

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **PLANNING COMMITTEE** held on 2 November 2022 at 2.15 pm

Present

Councillors

P J Heal (Chairman)
J Cairney, Mrs C Collis, Mrs F J Colthorpe,
L J Cruwys, Mrs C P Daw, B Holdman,
D J Knowles, F W Letch, R F Radford and
B G J Warren

Apologies

Councillor(s)

E J Berry and S J Clist

Also Present

Councillor(s)

J Buczkowski and J Wright

Present

Officers:

Maria De Leburne (District Solicitor and Monitoring Officer), Richard Marsh (Director of Place), Angharad Williams (Development Management Manager), Adrian Devereaux (Area Team Leader), John Millar (Area Team Leader), Jake Choules (Planning Officer), Andrew Seaman (Member Services Manager) and Carole Oliphant (Member Services Officer)

75 APOLOGIES AND SUBSTITUTE MEMBERS

Apologies were received from Cllrs S J Clist and E J Berry who were substituted by Cllrs J Cairney and Mrs F J Colthorpe respectively.

76 PUBLIC QUESTION TIME (0.04.14)

Mrs Campbell, a local resident, referring to No 3 & 4 on the Plans List stated:

Mr Chairman and councillors, I wish to object to the removal and all variations of the conditions put forward. Why would we agree with the proposed design of these 20 houses which are more in keeping with the suburb of a town and not a village in the countryside?

Policies DM1 of Mid Devon plans states that the designs of countryside should have a clear understanding of the characteristics of the site, its wider context and surroundings. This is clearly not the case. The site design is over-developed, which is shown on the plan because of the footpath only being on one side of the road – a danger to pedestrians. Tree planting is on private property and can be removed at a

later date, not on roadside, and not complying with national planning 2021 paragraph 131.

There is no allocated parking for visitors and no green spaces. These large houses built on a hill overlooking bungalows obviously intrude on their privacy. Mid Devon policy S1 states we should have a sustainable form of transport system for the new build – we haven't.

At the meeting on the 22nd of October our bus services have been cut considerably, thus making it necessary for people to use their cars even more. The last bus to Silverton is 5.55. Conditions 5, 6, 7 and 8 deal with drainage and ground water monitoring, also surface water drainage. These have not only been fully carried out. Ruddlesden geotechnical carried out one test only of three, and said in their report it was because of time constraints – surely not acceptable. I'm sure you're all aware of very recent concerns in the press and the television of phosphates going into our rivers, and polluting them causing great harm. With the added volume of water disposed of, as tested by the developer of combining sewage water and runoff water in larger pipes. This could cause our sewage system harm as the added volume of water after heavy rain and surges disturbs and cancels out separation causing sewage to flow into the river.

As was said on a television programme last week, more systems that are being added to are already outdated and overused systems that cannot cope with the extra volume. Should we ask the environment agency to do a nutrient neutrality test to make sure Silverton's sewage plant is not letting phosphates into the river, and adding to the problem with this proposed build? This is all the more reason for the long term infiltration test should not be removed. These matters need more investigation. These are the reasons why conditions 5, 6, 7 and 8 should not be removed. With regards to the apex turning to the construction site being removed, and as you stated before the 6 foot 6 width restriction then proposed that they should come from the Tiverton A396. This is a very dangerous junction. It is a site set for several accidents and buses stopped turning there years ago probably because of the dangers. It's hard to see how construction traffic can get to site from both approaches are not viable. This is the reason condition number 9 should not be removed. Also assuming the construction site has separate planning as it's not within the site. To conclude, wrong houses, no proof of local need, wrong place, and wrong drainage. Also this development does not comply with Mid Devon policies DM1, S1, 2, 8, 9, 13 and 14. Why would you ignore your own policies? Thank you for your time.

Paul Elstone, a local resident, referring to No 1 on the plan list stated:

I commend the MDDC Planning Officers and Solicitors for ensuring that this application comes before this committee. This for reasons of much needed openness and transparency.

QUESTION 1

Are this Committee fully aware that there are legal precedents set? This including those decided at the Supreme Court. Precedents which overturn the rights of Lawfulness of Existing Use. This if concealment or deception is involved.

