

## MID DEVON DISTRICT COUNCIL

**MINUTES** of a **MEETING** of the **PLANNING COMMITTEE** held on 15 July 2020 at 2.15 pm

### **Present**

#### **Councillors**

Mrs F J Colthorpe (Chairman)  
E J Berry, S J Clist, L J Cruwys,  
Mrs C P Daw, D J Knowles, F W Letch,  
S J Penny, R F Radford and B G J Warren

### **Also Present**

#### **Councillor(s)**

G Barnell, D R Coren, R J Dolley,  
J M Downes, R Evans, B Holdman and  
B A Moore

### **Present**

#### **Officers:**

Jenny Clifford (Head of Planning, Economy and Regeneration), Kathryn Tebbey (Head of Legal (Monitoring Officer)), Lucy Hodgson (Area Team Leader), Eileen Paterson (Group Manager for Development), Alison Fish (Area Team Leader), Adrian Devereaux (Area Team Leader), Oliver Dorrell (Planning Officer), Daniel Rance (Principal Planning Officer), Helen Govier (Principal Planning Officer), Greg Venn (Conservation Officer), Tim Jarratt (Tree Officer), Sarah Lees (Member Services Officer) and Carole Oliphant (Member Services Officer)

## 24 **VIRTUAL MEETING PROTOCOL (00.04.40)**

The Committee had before it, and **NOTED**, the \*'Protocol for Remote Meetings.

Note: \*'Protocol for Remote Meetings' previously circulated and attached to the minutes.

## 25 **APOLOGIES AND SUBSTITUTE MEMBERS (00.05.26)**

There were no apologies or substitute members.

## 26 **PUBLIC QUESTION TIME (00.05.32)**

1. Mrs Hill spoke in relation to item 12 on the agenda, land north of Town Farm, Burlescombe. My questions relate mainly to the ancient boundary hedge. Context very quickly, Blackdown Environmental conducted an ecology assessment report in February 2018, the plan then was for 13 houses and Blackdown's understanding was that the ancient hedge would remain intact as per the design proposals. They refer to

the boundary hedge along Old Road as species rich, potential to be categorised as an important hedgerow under the Hedgerow Regulations Act 1997. There also exists a Devon biodiversity and geodiversity action plan from Devon County Council with policies to protect the hedgerows. Blackdown's views can still be viewed on MDDC Planning portal. It was never updated dated but revised in July 2019. That has significant differences from plans report in 2018.

Can Officers explain why they have not met the requirements of the Hedgerow Regulations Act 97 by requesting an up-to-date assessment to address the ecological, botanical and heritage importance of the ancient boundary hedge?

Can Officers also explain why they failed to reconsult the ecologists (as the ecologists advised in the report) and or ensure an opportunity for a revised consultation response addressing the now proposed removal of 55 metres of the boundary hedgerow?

Can Officers explain why they did not ensure this was done?

The Ecologists wanted retention and protection of this historically important hedgerow. Can Officers explain why MDDC subsequently recommended Approval on a Revised Scheme that would destroy it?

Can Officers explain the discounting of the documented historic background to the Boundary Hedge from Devon County's Historic Records team, reference to the Domesday, and the hedgerows importance?

You say there isn't sufficient reason to recommend refusal on its own but MDDC has failed to address these issues and failed to conduct a proper survey of the impact. So it leaves the authority in danger of a breaching the Hedgerow's Regulation Act of 1997 and the Environmental Impact Regulations too.

Would Councillors not agree that the hedgerow's historic origins and in particular the Ecologist's requirements for retention and protection of this Boundary is an additional and valid Reason for Refusal as is the imminent adoption of the Local Plan which puts this site out of the settlement limit?

2. Mrs Hill spoke on behalf of Cllr Lewis Worrow from Burlescombe Parish Council, in relation to the same item (as he had not been in attendance at this point in the meeting).

The preservation and importance of Burlescombe's Grade I listed church and its setting is now listed as a reason for Refusal, supported by MDDC's Statutory duty under Section 66 of the Planning Act of 1990 and Policies DM27 and DM25.

The starting point for Appeals Inspectors in cases such as these is a 'strong presumption against granting permission' if there is any harm to the heritage asset itself or its setting.

This Application does not overcome or negate even 'less than substantial' harm to the setting of the Church and Historic England has consistently advised MDDC to focus on whether the public benefit outweighs the harm.

