

PLANNING AND DEVELOPMENT CONTROL COMMITTEE
18 NOVEMBER 2015

Minutes of the meeting of the Planning and Development Control Committee of the Flintshire County Council held at County Hall, Mold on Wednesday, 18th November 2015

PRESENT: Councillor David Wisinger (Chairman)

Councillors: Chris Bithell, David Cox, Carol Ellis, David Evans, Ray Hughes, Richard Jones, Richard Lloyd, Mike Lowe, Nancy Matthews, Mike Peers, Neville Phillips, Gareth Roberts, David Roney and Owen Thomas

SUBSTITUTIONS:

Councillor: Haydn Bateman for Marion Bateman, Jim Falshaw for Alison Halford and Ron Hampson for Christine Jones

ALSO PRESENT:

The following Councillors attended as local Members:-

Councillor Nigel Steele-Mortimer - agenda item 6.1

The following Councillors attended as observers:

Councillor Veronica Gay

APOLOGIES:

Councillors: Derek Butler, Ian Dunbar and Billy Mullin

IN ATTENDANCE:

Chief Officer (Planning and Environment), Planning Strategy Manager, Senior Engineer - Highways Development Control, Team Leader, Senior Planner, Planning Support Officer, Housing & Planning Solicitor and Committee Officer

80. DECLARATIONS OF INTEREST

Councillor Richard Lloyd declared a personal and prejudicial interest in the following application because he was a Member of Saltney Town Council:-

Agenda item 6.2 – General Matters – Proposed Amendment to Section 106 Agreement – Morrison’s Supermarket, High Street, Saltney (045999)

81. LATE OBSERVATIONS

The Chairman allowed Members an opportunity to read the late observations which had been circulated at the meeting.

Councillor Owen Thomas expressed his disappointment at the small number of Members of the Committee that had attended the site visit on Monday, 16th November 2015. Councillor David Roney indicated that he had been unable to attend but when he did miss site visits, he usually went to view the site in his own vehicle prior to the Committee meeting.

82. MINUTES

The draft minutes of the meeting of the Committee held on 14th October 2015 had been circulated to Members with the agenda.

RESOLVED:

That the minutes be approved as a correct record and signed by the Chairman.

83. ITEMS TO BE DEFERRED

The Chief Officer (Planning and Environment) advised that none of the items on the agenda were recommended for deferral by officers.

He commented on the small number of items on the agenda and assured Members that the short agenda was not as a result of the recent amendments to the Scheme of Delegation agreed at the 20th October 2015 County Council meeting. A number of applications had been due to be submitted to this meeting but were not able to progress due to issues such as a requirement for re-consultation following amendments to an application.

The Chief Officer (Planning & Environment) advised Members that following agreement to webcast certain meetings, the 16th December 2015 meeting of the Committee would be a pilot for webcasting.

84. FULL APPLICATION – ERECTION OF TWO STOREY EXTENSION TO DWELLING AT TY CAPEL, LON CAPEL, GWAENYSGOR (054199)

The Committee considered the report of the Chief Officer (Planning & Environment) in respect of this application which had been the subject of a site visit on 16th November 2015. The usual consultations had been undertaken and the responses received detailed in the report.

The officer detailed the background to the report and explained that the site was located in the Conservation Area and Area of Outstanding Natural Beauty (AONB) designation. A number of objections had been received which had been noted in the comments of the AONB but they had not raised any objections following the submission of proposed amendments to the application in relation to the removal of the gable end window.

Councillor Nigel Steele-Mortimer, the Local Member, sought clarification on whether he was permitted to speak on the application. The Chairman advised that at the previous meeting, he had exercised his discretion to allow Councillor Steele-Mortimer to speak notwithstanding that notice to speak had not been submitted. The Chairman said he would exercise his discretion again on this occasion, but in future local members who were not members of the committee and who wished to speak must submit the requisite notice, or the Chairman may decide not to exercise his discretion to allow them to speak.

The Housing & Planning Solicitor confirmed that paragraph 22.2 of the Rules of Procedure of the Constitution required members who wished to speak on matters significantly affecting their ward to register 24 hours before the meeting and this was not a new rule. He reminded members that on this occasion the Chairman had exercised his discretion to allow Councillor Steele-Mortimer to speak. Councillor Bithell requested that all Members be advised of the requirement to register. Councillor Carol Ellis suggested that Members be asked on the consultation form whether they wished to speak at Committee rather than needing to register separately. The Housing & Planning Solicitor confirmed that a reminder could be sent to all Members about the requirement.