One such case

Welwyn Case

This case identifies four features that take a case outside the 10 year protection of section 171B(2) of the relevant act.

– this now constitutes the four-part test generally used to establish concealment.

1. Positive deception took place in matters integral to the planning process.
2. The deception was directly intended to undermine the planning process.
3. The deception did undermine that process.
4. The wrong-doer would profit directly from the deception if the normal limitation period were to enable them to resist enforcement ('profit' / benefit includes the avoidance of enforcement action).

Time limits prevent me from providing more comprehensive detail.

QUESTION 2

I believe there may have been a series of concealments and deceptions. This to conceal the fact that planning conditions have been grossly violated and in order to prevent enforcement action being taken during and soon after the house and not the bungalow was first built.

Are this committee aware that:

1. French windows installed in a bedroom constructed in what should have been the garage space have been concealed by garage doors. Garage doors which are visible from the road. Photographs available.
2. French windows installed in an office constructed in what should have been the garage space also concealed by garage doors
3. It appears that Building Control Certificates application may have been purposely delayed and misleading. That certificates may not applied for until 2021. This if the MDDC application numbering system is correctly understood.
i.e.

Application 21/78/0630/BR

Erection of bungalow and garage and installation of septic tank.

Please note the application is for a bungalow and not a house in any event. Therefore, it's validity I believe requires challenge.

Note:

If these building control certificates were issued when the property was first built this leads to questions about the District Councils role and lack of enforcement at the time. Including reasons why.

4. That a MDDC Council Tax banding check shows the property has been banded as C effective 13th April 2001 i.e. This is when the house and not bungalow was first occupied.

Band C would seem appropriate for a 3-bedroom agricultural bungalow but not for a 6-bedroom 5-bathroom house that has been built and with various reception rooms. Band G being the true banding I would suggest. Saving the occupants nearly £2000 per year in Council Tax over the last 21 years.

All adding further I believe to the opinion that there was an attempt at concealment. This in order to evade any planning enforcement within the prescribed timelines

QUESTION 3

With this information will this committee give full consideration to deferring a decision in respect of this application? This to permit a comprehensive investigation to be carried out. This in order to confirm or otherwise if deception for the purposes of concealment has in fact occurred.

Mr Campbell, a local resident, referring to No 3 & 4 on the plans list stated:

Mr Chairman and planning committee, this is to do with the Silverdale site. As previously mentioned at a planning meeting, a committee member mentioned that there are a lot of people not happy about this site. I think it was with reason. It seems that the rules can be changed in favour of the developers but no notice is taken to the objections made by many residents. It is outside the planning area for the village and then it is adopted all of a sudden. No soil test or drainage test fully completed as requested by the planning inspector. The roads there not adopted as highway. The added amount of traffic coming through any of the approach roads is going to add a great deal of problems.

A proposal that surface water is allowed into local sewers by using larger pipes and combined volume should be too much for the pumping station and the sewage works. It does not look like conditions 6, 7, 8, 9 and 10 have been completed as satisfactory as requested by the planning inspector. Therefore, these should not be removed. On a proposed site, only a footpath on one side of the road, not wide enough for a wheelchair, no mention of drop curbs for wheelchair access. There are many excellent and valid objections submitted, but no notice taken. In fact, 66 letters have been submitted. Mr Chairman and committee, please consider the objections of the local people, not remove the conditions and not consider full planning permission. Thankyou.

The Chairman then advised that on advice from the District Solicitor and Monitoring Officer questions submitted by a Hannah Kearns had been rejected as they were found to be:

- ii) Is in his/her opinion scurrilous, improper, capricious, irrelevant or otherwise objectionable (Council procedure rule 11.2 (f) (ii)).

The Chairman advised that questions would be addressed when the applications were heard.

77 **DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT (0.17.34)**

Members were reminded of the need to make declarations where appropriate

78 **MINUTES OF THE PREVIOUS MEETING (0.18.09)**

The minutes of the meeting held on 5th October 2022 were agreed as a true record and duly **SIGNED** by the Chairman.