To this end I have two (2) questions:

- a) Have Members been clearly informed that the starting point for Planning authorities and Appeals Inspectors is a “strong presumption against granting permission if there is any harm to the heritage asset itself or its setting?”, particularly so when there is no public benefit but significant and less than significant harm?
- b) Can Officers explain why, until now, there has been no acknowledgement of the absence of public benefit and why MDDC’s Statutory duty under Section 66 of The Planning Act 1990 has not been cited as a Refusal reason until now?  
Further to this, the current Application is a Revised Scheme containing significant differences to that of the previous Application Refused in June 2019.

In the December 2019 Report, P32, Officers detail that the current scheme relates to revisions made to overcome the reason for Refusal (highways) and that the Authority cannot consider any other aspects of the development that was previously considered unless the changes made to overcome this reason for refusal cause additional harm to the surrounding area and the heritage assets.

This Revised Application includes a platform of additional and significant excavation to the proposed site: visibility splays, significantly increased parking/turning area and a covered roof not shown in the previous Application.

The Application also now requires the destruction of 55 metres of an historic, protected and irreplaceable boundary hedge, in contravention of the Hedgerows Protection Act 1997 and of the Environmental Impact Assessment Regulations.

To this end, I have three (3) subsequent questions for a total of five (5) questions:

- a) Can Officers explain why they did not treat such significant changes to the Plans as material considerations, and why they seem not to have concluded the changes would cause additional harm to the surrounding area and the heritage assets, as they detailed in the December 2019 Report?  
Officers incorrectly claim they cannot include new Reasons for Refusal, in contrast to their statement of December.
- b). Would Councillors not agree that these material differences provide MDDC with compelling and in Planning terms, justifiable reasons that permit MDDC to take into account and introduce new, legitimate reasons for Refusal that were previously not included?
- c). Would Councillors not agree there are flaws in this process, and that the Application should be finally Refused today?

3. Mr Jamie Byrom then spoke in relation to item 16, Appeal in relation to Higher Town, Sampford Peverell. After the closed session about this same site last October, this Council dropped one of its reasons for refusal, I therefore fear you are being asked to do something similar today, forgive me if I am mistaken. I urge you not to drop either of the remaining reasons for refusal.

Reason for refusal 3 concerns the safety of pedestrians who move in between the site and the village. A year ago you found that the Appellant’s proposals for the canal area would be unsafe and they still are. You will soon adopt our new Local Plan, its policy SP2 requires that access to and from the village must be improved. If you drop this reason for refusal just when the plan is about to be adopted you will in effect be

ignoring a Local Plan policy requirement and I think you will all agree this will be a very bad signal to send to the public at the moment.

The same is true of reason for refusal 1. This concerns landscape impact. A year ago you decided that the landscape proposal would do significant harm to the surrounding landscape character and appearance. This too is covered by policy SP2. It requires landscaping and design which respect the setting and character of the area, conservation of the area and listed building. To help achieve this the policy defines a large area of green infrastructure where there must be no development. The Local Plan Inspector described this area of green infrastructure as essential in providing the protection required but this Council's landscape expert witness for the Appeal never once mentions in his evidence how the Appellants proposals would harm this green infrastructure, something has held him back. In your private session councillors you might like to ask what this is. May be it is because the Local Plan had not yet been adopted when he wrote his evidence but the plan will soon have full force. This includes the requirement for the green infrastructure to remain undeveloped. Rather than give up on the landscape reason for refusal this committee should surely urge officers and your very capable experts to pursue it more aggressively backed up by the requirements of the soon to be adopted plan. If you drop reason for refusal 1 you will be ignoring the SP2 requirement for green infrastructure to remain undeveloped. Once again this is surely a very bad signal to send to the public.

In conclusion my question is, will officers give a clear undertaking here today that the Council and its experts will uphold in full every part of policy SP2 at the forthcoming Appeal enquiry? I am looking simply for a 'yes' or 'no' answer.

4. Professor Barney Dunn spoke in relation to item 13 on the agenda, the Tree Preservation Order at the former Primary School, Newton St Cyres. He stated that he wanted to comment on the appeal made to the imposition of the Tree Preservation Order. This first reason for objection was that the tree was in a poor structural condition. From a non-expert view it is beautiful and its thriving and I note that none of the other 2 experts that came out to see the tree said that it was in a poor state. There is a comment made that the process wasn't followed properly in placing the TPO. As far as I can tell the process has been followed properly.

There is some question about the amenity of the tree, I would just say that the tree has clear visual amenity and that there are multiple site points along Sand Down Lane and on the A377 whether you are a walker, a pedestrian or a cyclist and when they knock down the old school the visual amenity of the tree will potentially increase because it will be more visible.

