The original viability assessment had not included the benchmark of land value of £2.5m. In his view, this was irrelevant to the situation now where the trigger point for providing further affordable housing was the construction of 180 dwellings. The applicant could potentially leave the site and avoid providing further affordable housing.
- If the applicant left the site following the construction of 180 dwellings, there was no legal recourse for the developer to stay on site and complete the scheme.
- The applicant proposed to construct a further 40 dwellings to take the total to 220. 20 dwellings would be more economically viable units.
- The cost increase indexed up to provide the link road was £406,000.
- The only option available to the applicant was to modify the section 106 agreement, which necessitated a review of the viability assessment at today's values and costs.
- In his opinion, the original scheme could provide 20% affordable housing based on current values and costs and that if the applicant went to appeal, then the appeal would fail. The applicant would make a profit on the construction of the 20 dwellings, which would provide costs for the construction of the link road.

In response to questions from the Committee, the District Valuer advised the following:

- It was difficult to understand the reasons why the benchmark of the land value of £2.5m had been omitted from the original viability assessment. It had only been picked up as the applicant was about to reach the 180 dwellings trigger point.
- The viability assessment had been undertaken using the RISCA rules, and was based on current costs and values.
- The value of the completed dwellings had also increased since the original viability assessment.

In response to questions from the Committee, Mr Hutton was invited to respond to the points that had been raised and advised the following:

- The issue of the planning obligations within the Section 106 agreement being no longer viable had been raised approximately 1 year ago and that they had been working to find a solution.
- It was a significant piece of work to create the link road and was not just the construction costs.
- The developer would complete the construction of 180 dwellings by the end of the year. If the modifications to the section 106 agreement were approved, then the developer would remain on the site and continue to build the remaining dwellings. However, if the modifications were not approved, it would be more expensive for the developer to come back onto the site.
- The deferral of the proposed modifications would be counter productive and would break the development. The developer was unable to obtain finance for the current obligations.
- The developer would be able to obtain finance on the construction of the 20 bungalows as proposed in the modifications, however would not be able to provide £300,000 to the Community Land Trust for the provision of affordable housing.
- If the developer walked away from the site, they would still retain ownership of the strip of land for the provision of the link road.
- The profit margins for the development of the site in accordance with the planning permission was 10.4% and developer finance was 7%. The developer was required to demonstrate to the bank at least 20-25% profit otherwise the bank would not take on the risk for the development.
- The developer would be in agreement to amend the modifications of the section 106 agreement to include that the trigger point for the provision of the link road be commenced before reaching the construction of 185 dwellings. This would result in the link road being provided prior to the completion of the 185 dwelling.
- The best chance for the link road to be provided, would be for the land to remain in the ownership of the developer. If funding was available from a Local Authority to provide the link road, then they would co-operate, however the land would remain in the ownership of the developer.
- It had been a long process and all options had been exhausted. The viability assessment had not been used as a bargaining tool for negotiations and was a factual process. There was disagreement with the District Valuer regarding the sums available to fund the construction of the Gunswell Lane link and the balance sum in respect of the balance of section 106 requirement contained

within the assessment. If the application was deferred, it would take a very long time to come back to Committee. It took the developers 6 months to construct a bungalow and there was currently only 7 months left on site. By deferring would not serve anyone's interests well. The developers were committed to getting on with the construction of the dwelling, however if the application was deferred this opportunity would be lost.

In response to questions, the Legal Executive advised the following:

- Section 106 agreements could be modified and by approving the amendments to the section 106 would not open up the floodgates. Modifications were normally made with the agreement of all parties and officers. In this instance, the planning officer would ensure that the modifications required were included and that the trigger points were accurate.
- Requesting additional funds from the applicants could not be considered as the applicants had confirmed that it was not part of the application and that the Committee were obliged to consider the modifications as it had been called in by the Ward Member for consideration.

RESOLVED (10 for, 1 against and 1 abstained) that the modifications to the planning application be APPROVED subject to the wording of a revised section 106 agreement being delegated to the Planning Officer in consultation with the Chair of the Planning Committee, Ward Members and Legal to include the applicants proposal to amend the trigger point for the provision of the Gunswell Lane Link Road to be commenced prior to the completion of the 185 dwelling.

**145. ADJOURNMENT OF MEETING**

RESOLVED that it being 11.40 am that the meeting be adjourned for a comfort break and reconvened at 11.45 am.

**146. 76690: QUEEN STREET CAR PARK OSPREY CHARGING NETWORK DEVELOPMENT QUEEN STREET BARNSTAPLE DEVON EX32 8HG**

The Committee considered a report by the Planning Officer (circulated previously) in relation to planning application 76690.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Planning Officer.

**147. 76760: 36-37 BOUTPORT STREET BARNSTAPLE DEVON EX31 1RX**

The Committee considered a report by the Lead Planning Officer (North) (circulated previously) in relation to planning application 76760.

The Service Manager (Development Management) advised that since the publication of the agenda:

- That the agent had been in discussions with South West Water the Lead Flood Authority and achieved a final flood water technical solution.
- Further representation had been received from Barnstaple Town Council. In response to the comments made by the Town Council, Historic England were now in support of the application and the Conservation Officer had been consulted on the detail of the scheme and was in support.
- A representation had been received from Historic England advising that they were in support of the application.

In response to a question from the Committee, the Service Manager (Development Management) advised the Committee that the recommendation be amended to delete reference to Historic England as they had now confirmed they support the application.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Lead Planning Officer (North) subject to the deletion of reference to Historic England.

**148. 76761: 36-37 BOUTPORT STREET BARNSTAPLE DEVON EX31 1RX**

The Committee considered a report by the Lead Planning Officer (North) (circulated previously) in relation to planning application 76761.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Lead Planning Officer (North) subject to the deletion of reference to Historic England.

**149. 76410: 8 BROADWAY FREMINGTON BARNSTAPLE DEVON EX31 2NR**

The Committee considered a report by the Planning Officer (circulated previously) in relation to planning application 76410.

The Service Manager (Development Management) advised the following:

- The applicant was a North Devon Councillor. Unfortunately, the application had been determined incorrectly under delegated powers by a Planning Officer in February 2023. The Council subsequently received a complaint from a member of the public.
- The error had been made by a Planning Officer and there was no suggestion that the error had been made by the applicant or agent or that they had requested the application be determined under delegated powers.
- The original decision had now been quashed by the Administrative Court on 20 April 2023 and therefore the Committee could determine the application.

Councillor Mackie (Ward Member) addressed the Committee.

In response to comments made by Councillor Mackie, the Service Manager (Development Management) advised the Committee that further staff training would be undertaken to ensure that all staff knew who Councillors were. Further triggers had now been introduced into the system where planning decisions would need to be authorised by the Service Manager (Development Management) and the Monitoring Officer. Additional triggers had also been introduced within the planning support processes.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Planning Officer.

**150.            75694: BARN AT LITTLE YEO WITHERIDGE DEVON EX16 8QA**

Councillor Yabsley declared a disclosable pecuniary interest as the applicant and left the room during the consideration thereof.

The Committee considered a report by the Senior Planning Officer (circulated previously) in relation to planning application 75694.

RESOLVED (unanimous) that the application be APPROVED as recommended by the Senior Planning Officer.

**151.            APPEAL REPORT**

The Committee considered and noted the appeal report by the Senior Planning Support Officer (circulated previously).

Chair

The meeting ended at 12.10 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.