

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON TUESDAY 19 NOVEMBER 2019 AT 6.00 PM  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY,  
CO16 9AJ**

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| <b>Present:</b>       | Councillors White (Chairman), Bray (Vice-Chairman), Alexander, Cawthron, Codling, Fowler, Harris and McWilliams  |
| <b>Also Present:</b>  | Councillors Fairley (except minute 66) and Wiggins   |
| <b>In Attendance:</b> | Cath Bicknell (Head of Planning), Lisa Hastings (Head of Governance and Legal Services & Monitoring Officer), Graham Nourse (Planning Manager), Trevor Faulkner (Temporary Planning Team Leader) and Katie Sullivan (Committee Services Officer) |

**61. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillor Placey (with no substitute).

**62. MINUTES OF THE LAST MEETING**

The Council's Head of Governance and Legal Services & Monitoring Officer (Lisa Hastings) informed Members that it had been brought to her attention that there was an error in the minutes in relation to Planning Application 19/01353/OUT (Minute 60) where during public speaking Councillor Scott, a local Ward Member had in fact spoken in favour of and not against, the application had been erroneously recorded.

The minutes of the last meeting of the Committee, held on Tuesday 22 October 2019, were then approved as a correct record and signed by the Chairman, subject to the above alteration being made thereto.

**63. DECLARATIONS OF INTEREST**

There were none.

**64. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

There were none.

**65. A.1 - PLANNING APPLICATION - 19/00738/FUL - LAND REAR OF 1 & 2 THE PADDOCKS, WINDMILL ROAD, BRADFIELD, CO11 2QR**

It was reported that this application had been referred to the Planning Committee at the request of Councillor Fairley, the local Ward member.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Temporary Planning Team Leader (TF) in respect of the application.

An update sheet was circulated to the Committee prior to the meeting with details of one letter of support that had been submitted.

Bill Marshall, a resident, spoke in support of the application.

Parish Councillor Kreon Wynn, representing Bradfield Parish Council, spoke against the application.

Councillor Fairley, the local Ward Member, spoke against the application.

Peter Le Grys, the agent on behalf of the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor Bray, seconded by Councillor Cawthron and **RESOLVED** that, contrary to the Officer's recommendation of approval, the Head of Planning (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the following reasons:-

- Contrary to NPPF para 127 - failure to optimise land outside Settlement Boundary.
- Backland development.
- Contrary to policy HG13 – long driveways.
- Loss of amenity.

**66. A.2 - PLANNING APPLICATION - 18/00767/OUT - LAND TO THE NORTH OF STOURVIEW CLOSE, MISTLEY, CO11 1LT**

The Chairman informed the meeting that, ordinarily, there would not be any public speaking allowed on the application at this time as the application had been the subject of public speaking when it had been previously been before the Committee at its meeting held on 22 October 2019. However, in order to ensure that the Members of the Committee who had not been in attendance at that meeting were in possession of the same facts and knowledge on the application as the rest of the Committee when it came to determining the application, the Chairman advised the meeting that he was exercising his discretionary authority under the Public Speaking Scheme and would allow a speaker to put the case on behalf of the applicant.

The Committee was aware that at its meeting held on 22 October 2019 the only Public Speaker on this application had been Will Vote, the applicant's Planning Agent

Members recalled that this application had been deferred by the Committee on 22 October 2019 in order for further clarification to be sought on the Viability Study submitted in support of the application to vary the terms of the existing Section 106 Legal Agreement associated with application ref. 15/01810/OUT, which had been for up to 70 dwellings with a new access road off Stourview Avenue, Mistley, and which had been approved on 30 May 2017.