79 **CHAIRMAN'S ANNOUNCEMENTS (0.18.49)**

The Chairman reminded Members of the informal planning committee on 9th November 2022 and the training day on 23rd November 2022. He also confirmed that there would be a need to hold a special Planning Committee in January, date to be confirmed.

80 **WITHDRAWALS FROM THE AGENDA (0.19.59)**

There were no withdrawals from the agenda.

81 **THE PLANS LIST (0.20.05)**

The Committee considered the applications in the *Plans List.

Note: *List previously circulated and attached to the minutes

a) Application 22/01377/CLU - Certificate of Lawfulness for the existing use or development for the occupation of the dwelling by anyone without restriction at Higher Coombelands, Knowle, Cullompton.

The Planning Officer outlined the application by way of a presentation which highlighted block plan, the original condition J, the approved plans, first floor elevations, south elevations, west elevations and photographs of the site.

The Officer explained that the Committee would need to determine if the breach of planning control was in excess of 10 years and if so enforcement was not legally an option.

In the case of applications for existing use, if a local planning authority had no evidence itself, nor from any others, to contradict or otherwise make the applicants version of events less than probable, there was no good reason to refuse the application, provided the applicant's evidence alone was sufficiently precise and unambiguous to justify the grant of certificate on the balance of probability.

In response to public questions the Officer did not think there was deception and there had been no objections raised during the period of public consultation.

Consideration was given to:

- The Planning Officer had carried out a site visit
- There had been no previous enforcement cases within the 10 year time limit
- Officers did not see the application as a concealment as the property was openly on view and not being hidden
- A Certificate of Lawfulness was different to Planning Policy and any enforcement period had passed
- The views of the Applicant who stated it was a detailed application which was not to be assessed against Planning Policy and that the matters set out were true. It would be unreasonable not to grant the Certificate of Lawfulness

It was therefore **RESOLVED** that the Certificate of Lawfulness be granted as recommended by the Development Management Manager.

(Proposed by Cllr B G J Warren and seconded by Cllr D J Knowles)

Reason for the decision: As set out in the report

Notes:

- Cllrs P J Heal, Mrs F J Colthorpe, J Cairney, Mrs C Collis, L J Cruwys, Mrs C P Daw, B Holdman, D J Knowles, F W Letch, R F Radford and B G J Warren all made declarations in accordance with protocol of Good Practice for Councillors dealing with planning matters as they knew Cllr E J Berry
- Cllr B G J Warren made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he had received correspondence from members of the public
- Ms K Berry spoke as the Applicant
- Cllrs B Holdman, F W Letch and L J Cruwys requested that their abstention from voting be recorded

b) Application 22/01718/MFUL - Variation of condition 2 of planning permission 17/01509/MFUL (Erection of 39 dwellings following demolition of existing garages and adjacent substructure, together with bike storage, underground car parking, landscaping and associated works) to allow substitute plans relating to external materials and colours and basement car park screens at Land and Buildings at NGR 295350 112455 (Rear of Town Hall), Angel Hill, Tiverton.

The Area Team Leader outlined the application by way of a presentation which highlighted an aerial image, approved site location plan, approved site plan, block e south elevation, west and east elevations.

The Officer explained the reason for the variation was that there had been issues of the supply of red bricks and matching them to existing materials on site. The change in materials now mimicked an already approved block on site for colours and materials. The variation also proposed to replace the approved hit and miss brickwork ventilated screens in the car park with grey-brown coloured powder coated aluminium louvers.

Consideration was given to:

- If the applicant was not 3 Rivers Developments Ltd the application would have been delegated and not brought before committee
- The render and brickwork variation was retrospective but the louvre panels were not
- The views of the Town Council who stated that the variation was retrospective and had taken over 18 months to come before committee and that the louvre doors distracted from the original design and would see an increase in vehicle emissions
- There had been no objections from Public Health on the impact of vehicle emissions due to louvre doors being installed
- The louvre doors had been designed so that mechanical ventilation would not be required in the underground car park and would benefit both residents of the development and adjoining properties

It was therefore **RESOLVED** that planning permission be granted subject to conditions as recommended by the Development Management Manager.