Mrs. S. Appleton spoke against the application. She was the owner of the neighbouring property at Pen y Parc and strongly objected to the proposals due to the close proximity of the extension to her property. She commented on the three different versions of the proposals and expressed concern at the officer recommendation of approval despite objections from the Local Member and Trelawnyd & Gwaenysgor Community Council. The footprint of the extension took in all available land within the site and was extremely close to the shared boundary. The report at paragraph 7.07 referred to extension being approximately 2 metres from the neighbouring property and Mrs. Appleton raised concern that the actual figure was not reported which she suggested was only 33 inches. The proposal was overbearing and would create a narrow alleyway between the properties and the extension was being built off the wall. She did not feel that this was reasonable and added that it did not comply with the Council's policy on space around dwellings. She asked the Committee to challenge the proximity of the extension to her property and to take account of the comments of the Local Member.

Councillor Gareth Roberts proposed the recommendation for approval which was duly seconded. He felt that this was a clear cut decision and that the extension would be built on land up to the boundary with the distance between the extension and the building next door including a wall. It had been suggested that there were very few properties with little space between them but Councillor Roberts did not feel that this was true and commented on terraced properties. He felt that approval of the application was the correct decision as refusal would be difficult to defend on appeal and could result in costs against the Council.

Councillor Chris Bithell apologised for not attending the site visit. He concurred that the figure reported in paragraph 7.07 should be the actual figure not an approximation but said that it was clear from the report that the extension complied with space around dwellings guidelines. There had been another extension to the property but this had been 34 years ago. The property was in a Conservation Area but there had been no objections from the AONB Joint Advisory Committee and in policy terms the application should not be refused.

The Local Member, Councillor Steele-Mortimer, thanked the Chairman for exercising his discretion to allow him to speak and those Councillors that had attended the site visit. He commented on the proposed extension which would reduce the gap between the two properties by 80% leaving a gap between the buildings of approximately 1.5 metres. He suggested that the proposal would result in a terrace effect which he did not feel should be forced upon residents. He felt that the application should be refused as it was overbearing and was too close to the neighbouring property and this would allow the applicant to submit a more appropriate application.

Councillor Mike Peers sought clarification on why the Community Council was objecting to the application and queried the percentage increase of the extensions. He agreed that the proposal seemed close to the neighbouring property. Councillor Owen Thomas raised concern about the proposal to render the building rather than building it with stone which he felt would be more appropriate in a conservation area. He suggested that the proposals would result in a very small garden area for the property and agreed that the extension would be close to the neighbouring property and that the actual figures should be provided. He felt that the proposal would not enhance the village and that the building materials should be reconsidered.

In response to the comments made, the officer advised that the distance from gable to gable was 1.5 metres. He confirmed that it was not proposed to build the extension off the wall and that the extension would be rendered to match the extension built in 1981. He commented on properties in the area that were a mix of stone and render so the proposal would not result in the extension being out of character with the area. A window that would have overlooked the neighbouring property in the original application had been moved and the bedroom window would now overlook the road. He felt that the proposal including the scale of the proposal was in character with the area and the rendered appearance was in keeping with other properties. The officer added that the Community Council had not specified their reasons for objecting.

The Planning Strategy Manager suggested that rendering the extension would allow the original building that was built of stone to be identified and would not detract from the character of the area. He advised that he did not have details of the percentage increase but reminded Members that the 50% baseline figure was used to assist planning judgement on whether it was acceptable or not but was not part of the policy.

In summing up, Councillor Roberts said that the site was in the settlement boundary and the 50% figure was not material to the Committee's consideration. He did not feel that there was a planning reason to defer or refuse the application to enable the applicant to propose an alternative as it was a clear cut decision.

RESOLVED:

That planning permission be granted subject to the conditions detailed in the report of the Chief Officer (Planning and Environment).