Also the tree has some historical amenity in that generations of kids went to school there and remember having lessons under it and doing outdoor learning so it is kind of a cultural landmark in the village.

There were some questions raised that it will bias a subsequent planning application with views of the public. My understanding of planning law is that a TPO can be overturned at the planning stage but that it is good to have it there so that that tree is given due process.

The other reason for appeal is that the tree is an inappropriate species for a confined space within a development environment. Just to note the rival bidder for the site which was a Community Housing Trust had come up with a scheme that could successfully incorporate the tree and didn't see any problems with it. That bid was refused on the grounds of profitability for the Council not for viability of the proposal, that is my understanding.

For those reasons I think the original TPO was fine and I would hope that it continues to be upheld. Thank you.

5. Beverly Tolley then spoke in relation to item 12 on the agenda, land north of Town Farm, Burlescombe. She stated that MDDC would seem to be inconsistent in the consideration of applications and in its decisions regarding the harmful effect this proposal will have on the appearance of Old Road, one of the oldest parts Burlescombe has been discounted. On a recent application, outside of the settlement area of Craddick, policies of COR2 and DM 2 concerning local distinctiveness were fully considered and cited as reasons for refusal so my question is can MDDC officers explain why they did not explore and properly consider the relevance of COR2 and DM2 to this application and apply them instead of claiming that the application complied with both?

6. Caroline Pitchin also spoke in relation to land north of Town Farm, Burlescombe.

Good news for the village we now have a farm shop, however the location is in front of the proposed development. Visitors to the shop are already trying to park when the shop is busy, often parking two abreast as we simply do not have anywhere to park. The visitors in the shop are only parking for a few minutes but my question is where are the visitors to park for the proposed development? I cannot see that they will park in the proposed parking area as these are family homes that could mean several cars per household. We have measured the lane and it's 4.2 metres in width on the road outside the proposed development.

The Leylandii trees are growing out of control, spoiling the view for all in the Parish. This has been mentioned by several parties and in previous proposals these were to be cutback or replaced. However will these be allowed to grow even taller if the proposal is denied? I feel that the Leylandii is being used as a bargaining tool. Please will these be cut if the proposal is denied or if permission is given?

The hedge row is an ancient hedge and should remain. The developers Assessment report in 2018 does state that the ancient hedge needs to be protected and remain intact. I have also read on the Mid Devon website that you cannot simply remove an ancient hedge.

7. Cllr Andrew Moore, Ward Member for Clare and Shuttern, stated that he was speaking in relation to item 11 on the agenda – erection of an office building and a Change of Use from agriculture to a groundworks depot at Highfield Farm.

Members of the Committee, you will recall that I called this retrospective application in with concerns about cumulative impact, whether this is the right sort of development to be promoting in remote, heartland countryside and because of

potential amenity impact given the history on the wider site. I stand by those concerns.

You'll remember that a simple search uncovered 8 businesses at Highfield Farm, with this one, "a new employment site" per the report, proudly proclaiming that its growth had been "exponential" and employed 30 people. Taking into consideration everything else that goes on at Highfield Farm is this an appropriate scale or over-development? Is there sufficient adverse impact to refuse the application? You must decide, again in the context of other noisy operations in the immediate area: there must come a point where yet another business is the straw that breaks that particular camel's back.

We are told there are no other suitable sites in the area so the criteria for DM20 are met, but given that the business operates right across the south of England is a 3 km search radius enough? As for adverse impact to the "appearance and character of the countryside", or alternatively "sustaining local distinctiveness, character and environmental assets", you saw photos that showed that a green field site has been completely taken over by this business. Are you aware that, contrary to the report, this site does have a Statutory designation: part is in the North Devon Biosphere, a UNESCO-designated reserve? Are you entirely happy that the requirements of COR2 and COR18 are being fulfilled?

Amenity impact for the few local properties in this quiet area is an important consideration. The recommendations strongly restricting operating hours, lighting and noise are welcome. As this report mentions, a further restriction on vehicle access times might well be appropriate - within the past week there was reportedly regular activity from 5:30 am and vehicles were reportedly entering site with materials at 9:00 pm: Environmental Health Officers have been informed. As always, we rely on the integrity of the operator to honour the conditions, and so it has to be. But I worry that on this remote site with few neighbours, despite the controls, regular Enforcement visits will be needed. And there's a risk that this business's operation could spill conveniently onto the adjacent site where there are currently no specific controls on operating hours, lighting or noise and there have been several Enforcement actions. Are you happy that controls are enough to safely secure the wider policy requirements for the protection of the countryside environment?

