

NORTH DEVON COUNCIL

Minutes of a meeting of Planning Committee held at Virtual - Online meeting on Wednesday, 9th December, 2020 at 10.00 am

PRESENT: Members:

Councillor Ley (Chair)

Councillors Chesters, Crabb, Davies, Fowler, Gubb, Lane, Leaver, Mackie, Prowse, D. Spear, L. Spear, Tucker and Yabsley

Officers:

Head of Place, Solicitor (Legal Officer), Lead Planning Officer (North), Lead Planning Officer (South), Planning Officer and Senior Planning Officer

Also Present:

Councillors Biederman, Worden and Wilkinson

118. VIRTUAL MEETINGS PROCEDURE - BRIEFING AND ETIQUETTE

The Chair outlined the virtual meeting procedure and etiquette to the Committee and attendees.

The Senior Corporate and Community Services Officer confirmed the names of those Councillors and officers present and advised that members of the public were also in attendance to address the Committee or listen to proceedings.

119. APOLOGIES FOR ABSENCE

No apologies for absence were received.

120. TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE MEETING HELD ON 11TH NOVEMBER 2020

RESOLVED that the minutes of the meeting of 11th November 2020 (circulated previously) be approved as a correct record and signed by the Chair (13 for, and one abstained).

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

No items were brought forward to be considered as a matter of urgency.

122. DECLARATION OF INTERESTS

Councillor Mackie declared a Prejudicial interest on Planning application 71113 as the applicant was a former employer.

**123. TO AGREE THE AGENDA BETWEEN PART 'A AND PART 'B'
(CONFIDENTIAL RESTRICTED INFORMATION)**

The Committee agreed the agenda between part 'A' and part 'B'.

124. 72325: ADVERTISEMENT CONSENT FOR SITING OF NON-ILLUMINATED COPPER LETTERING AT: MUSEUM OF BARNSTAPLE AND NORTH DEVON, THE SQUARE, BARNSTAPLE, EX32 8LN

Councillor Mackie re-joined the meeting.

The Committee considered a report by the Head of Place (circulated previously).

RESOLVED (unanimous) that the application be APPROVED as recommended by the Head of Place.

125. 71113: ERECTION OF A DWELLING AT: GARAGE SITE, ADJACENT 1 HIGH ROAD, FREMINGTON, EX31 3BG

Councillor Mackie declared a prejudicial interest and left the meeting during the consideration of this item.

The Committee considered a report by the Head of Place (circulated previously).

The Committee was advised of the additional planning history, which had not been included in the report:

- Other applications relevant to the site were 41523 – erection of double garage Approved 15th March 2006 and the subsequent Listed Building approval for the double garage under 41550, 15th March 2006. Planning Officer (RB) referred to 41523 in his report which had not been included in the history section. 41550 was the only history that was not shown which was the Listed Building approval for 41523.

The Senior Corporate and Community Services Officer read statements to the Committee received from Ros Raistrick (agent), Mr and Mrs Smith, Mrs McSween and C Stott (objectors).

Councillor Biederman addressed the Committee as Ward Member. He confirmed the recommendation of Fremington Parish Council of refusal for the application.

RESOLVED that (7 for and 6 against) that the application be APPROVED as recommended by the Head of Place.

126. 72326: LISTED BUILDING CONSENT FOR COPPER LETTERING AT: MUSEUM OF BARNSTAPLE AND NORTH DEVON, THE SQUARE, BARNSTAPLE, EX32 8LN

The Committee considered a report by the Head of Place (circulated previously).

RESOLVED (unanimous) that the application be APPROVED as recommended by the Head of Place.

127. APPEALS REPORT

The Committee considered and noted a report by the Head of Place (circulated previously) regarding planning and enforcement appeal decisions received since those reported at the last meeting of the Committee.

128. 60385: ERECTION OF 17 DWELLINGS (3 BUNGALOWS AND 14 HOUSES), LAND ADJACENT PEARLDEAN, WEST DOWN

The Committee considered a report by the Head of Place (circulated previously).