85. GENERAL MATTERS – PROPOSED AMENDMENT TO SECTION 106 AGREEMENT – MORRISONS SUPERMARKET, HIGH STREET, SALTNEY (045999)

The Committee considered the report of the Chief Officer (Planning and Environment) in respect of this application. Councillor Richard Lloyd, having earlier declared an interest in the application, left the meeting prior to its discussion.

The Housing & Planning Solicitor detailed the background to the report and explained that planning permission had been granted in 2009 for the erection of Morrisons Supermarket and had included a Section 106 (S106) agreement which required the transfer of land for a library and that the land be transferred back to Morrisons if the library was not built within seven years of the date of the permission. A report to Committee in December 2014 obtained a resolution for the land to be retained by the Council beyond August 2016 providing the land was to be used for some benefit to the Community. The land was currently still in the ownership of Morrisons. Following further negotiations, it was now intended that the land should be transferred by Morrisons directly to Saltney Town Council and that authority be sought to vary the S106 agreement as required.

Councillor Chris Bithell proposed the recommendation that the land be transferred directly to Saltney Town Council and the existing Section 106 agreement entered into in connection with planning permission reference 045999 be varied as required. He said that it had been hoped that a library could be erected but this was a useful alternative for the land.

In response to a query from Councillor David Roney, the Chief Officer (Planning & Environment) confirmed that the land was to the west of the supermarket access road, not the east as reported in paragraph 6.01. Councillor Richard Jones queried whether there was access and egress to the site and the Chief Officer said that pedestrian access to the site could be achieved from Chester Road.

RESOLVED:

That the land be transferred directly to Saltney Town Council and the existing Section 106 Agreement entered into in connection with planning permission reference 045999 be varied as required.

After the vote had been taken, Councillor Lloyd returned to the meeting and the Chairman advised him of the decision.

86. GENERAL MATTERS – ERECTION OF 20 NO. DWELLINGS (PHASE 2) AT VILLAGE ROAD, NORTHOP HALL (052388)

The Committee considered the report of the Chief Officer (Planning and Environment) in respect of this application.

The officer detailed the background to the report and explained that the report was before Committee to advise them that the incorrect layout plan had been shown when the application was considered by the Committee in October 2014. The site was slightly smaller than the area shown on the plan but the correct layout plan had been consulted on.

Councillor Chris Bithell queried how this had happened and whether it could have implications for the approval of the application. He did not have any objection to the smaller site area but asked whether the Committee's original decision needed to be rescinded. He proposed the recommendation for approval which was duly seconded.

The Housing & Planning Solicitor said Members were being asked to note the discrepancy and move approval subject to the same conditions as the original resolution on 8th October 2014. He confirmed that an amended plan had been submitted by the applicant and it was that plan (the correct layout plan) which had been consulted on but the incorrect layout plan had then been accidentally displayed in the officer's presentation to the Committee. The Committee was also being asked to note the amended location plan.

Councillor Mike Peers referred to the provision of affordable housing which it was recommended would be two three bed dwellings being gifted to North East Wales Homes. He queried whether this was in agreement with the Housing Strategy Manager. In response, the Housing & Planning Solicitor advised that those provisions within the Section 106 agreement had not changed from those that were resolved to be granted in October 2014 and that this report was only to point out that the incorrect layout plan had been displayed during the presentation to the Committee. The Planning Strategy Manager said that the provision of gifted units in Northop Hall had been established for some time and was the view of the Housing Strategy Manager.

RESOLVED:

That planning permission be granted based on the amended red line boundary and planning layout Drawing AH008-01N subject to the applicants entering into a Section 106 agreement/unilateral undertaking or earlier payment for the following contributions:-

- To gift 2 three bed dwellings to North East Wales Homes to be used as affordable housing
- To provide a commuted sum of £1,100 per dwelling in lieu of on-site open space provision

87. APPEAL BY MULLHILL ESTATES LLP AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR OUTLINE – DEMOLITION OF ‘SUNNYSIDE’ & 66A MOLD ROAD AND THE ERECTION OF 58 NO. HOUSES INCLUDING DETAILS OF ACCESS, APPEARANCE, LAYOUT AND SCALE AT 66A MOLD ROAD, MYNYDD ISA (048042)

The Chief Officer (Planning & Environment) detailed the background to the report and explained that the application had been refused contrary to officer recommendation and paragraph 6.01 set out the concerns raised which included lack of provision of 30% affordable housing. The applicant's had spoken of significant costs associated with the site and the unviability if affordable housing provision needed to be included. The appeal Inspector felt significant weight should be applied and this resulted in affordable housing being limited as a result. Consideration had also been given to ecology and flooding issues and because the Joint Housing Land Availability Study showed a shortfall in the five year supply of housing land required, the Inspector attached considerable weight to the consideration. He granted planning permission subject to a significant number of conditions.