So, is this the right thing to be approving, and if so, are you happy that the conditions are sufficient to ensure that all concerns are being comprehensively addressed?

The Chairman stated that the questions would be raised when the Committee got the relevant item on the agenda.

## **27 DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT (00.25.44)**

Members were reminded of the need to declare any interests when appropriate.

## **28 MINUTES OF THE PREVIOUS MEETING (00.25.55)**

The minutes of the meeting held on 17<sup>th</sup> June 2020 were agreed as a true record.

## 29 CHAIRMAN'S ANNOUNCEMENTS (00.27.55)

The Chairman had the following announcements to make:

- She informed the meeting that item 14 on the agenda - Tree Preservation Order 20/0003 – Land at Meadow Park, Willand, Devon had been deferred
- She informed Members that Lucy Hodgson would be leaving the authority after 16 years and she thanked her for her support of the Planning Committee and wished her well for the future

## 30 DEFERRALS FROM THE PLANS LIST (00.30.20)

There were no deferrals from the Plans list.

## 31 THE PLANS LIST (00.30.34)

The Committee considered the applications in the \*Plans List.

Note: \*List previously circulated; copy attached to the signed Minutes.

- a) 20/00189/FULL – (Conversion of agricultural building to dwelling, retention of office building with temporary use as living accommodation while barn conversion takes place, erection of garage/carport and summerhouse at Land and Buildings at NGR 279660 98291, Brookdale, Neopardy).**

The Area Team Leader had informed the Committee that a completed Unilateral Undertaking had been received from the applicant providing a financial contribution towards Air Quality Management in Crediton.

He outlined the contents of the report by way of a presentation highlighting the location, the block plan including the proposed landscaping and the existing and proposed plans.

He explained that the application was seeking approval to convert an agricultural building into one dwelling. The log cabin on site was the same dimensions as a caravan and would be converted to an office building once the main house was completed.

He provided the Committee with a background to the previous Class Q approval for the site which approved the change of use of the agricultural building to 2 x 4 bedroomed dwellings. The prior approval allowed the applicant to live in a temporary building on site under permitted rights.

He explained the appeal decision of Mansell v Tonbridge and Malling Borough Council (2017) and deemed that an original decision of the Class Q application (2 x 4 bedroomed dwellings) would be a fall back position if the current application was refused and went to appeal.

The Area Team Leader stated that the revised application of one dwelling would reduce the amount of traffic and that the building would be completely off grid with extensive tree planting. He stated that the one neighbouring property would not be

overlooked and the log cabin would be repurposed into an office building once the conversion was complete.

Consideration was given to:

- The fall back position if the application was refused and went to appeal
- The log cabin would be converted to offices once the conversion was complete and could not be used as self contained residential accommodation
- The footprint of the proposed building was the same as the original
- Legislation which determined when Class Q could be applied for and possible restrictions through condition
- The views of the applicant who stated that the log cabin would be used as offices for his business once the conversion was completed and that he intended for this to be his forever home built to the highest quality
- The views of the Parish Council who were against the application and felt that the original application would have improved the area but the proposed dwelling was too large for 2 people and questioned the need for offices on site
- The views of the Ward Members with regard to the large mobile home on site that was built without requiring separate planning permission, that the proposal was not betterment when 2 buildings were reduced down to one, that it exceeded the original application, the design of the building and that the curtilage had been considerably increased by this new proposal
- The size of the log cabin
- Whether the application was sympathetic to agricultural heritage
- The ability of the Authority to impose conditions on the revised application with regard to materials and curtilage which could not be imposed with the current Class Q approved scheme

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

Note:

- i.) Cllr Mrs F J Colthorpe, Cllr D R Coren and Cllr S J Penny made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant.
- ii.) Mark Broster (applicant) spoke;
- iii.) Cllr Mortimer spoke on behalf of Crediton Hamlets Parish Council
- iv.) Cllrs D R Coren and S J Penny spoke as Ward Members;
- v.) Cllr B G J Warren requested that his vote against the decision be recorded

**b) 19/01309/FULL - Erection of a dwelling including demolition of a garage at Fair Havens, Mill Street, Crediton.**

The Principal Planning Officer outlined the contents of the report that had been produced to address Member concerns with:

- The requirement of an enhanced landscaping scheme to include semi-mature tree planting to site boundaries
- The colour of the cladding
- The weathering of the roof tiles to tone down the colour
- The need for the amount of roof lights installed and the glare from those that had already been installed

She highlighted by way of a presentation the elevations of the original agreed building to the one that had been built out, photographs of the site from various aspects, the revised landscaping scheme, the extra heavy standards trees and photographs of the previous bungalow showing the roof tiles in a less weathered state.