It was reported that post deferral from the October Planning Committee, the applicant had now provided some additional comments to support their case, which could be summarised as follows:

- *Developer profit on private housing is, on average, 23% based on Gross Development Value (GDV), developer profit on affordable housing is less;*

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- *Developers must meet two financial tests to satisfy lending from banks, namely profit (on GDV) and Return on Capital Employed (ROCE).*
  - *ROCE is a measure of how profitable the development project is in relation to the funds invested in it;*
  - *An appropriate profit may be influenced by a number of factors; these include: Certainty of information to the valuer; risk; scale of development; level of financial exposure; and timescales;*
  - *With respect to Stourview Avenue, abnormal costs (as referred to above i.e. site levels, spring, drainage solution) mean that the risks are higher than average;*
  - *For banks to reasonably lend to developers on a specific site, they will arguably expect a higher profit margin than normal. The applicant consider they have adopted a profit level reflecting a fairly low risk scheme at 20% of cost of the private units and 6% on affordable units. This figure is less than the 23% figure quoted above despite the high level of abnormal/unknown costs;*
  - *Finance is needed to cover the initial site purchase and cover the cost of development up until the project starts to turn a profit, when new homes are sold. This threshold is normally only crossed when selling the last phase of homes on the site;*
  - *If the bank believes that the financial risk is not matched by suitable profit, then the finance itself would not be available or at best, restrictively expensive;*
  - *Lending rates currently start at 8.5% on average and rise subject to perceived project or borrower risk; and*
  - *In conclusion, the applicant considers the proposed profit margin at Stourview Avenue to be 'particularly low' with financial lending a long way below current lending rates. Further, the profit level (at 16.67%) was accepted without comment by Council's own independent valuer, suggesting that such low margins represent a very lenient position by the developer.*

To assist Members in their consideration of this case, it was important to note National Planning Policy Guidance with respect to Viability. The NPPF (2019) at paragraph 57 stated:

*"...The weight to be given to a viability assessment is a matter for the decision maker, having regard to all circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan [or in this case, since approval on outline planning permission in 2017] was brought into force."*

In support of the NPPF, the Government had produced complementary national planning policy guidance which included guidance on 'Viability'. This guidance had helpfully set out advice on a 'return to developers' (profit) for the purpose of viability assessment. In this regard, the planning policy guidance included the following guidance:

- *It is the role of developers, not plan makers or decision makers, to mitigate potential risks to development;*
- *The cost of fully complying with policy requirements should be accounted for in benchmark land value;*
- *Under no circumstances will the price paid for land be relevant justification for failing to accord with relevant policies in the plan; and*
- *For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish*

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*the viability of plan policies [by inference, this could equally be applied to considering scheme viability through a planning application].*

The agreed Viability Assessment had included a projected developer profit level of 16.67%, which would allow for a financial contribution of £260K. At 16.67% profit, this sat at the lower end of the suggested 15-20% profit range contained in the national guidance and had been deemed acceptable by the Council's independent valuer.

To further assist Members in their consideration of this case, Officers had sought additional advice from an independent valuer in terms of a scenario where the developer profit was capped at 15% - the lowest level referred to in the national guidance on viability. The results of this further appraisal were that a 15% GDV would allow for a financial contribution of circa £544K. This would be nearer to the originally agreed Section 106 contributions (excluding affordable housing) but would remain below the level that would now be generated in association with the new application.

Members were informed that it must be borne in mind that the applicant had not agreed to the above re-run appraisal and the application before Members remained that which was reported above – namely a revised Section 106 planning obligation that made a provision in lieu payment of £260K which would need to include the RAMS payment (£8,805,60), together with the provision of on-site open space and its maintenance.

Members were further informed that the planning merits of this case hinged on the relative weight that should be given to the need to provide housing in the District as set against the low level of contributions that would be provided to mitigate the impacts of the scheme in terms of addressing the additional demands on education and healthcare and the absence of any affordable housing provision.

On balance, Officers had remained content that, given the importance of maintaining housing land supply and the special circumstances of this case where viability concerns had been proven and accepted by the Council's independent experts, the grant of planning permission with a revised Section 106 Agreement for a significantly reduced level of contribution to allow development to come forwards was acceptable in this case.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Temporary Planning Team Leader (TF) in respect of the application.

In accordance with the Chairman's decision to exercise his discretionary authority under the terms of the Public Speaking Scheme, as detailed above, Steven Rose, the applicant, spoke in support of the application.

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Bray and **RESOLVED** that, contrary to the Officer's recommendation of approval, the Head of Planning (or equivalent authorised officer) be authorised to refuse planning permission for the development due to the benefit of additional housing being outweighed by failure to provide sufficient infrastructure through Section 106 contributions, with particular focus on lack of education and health care and also reduced affordable housing provisions, being against policy.

The meeting was declared closed at 8.02 pm

**Chairman**