(Proposed by the Chairman)

Reason for the decision: As set out in the report

Notes:

- Cllrs Mrs C P Daw and L J Cruwys made declarations in accordance with protocol of Good Practice for Councillors dealing with planning matters as they were Members of Tiverton Town Council and were both Ward Members
- Cllr D J Knowles made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he was a Member of Tiverton Town Council and knew some of the objectors
- Cllr B G J Warren made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he had been contacted by objectors
- Cllr B Holdman made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he was a Member of Tiverton Town Council and had been contacted by objectors
- Cllr P Elstone spoke on behalf of Tiverton Town Council
- Cllr B Holdman requested that his vote against the decision be recorded
- Cllrs L J Cruwys and J Cairney requested that their abstention from voting be recorded

c) Application 21/01552/MARM - Reserved matters for the erection of 20 dwellings with details of access, appearance, landscaping, layout and scale following outline approval 18/02019/MOUT at Land at NGR 295508 103228 (Silverdale), Silverton, Devon.

In response to questions asked by the public the Area Team Leader stated that:

- The design of trees and footways would be for Members to discuss
- Condition 6 currently required 6 – 12 months of percolation testing if the surface water drainage was going to be dealt with on site. As it had now been established that the surface water drainage would be dealt with offsite the requirement to test was no longer valid.
- Members would discuss Construction Traffic
- The Application was compliant to Policy
- The pavements were 2 metres wide and dropped kerbs were included

The Area Team Leader outlined the application by way of a presentation which highlighted an aerial image, site location plan, site plan, plans and elevations of individual plots, site sections and photographs of the site.

The Officer explained that the reserved matters contained details of access, appearance, landscaping, layout and scale following outline approval. He acknowledged that there was a lot of local objection but the application submitted was satisfactory and the principal of development had been established through the outline application.

Consideration was given to:

- The final materials used, including slate roofs would be dealt with by Condition 2
- Police concerns had been addressed by a Condition that ensures suitable boundary treatments were put in place
- The views of the objector who stated that the height of the houses overlooking the existing bungalows had not been considered, there were width restrictions on the roads leading to the construction access point, local concerns with access to and from Tiverton Road and that the oldest village in the district should be protected
- The views of the agent who stated that the principal of development had been established and that the developer had worked hard to address the concerns of local residents. 7 affordable houses would form part of the application.
- The views of the Ward Member who had called in the application so that the local public could have their say, did the application demonstrate best design practices, the lack of specification in materials to be used and the impact on traffic in the local area
- Some Members concerns with regard to lack of proposed parking and the impact of surface water drainage
- Confirmation that the application proposed in excess of minimum car parking requirements and was policy compliant
- The surface water would be now dealt with via attenuation ponds which would disperse into the main drains in a controlled manner and were approved by the Flood Authority

It was therefore **RESOLVED** that the reserved matters be approved subject to conditions as recommended by the Development Management Manager.

(Proposed by Cllr Mrs F J Colthorpe and seconded by Cllr Mrs C P Daw)

Reason for the decision: As set out in the report

Note:

- Cllrs D J Knowles, P J Heal, Mrs C P Daw, Mrs C Collis and R F Radford all made declarations in accordance with protocol of Good Practice for Councillors dealing with planning matters as they had received correspondence
- Cllr B G J Warren made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he had represented the Authority at appeal
- Cllr F W Letch left the room at 3.50pm and took no part in the discussion or vote
- Mr Grimes spoke as the objector
- Mr Lethbridge spoke as the agent
- Cllr J Wright spoke as the Ward Member
- Cllrs L J Cruwys, B Holdman and J Cairney requested that their abstention from voting be recorded

d) Application 22/00969/MOUT - Removal and/or variation of Conditions 5, 6, 7, 8, 9 and 10 of Planning Permission 18/02019/MOUT Outline for the erection of 20 dwellings at Land at NGR 295508 103228 (Silverdale), Silverton, Devon.

The Area Team Leader explained that a S106 Agreement had been agreed at outline planning stage but this would now require a deed of variation.