She informed members that the applicant had suggested two options to address the colour of the cladding, either replacement with hanging tiles or lead cladding but she informed members that officers were unconvinced that lead would be an appropriate solution.

Consideration was given to:

- The property was a 3 storey dwelling with rooms in the attic space
- The shared driveway and that the applicants garage would be removed
- The views of the objector who had concerns about the proposed tree planting in particular the Holm Oaks which she felt would be over whelming. Windows that were not included within the original application and the addition of a section of the building which was not permitted development and should be removed
- The views of the Agent who stated that the new landscaping proposals introduced larger trees and was based on Member discussions at the last meeting. The siting of the Holm Oaks and the proposal to replace the cladding on the bay window with leads which had been rejected by officers
- The views of the Ward Member who stated that the building had been built on an extant loophole and that the amenity could be improved if the extension was not approved but permission had been granted and the authority would need to ensure that any works carried out were in accordance with the plan.

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions and including the additional conditions set out in the addendum report, as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Notes:

- i.) Cllr F W Letch declared a personal interest as he knew the occupants

- ii.) Cllr J Downes declared a personal interest as his property overlooked the application site
- iii.) Cllr Mrs C P Daw, Cllr S J Clist and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the agent and objectors
- iv.) Sinead Partridge (objector) spoke
- v.) Joseph Marchant (Agent) spoke
- vi.) Cllr J Downes spoke as Ward Member
- vii.) The following late information was provided via the update sheet:

Since the officer report was completed a revised landscaping plan has been provided, drawing reference JW719/07/d, this supersedes drawing number JW719/07/c. The updated plan demonstrates the location of the dwarf brick wall which has recently been constructed on site to support the access path to the front of the property from the parking area. The applicant has confirmed that the maximum height of this wall is 900mm. The revision does not propose any amendments to the scope of landscaping as set out on the previous revision and discussed within the officer report.

**c) 19/02013/FULL - Erection of dwelling and demolition of agricultural building at Land at NGR 306728 119836 (Wardmoor), Holcombe Rogus, Devon.**

The Principal Planning Officer outlined the contents of the report by way of a presentation highlighting the location, site plan, proposed elevations, floor plans and photographs of the site.

He explained that Class Q had been granted in 2018 and that this original application would be the fall back position if the application was refused and went to appeal.

He explained that the ridge height of the new proposal was significantly higher than the original plans but there was no evidence that the new development would cause more significant harm than the original position.

Consideration was given to:

- The footprint of the proposed building compared to the original permission
- The views of the objector who stated COR18 required that development in the countryside should be strictly controlled and that this application should be no greater in scale than the original, be agricultural in style and be a betterment of the original granted permission.
- The views of the agent which confirmed that because there was existing permission on the site that a residential building of some form would be built out and referred Members to the fall back position. That solar panels would be installed and that no neighbouring properties would be affected
- The views of the Parish Council regarding the character of the proposed building bore no resemblance to the existing building and it was not betterment in the countryside.
- The views of the Ward Member who had visited the site and had concerns with the size and scale of the building and the relocation away from the hedge. That the new building style would be in keeping with the local area and that

local objections were due to the site being outside the settlement of Holcombe Rogus

- Members views on the visual impact of the new building
- A consistent approach to Class Q redevelopment proposals

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Note:

- i.) Cllr Mrs F J Colthorpe, Cllr E J Berry, Cllr S J Clist, Cllr L J Cruwys, Cllr Mrs C P Daw, Cllr D J Knowles, Cllr F W Letch, Cllr R F Radford, Cllr S J Penny and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant.
- ii.) Mr Grubb (Objector) spoke
- iii.) Hannah Cameron (Agent) spoke
- iv.) Cllr Pilgrim spoke on behalf of Holcome Rogus Parish Council
- v.) The Chairman read a statement on behalf of Cllr Mrs J Norton (Ward Member)
- vi.) The following late information was provided:

Letter of objection received:

Dear Councillor Colthorpe

I am writing to you personally as a neighbour of the application adjacent to Wardmoor to remove an agricultural barn and replace it with a modern house of very mediocre design. This is not a case of NIMBYism but a serious objection to development of the open countryside.