Councillor Lane declared a Personal Interest as he was a builder and developer.

In response to questions from the Committee, the Head of Place advised that:

- The applicant had submitted a viability study for the site.
- Plymouth City Council (PCC) had provided North Devon Council with an impartial assessment of the financial viability of the site. PCC concluded that a 10% return on a site was appropriate and that the developer could meet most of the Section 106 requirements and still have achieved a reasonable 10% margin return.
- The site was now fully completed and no further financial risks would be experienced by the developer. The final figures for the development of the site were known.
- Whilst there has been no formal challenge made to the validity of the Section 106 agreement, the applicant had provided North Devon Council with letters from their Solicitor stating that in their opinion it was not enforceable and so they did not intend to comply with it.
- Anecdotal evidence suggested that the housing market was currently booming and house prices had increased due to demand in the North Devon area.
- It was unlikely that the new increased house prices had been included in the applicant's viability study.

In response to questions, the Lead Planning Officer (North) advised the Committee that the Council had pursued financial contributions through the section 106 agreement in July 2019. As of 19 February 2020, five dwellings were occupied and therefore some financial payment should have been made by that point. On 18 March 2020 the Council received a letter from the developer's solicitor advising that they did not believe the developer would have needed to meet the legal obligations. On 21 May 2020, Acorn had advised that they believed their legal position was correct but requested that the section 106 be revisited on the grounds of viability. The Council then sought a viability assessment from PCC.

Councillor Wilkinson addressed the Committee as Ward Member.

The Committee were addressed by Stuart Bryant (former owner of the site), Mike Reeves (resident of West Down), Carole King (West Down School), John Stainer (West Down Parish Hall and Community Recreational Field) and Sue Ayers (West Down Parish Council).

The Committee were advised of the following in response to the information that the applicant had placed the five affordable properties (which were part of the Section 106 agreement) on to the open market:

- North Devon Council's solicitor had written to the Applicant (for the attention of their Legal representative). The letter had been acknowledged, although no response had been received.
- The Head of Place had written to the Estate Agents who were marketing the properties to advise that the properties were subject to a Section 106 agreement and could not be placed on the open market.

In response to questions, the Lead Planning Officer (North) advised that there had been three enforcement cases opened on this development. The first was during the early stage in relation to highways and was found by the Enforcement Officer not to be a breach. The second was in relation to fencing between an existing dwelling fronting Ilfracombe Hill and the development site, which had now been resolved. The third was still open and subject to investigation and was in relation to the compliance of highways conditions and use of materials. He confirmed that in relation to the section 106 financial contributions and the funding of local projects, planning applications had already been submitted and the extension to the village hall had already been approved.

With the agreement of the Committee, Mark Thomas (agent) addressed the Committee.

129. EXCLUSION OF PUBLIC AND PRESS AND RESTRICTION OF DOCUMENTS

RESOLVED:

(a) That under Section 100A (4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 5 Part 1 Schedule 12A of the Act (as amended from time to time), namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;

(b) That all documents and reports relating to the item be confirmed as "Not for Publication".

130. 60385 ERECTION OF 17 DWELLINGS (3 BUNGALOWS AND 14 HOUSES), LAND ADJACENT PEARLDEAN, WEST DOWN.

The Committee considered Appendix C of the Head of Place's report (circulated previously) and received legal advice from the Council's Solicitor.

RESOLVED that it being 1.00 p.m. that the meeting continue in order for the remaining business to be transacted.

RESOLVED that the public and press be re-admitted to the meeting to enable the Committee to consider planning application 60385 under item 11 on the agenda.

RESOLVED that (unanimous) recommendation 2.1.4 "Accept no compromise on the Section 106 and pursue delivery of five affordable dwellings and £118,201" be sought as recommended by the Head of Place.

Chair

The meeting ended at 1.39 pm

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

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