Councillor Mike Peers queried why highway safety had been considered by the Inspector when the Council had already dropped this as a reason for refusal. The Chief Officer advised that the issue had been raised by a third party. Councillor Peers asked whether the 28% return figure was correct and queried the amount of affordable housing that would be achieved on site. The Chief Officer confirmed that he would clarify both of these issues following the meeting. Councillor Peers referred to the concerns by the applicant over viability issues which the Committee had argued against and also commented on the sum of £0.5m which had been spent by the developer on marketing. He felt that this was a significant amount, along with the 28% profit, particularly as the applicant had stated that they were unable to provide affordable housing on the site due to it being unviable. The Planning Strategy Manager drew Members' attention to paragraph 6.07 where the decision of the Inspector relating to affordable housing and the provision of a commuted sum were reported.

Councillor Richard Jones raised significant concern that the consideration of viability of a site would need to be undertaken by the Committee and suggested that the decision of the Inspector should be challenged.

The Planning Strategy Manager advised that since 2013, a Developer Guidance Note had been produced for all developments which provided details to developers of issues to consider and one of the criteria was to ensure that the site was viable and sustainable. He added that the developer had raised viability issues on another application which had also been appealed and had won both appeals. He spoke of the lessons that had been learned since the production of the guidance note. Councillor Peers expressed his significant disappointment in the outcome of the appeal in relation to the viability aspect.

In response to a query from Councillor Owen Thomas about the ownership of the land, the Chief Officer (Planning & Environment) said that an applicant could apply to develop land they did not own if they served the appropriate notices to the land owner.

Councillor Gareth Roberts shared the concerns on the issue of viability and suggested that had the applicant been aware of the restrictions on the site and therefore effect on costs, they could have adapted their proposal accordingly. Councillor Richard Jones said that applicants should ensure viability before purchasing a site and in expressing his concern about the Inspector's decision, suggested that a letter be sent to the Inspector on their interpretation of the policies in place.

The Chief Officer (Planning & Environment) said that the developer guidance note required developers to prove the site was deliverable and viable. He suggested that this appeal could be considered in further detail by the Planning Strategy Group.

RESOLVED:

That the decision of the Inspector to allow this appeal be noted.

88. APPEAL BY MR. D. GELDER AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE SITING OF 10 STATIC CARAVANS AT TARTH Y DWR, DYSERTH ROAD, LLOC (053130)

The Chief Officer (Planning & Environment) advised that the application had been refused under delegated powers and the written representation appeal had been dismissed. Objections had been raised by Natural Resources Wales which the applicant had been unable to address.

RESOLVED:

That the decision of the Inspector to dismiss this appeal be noted.

89. APPEAL BY MR. MYLES BERRY AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE CHANGE OF USE OF LAND TO PROVIDE 2 NO. RESIDENTIAL GYPSY/TRAVELLER PITCHES TO INCLUDE 2 NO. STATIC CARAVANS AND 2 NO. TOURING CARAVANS WITH PARKING FOR 2 NO. VEHICLES TO EACH PITCH AT 1 OLD PAPER MILL LANE, OAKENHOLT (053290)

The Chief Officer (Planning & Environment) advised that the application had been refused under delegated powers and the appeal, which had been dealt with by way of an informal hearing, had been allowed.

The Inspector had found that the proposed development would amount to inappropriate development in the countryside and within the green barrier

but he had given significant weight to the personal circumstances of the applicant and felt that these outweighed the requirement to protect the green barrier. The Chief Officer raised concern that a temporary permission had not been granted.