The application site is 1 mile from Holcombe Rogus and the Planning Officer in his report acknowledges that a new dwelling in this location would not be policy compliant because it is development of the open countryside. In particular Policy COR18 and Para 79 of the National Planning Policy Framework seek to prevent the provision of isolated new homes in the open countryside. The Planning Officer’s reason for approval is that the design and layout represents betterment over the Class Q proposal. I very strongly disagree with that point as the new agricultural barn, built in 2009/10, is in good condition and can be easily converted to a dwelling without extremely affecting the external appearance in the countryside. Plans for the Class Q conversion can be seen. Whereas the proposed building is a standard, modern building, more fit for an estate than its proposed location. There is no mention of sustainability or consideration for the environment other than the basic minimum with regard to building a low bank and hedge to surround the garden. The agricultural barn conversion (permitted by Class Q) would be far less intrusive and is therefore a much better solution than the application.

If the application is approved, this will lead others in the district, to argue that a new build should be permitted to replace any barn. The intention of Class Q is not to allow new build, but to convert existing barns into dwellings with minimal impact on the environment and local amenity.

I know that it may not be considered now, but when the application was first granted for an agricultural barn, the planning officer at the time included a condition to remove the barn when it was no longer required. A Planning Inspector deemed that condition unnecessary but it shows that in 2009 the planning officer wanted to avoid further development of the site.

There is absolutely no reason to permit this application, as there is no betterment in the application, so I would appreciate it, if you could follow your council's policies and refuse the application.

### 32 **MAJOR APPLICATIONS WITH NO DECISION (02.20.27)**

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

It was **AGREED** that:

- Application 20/00876/MFUL (Land at NGR 302456 107324 Cullompton Devon) be brought before the committee for determination
- Application 20/00745/MOUTH (Land at NGR 286628 106169 R/O Barton Close Cheriton Fitzpaine Devon) be brought before the committee if the officer recommendation was minded to approve, no site visit was requested
- Application 20/00832/MOUT (Land at NGR 295372 113642 Bolham Road Tiverton Devon) be brought before the committee for determination, no site visit was requested

Note: \*list previously circulated and attached to the minutes.

### 33 **APPEAL DECISIONS (02.23.29)**

The Committee had before it, and **NOTED**, a \*list of appeal decisions providing information on the outcome of recent planning appeals.

Note: \*list previously circulated and attached to the minutes.

### 34 **19/01430/FULL HIGHFIELD FARM - ERECTION OF AN OFFICE BUILDING AND CHANGE OF USE OF AND CHANGE OF USE FROM AGRICULTURE TO GROUNDWORKS DEPOT (02.24.54)**

At the Planning Committee meeting on 17<sup>th</sup> June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration. The Committee therefore had before it an \*implications report of the Head of Planning, Economy and Regeneration setting out the implications of refusal.

The Planning Officer explained the implications report highlighting the reasons for refusal that members had identified at the previous meeting:

- Number of developments in the area
- Suitability of this particular business in this particular area
- Impact of noise on site and the number of hours worked

He explained that Public Health had appraised the application and that they concluded that subject to restrictions on hours that the impact could be adequately mitigated.

He informed members that the north end of the site had been determined as in the fringes of the North Devon Biosphere, a UNESCO-designated reserve, that officers had considered this and that with regard to the scale and nature of the proposed development within that portion of the site that the proposed conditions were adequate.

He addressed the points submitted by the Ward Member at public question time:

- Alternative sites had been investigated within a 3 mile radius not 3km
- Members should only consider the noise impacts of the application site and not from other locations

Members requested confirmation of the additional and updated conditions which had been presented at the previous Committee meeting.

The Planning Officer confirmed the additional and updated conditions as:

- Additional Condition - No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to its installation. Any external lighting that is installed shall accord with the details so approved.
- Amended reason for Condition 3 - To allow the Local Planning Authority to retain control over the future use of the site, in the interests of visual and residential amenity, in accordance with policy DM2.
- Amended Condition 4 - The building hereby approved shall be used for purposes falling within Use Class B1(a) or (b) only and for no other purpose (including any other purpose in any Use Class of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), or any other use permitted under the provisions of Article 3 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification).
- Amended Condition 6 - No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to its installation. Any external lighting that is installed shall accord with the details so approved.