Conditions 5, 6, 7, & 8 were regarding drainage and the need for tests to be carried out if the surface water drainage was to be dealt with on site. It had now been established that the surface water drainage could not be dealt with on site so these tests were no longer required. The applicant had provided details of the new surface water arrangements and the Flood Authority had been consulted.

Conditions 9 & 10 required the provision of a Construction Management Plan which had now been provided by the applicant.

The Area Team Leader outlined the application by way of a presentation which highlighted an aerial image, contractor's compound and parking area, construction phase drainage, foul and surface water drainage, drainage layout plan and photograph's of the site.

The Officer explained that although there were 3 possible routes into the site only 1 was suitable for construction traffic and there had been no concerns from the Highways Authority.

Consideration was given to:

- The Developer had an agreement with the land owner for the compound and parking area
- The access into the site had been approved at outline and was for residential use and not construction traffic
- The use of Banksmen had been conditioned for safety
- The issue of mud on roads had been dealt with in the Construction Management Plan
- The Agent who stated that the change of conditions was to catch up with the reserved matters already approved. The construction was due to start in spring 2023 and take about 12 months and that the roads and drainage would be built out first

It was therefore **RESOLVED** that removal and/or variation of Conditions 5, 6,7, 8, 9 and 10 of Planning Permission 18/02019/MOUT be granted subject to conditions as recommended by the Development Management Manager and:

- A Deed of Variation for the S106 Agreement be signed
- An amendment to the Construction Management Plan that the construction access, compound and car park area be reinstated back to original and a timescale added for doing so

(Proposed by Mrs F J Colthorpe and seconded by Cllr Mrs C Collis)

Reason for the decision: As set out in the report

Notes:

- Cllrs D J Knowles, P J Heal, Mrs C P Daw, Mrs C Collis and R F Radford all made declarations in accordance with protocol of Good Practice for Councillors dealing with planning matters as they had received correspondence
- Cllr B G J Warren made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he had represented the Authority at appeal
- Mr Lethbridge spoke as the Agent
- Cllrs B Holdman and L J Cruwys requested that their abstention from voting be recorded

e) Application 22/01554/MFUL - Erection of external heat pump systems and solar car port, installation of photovoltaic panels to existing roofs and erection of shelter over skate park at Lords Meadow Leisure Centre, Commercial Road, Lords Meadow Industrial Estate.

The Area Team Leader outlined the application by way of a presentation which highlighted an aerial image, a site location plan, proposed block plan, parking roof module plans, external biomass store, site roof plan, site views and photographs of the site.

The Officer explained that the Flood Authority had raised no objections but requested that the surface water drainage be considered which had been completed. Public Health had noted that the heat pumps were at ground level but were not near any residential properties and had no objections.

Consideration was given to:

- The heights of vehicles using the parking spaces and that there were alternative spaces available for larger vehicles
- The overall support from Members who welcomed the proposals

It was therefore **RESOLVED** that planning permission be granted subject to conditions as recommended by the Development Management Manager

(Proposed by Cllr J Cairney and seconded by Cllr F W Letch)

Reason for the decision: As set out in the report

- Cllr F W Letch returned to the meeting at 4.58pm and before the item was presented and was able to take part in the discussion and vote
- Cllr J Cairney made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he was a member of the leisure centre and was Ward Member
- Cllr D J Knowles made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he was the Cabinet Member for Community Wellbeing and the Leisure Centres were in his portfolio

- Cllr R F Radford made a declaration in accordance with protocol of Good Practice for Councillors dealing with planning matters as he was a registered carer who had free access to the Leisure Centres

82 MAJOR APPLICATIONS WITH NO DECISION (3.01.57)

The Committee had before it, and **NOTED**, a *list of major applications with no decision.

The Committee agreed that:

- 22/01910/MOUT – Remain delegated
- 22/01671/MFUL – Be determined by Committee if officer was minded to approve and that a full Committee site visit take place
- 22/00915/MFUL - Be determined by Committee if officer was minded to approve and that a full Committee site visit take place

Note: *list previously circulated and attached to the minutes

(The meeting ended at 5.37 pm)

CHAIRMAN