Councillor Chris Bithell expressed significant concern and commented on a number of applications from residents to develop in the area which had all been refused. He referred to paragraphs 6.07 and 6.08 where it was reported that the proposal failed to comply with Policy GEN4 and therefore permission should not be granted. However, the Inspector had then considered the personal circumstances of the applicant and had granted permission. He raised significant concern that Flintshire and Wrexham had provided a large number of Gypsy and Traveller sites when other Local Authorities in North Wales had not made any provision. Councillor Gareth Roberts shared the concerns and felt that the original decision to refuse the application had been correct. Councillor Mike Peers felt that this was new site provision through the back door and suggested that it would be useful for Planning Strategy Group to consider this appeal in detail. The inspector appeared to have recognised the importance of the green barrier but, in his conclusion in paragraph 6.21, had found that the need for additional gypsy pitches within the area and the personal circumstances of the appellant had amounted to very exceptional circumstances. Councillor Peers queried whether the same conclusion would have been reached if the application had been from the general public and if not, he felt that the decision should be challenged.

Councillor Carol Ellis queried why a temporary permission had not been granted and suggested that the decision set a precedent. The Chief Officer shared the concerns of Councillor Ellis and explained that the site at Dollar Park had only been granted temporary permission so he did not understand why this was different. In referring to other applications that had been refused planning permission in the area, he said that the only difference in the applications was that the applicant was a Gypsy/Traveller. The Planning Strategy Manager spoke of the duty on all Local Authorities to provide Gypsy/Traveller pitches. He commented on work to be undertaken on a Gypsy/Traveller assessment which was a requirement for all Councils to carry out by February 2016. This would provide information on where the provision of pitches needed to be and how this was to be addressed.

RESOLVED:

That the decision of the Inspector to allow this appeal be noted.

90. **APPEAL BY MORRIS HOMES LTD TO THE HIGH COURT AGAINST THE DECISION OF THE WELSH MINISTERS TO REFUSE PLANNING PERMISSION FOR THE ERECTION OF 36 NO. AFFORDABLE DWELLINGS WITH ASSOCIATED PARKING ACCESS, HABITAT CREATION AND PUBLIC OPEN SPACE ON LAND AT LLYS BEN, NORTHOP HALL (050613)**

The Housing & Planning Solicitor explained that the applicant had appealed to the High Court against the Inspector's decision to refuse the application and a hearing date had been set for 13th November 2015. However, prior to this date, the applicant had decided not to continue with the appeal and therefore the decision to refuse stood.

Councillor Gareth Roberts asked whether the applicant had been subject to costs and whether a payment for costs had been made to the Council. The Housing & Planning Solicitor explained that the Council's costs were small given the stage that the proceedings were withdrawn but advised that in appeals against a Welsh Government (WG) it would be unusual for both WG and the Local Authority to be awarded costs.

In response to a question from Councillor Mike Peers, the Housing & Planning Solicitor advised that the appellant had not provided a reason for discontinuing their appeal.

RESOLVED:

That the decision to discontinue this appeal be noted.

91. **HIGH COURT APPEAL BY FLINTSHIRE COUNTY COUNCIL AGAINST THE WELSH MINISTERS' DECISION TO GRANT PLANNING PERMISSION FOR CHANGE OF USE OF THE SITE TO A PLANT HIRE BUSINESS AND TO ERECT A NEW WORKSHOP BUILDING ALONG THE SOUTHERN BOUNDARY OF THE SITE, AS WELL AS THE CHANGE OF USE OF THE TEA POT CAFÉ INTO ANCILLARY OFFICE SPACE FOR THE PLANT HIRE BUSINESS (052645)**

The Housing & Planning Solicitor advised that the appeal had been allowed by the Welsh Ministers but their decision had been appealed by the Local Authority to the High Court as the Inspector had not included a condition requiring the submission of a Traffic Management Plan or a condition relating to adequate vehicular turning space within the site. The Council considered that the Inspector had erred in his determination and an appeal had been submitted. The Welsh Ministers and the applicant agreed that the Inspector had made an error and the decision to allow the appeal was quashed and the matter submitted to the Welsh Ministers for re-determination.

Councillor Jim Falshaw raised concern about the level of costs and the Housing & Planning Solicitor advised that the Council had been awarded costs and that the appeal would now be considered afresh.

RESOLVED:

That the decision of the High Court to allow this appeal be noted.

92. MEMBERS OF THE PUBLIC AND PRESS IN ATTENDANCE

There were two members of the public and one member of the press in attendance.

(The meeting started at 1.00 pm and ended at 2.33 pm)

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Chairman