It was therefore:

**RESOLVED** that: Planning permission be granted subject to conditions as recommended by the Head of Planning, Economy and Regeneration

(Proposed by the Chairman)

(Vote 5 for: 5 against – Chairman’s casting vote)

Notes: \* implications report previously circulated and attached to the minutes

**35 19/01189/OUT LAND NORTH OF TOWN FARM BURLESCOMBE - OUTLINE FOR THE ERECTION OF TWO DWELLINGS (REVISED SCHEME) (02.41.59)**

At the Planning Committee meeting on 17th December 2019, Members advised that they were minded to refuse the above application and invited an implications report for further consideration. The Committee therefore had before it an \*implications report of the Head of Planning, Economy and Regeneration setting out the implications of refusal.

The Principal Planning Officer explained the implications report highlighting the reasons for refusal that members had identified at the previous meeting:

1. The impact of the proposal on the historic hedge/wall
2. The impact of the proposal on the historic location
3. The impact of the proposal on the setting of the Grade I listed church
4. The lack of pavements in the area and the narrowness of the roads.

He explained that the first two reasons for refusal could be combined as they dealt with the same. He explained this would leave 3 reasons for refusal:

1. The impact of the proposal on the historic hedge/wall & The impact of the proposal on the historic location
2. The impact of the proposal on the setting of the Grade I listed church
3. The lack of pavements in the area and the narrowness of the roads.

He further explained that reason 1 could be considered as a reason for refusal as this was a revised application but he would go into more details about this later on in his presentation. He explained that reason 2 could be considered as a reason for refusal and the Conservation Officer would give further details but reason 3 was not supported by Highways and therefore was unlikely to succeed.

He explained that a further reason for refusal could be considered as the application site was now deemed to be outside of the settlement limit as confirmed in the

published Mid Devon Local Plan review which carried substantial weight for a reasons for refusal.

The officer then went on to address the questions raised at public question time:

- Under section 6 of the Hedgerow Regulations planning applications were exempt from needing to be being considered so carrying out planning applications is deemed to be accepted and does fall to be considered under that regulation
- An Ecology assessment was submitted with the previous application it identified the potential for the hedge to be an important roadside hedge. Natural England were consulted on the application at every stage and the LPA should be reasonable in their requests for additional information from applicants, not putting them to any additional expense unless absolutely necessary. Given that the application was being refused and therefore there would be no need for the roadside hedge to be removed it was not considered proportionate to request additional survey work be undertaken. Where protected species are likely to be removed a licence is required from Natural England before works can progress. This is a requirement outside of the planning system.
- The issue of the loss of the hedge in the current application was addressed in the officer report to committee in December 2019 and also addressed in the implications report before Members today and your officers are stating that could be a defensible position but highlighted the possibility of costs being awarded due to this not being raised in the original reasons for refusal. There is clearly a lot of local feeling towards the hedge and Members may wish to include this as a reason for refusal if they are so minded.
- Hedgerow regulations fall outside of the the consideration of planning applications
- The revised scheme was dealing with original reasons for refusal and we are unable to introduce new reasons into a revised scheme
- Documented historic background has not been discounted and is included within the officers report however members could utilise the loss of the hedge as an additional reason
- Councillors are aware of the starting point with regard to harm to heritage assets and settings and members have been advised of section 66 of the Act and their statutory duty
- There is public benefit as two houses towards the housing need in the district and employment would be provided during the construction phase
- It was considered that the additional works were not substantial for the alterations made. Yes they were going to be digging more into the hillside however the initial application did show a very large wall in which we said we weren't keen with and that was replaced with a canopy which would then be covered with the earth to mimic the rest of the hill leaving a chamber underneath for the cars to turn around in. There are conditions with this in that there will be no lighting underneath and to be kept for a turning area only.
- The amended scheme limits the impact of the proposal with regard to the church is not a huge change and the appearance appears to be appropriate although main appearance and size and scale will be dealt with at reserved matters
- Complied with COR2 and DM2 and dealt with on December 2019 report

- Parking for the proposal does meet the planning policies under DM8 and the revised Local review Plan . There is no parking restrictions on this part of the road and not aware of anything we can control on that via planning legislation. The farm shop has the same issues.
- The Leylandii trees are not something the planning service can deal with and they would be the responsibility of the owner if minded to refuse
- The latest Historic England advice has been provided to members

The Conservation Officer then provided Members by way of a presentation views to and from the Church and historic monuments. He provided further details of Section 66 of the listed building act and that heritage assets and conservation was enforced by DM27 and repeated in DM25. He explained that in his balanced view the development did not cause harm to the Grade 1 Church but members may have an alternative view.

Consideration was given to:

- The hedge not being an original reason for refusal
- The original highways reason for refusal
- The possibility of costs being awarded against Council if the hedge was now introduced as a reason for refusal
- The significant weight of the Local Plan Review and that the Local Plan was due to be adopted prior to any appeal being received

It was therefore:

**RESOLVED** that that application be refused for the following reasons:

1. The proposal is within the setting of a Grade I listed Church with associated Grade 2 structures and monuments. The significance of the Church relates to views to and from the Church principally, in relation to this application, towards the east from the unnamed road to the west of the site, and from the Church and Church Yard out to the West. The Council considers that the introduction of two dwellings as per the submission, would alter these views by creating two dwellings that would result in an unjustified distraction and intrusion into these important historic views from the public highway and be harmful to the local experience of this Grade 1 listed building contrary to the statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and contrary to Policy DM27 of the current Adopted Local Plan, Policy DM25 of the Mid Devon Local Plan review 2013- 2033:Pre Adoption Draft and the National Planning Policy Framework 2019
2. National and local planning policy states that local planning authorities should avoid new homes in the countryside unless there are special circumstances to justify an approval. A case has been submitted for the provision of two dwellings in this rural location; however this justification is not considered to amount to special circumstances and considered to carry insufficient weight so as to override local and national policy. The proposed residential development would be in an unsustainable location and is considered to be in conflict with policies S1, and S14 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the National Planning Policy Framework 2019

(Proposed by Cllr B G J Warren and seconded by Cllr F W Letch)

Notes:

- i.) Cllr Mrs F J Colthorpe, Cllr E J Berry, Cllr S J Clist, Cllr L J Cruwys, Cllr Mrs C P Daw, Cllr D J Knowles, Cllr F W Letch, Cllr R F Radford, Cllr S J Penny and Cllr B G J Warren made declarations in accordance with the Protocol of Good Practice for Councillors dealing with planning matters as they had received contact from the applicant and objectors.
- ii.) Cllrs S J Clist and R F Radford declared a personal interest for personal reasons and left the meeting during the discussion thereon
- iii.) \* implications report previously circulated and attached to the minutes

**36 TREE PRESERVATION ORDER 20/00002 - FORMER PRIMARY SCHOOL, NEWTON ST CYRES, EXETER (03.31.10)**

The Committee had before it a \* report of the Head of Planning, Economy and Regeneration regarding the above application.

The Area Team Leader outlined the contents of the report via a presentation highlighting the location of the tree , photographs of the tree from various locations and the tree itself.

Consideration was given to:

- The views of the agent who stated that the tree was structurally poor and only some of the issues had been addressed by the tree officer and that the tree had many defects. The applicant was not looking to clear the site of all trees
- The Ward Member who said the challenge to the TPO was unnecessary and it was not to stop development but that the Parish Council were looking forward to development plans for the site be being brought forward. The tree had historic significance.
- Confirmation from the Council's Tree Officer to the age of the tree and how many years of useful life were remaining
- Whether the tree was safe
- The rooting system of the tree
- Responsibility for the tree

**RESOLVED** that the Tree Preservation Order be confirmed.

(Proposed by Cllr F W Letch and seconded by Cllr L J Cruwys)

Notes: \*Report previously circulated copy attached to the minutes.

**37 TREE PRESERVATION ORDER 20/00003 - LAND AT MEADOW PARK, WILLAND, DEVON**

This item was deferred as stated in minute No 29

**38 ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC (04.00.02)**

Prior to considering the following item on the agenda, discussion took place as to whether it was necessary to pass the following resolution to exclude the press and

public having reflected on Article 15 15.02(d) (a presumption in favour of openness) of the Constitution with the following issues being raised:

- Legal advice with regard to information pertaining to individuals, financial and business affairs and legal professional privilege
- The financial and business affairs of the company and that much of that information was confidential or had been provided as such
- Members needed to be have a full and frank debate on the issues which should take place in closed session

The Planning Committee decided that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

It was therefore:

**RESOLVED** that: under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 namely information relating to any individual; paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 5 namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(Proposed by the Chairman)

Prior to going into closed session the Head of Planning, Economy and Regeneration provided answers to questions that had been asked at public question time:

**Public Question response Higher Town, Sampford Peverell**

- It is for Committee to instruct Officers over defence of reasons for refusal.
- As a public inquiry, consultants have been secured on behalf of the Council to defend the Council's position and will appear as expert witnesses and have submitted their proofs of evidence.
- The wording of policy SP2 in full, the Inspector's report on the Local Plan and its adoption status are material considerations at the appeal and the Council's case at appeal will take these into account.

39 **APPEAL - APPLICATION 17/01359/MOUT - OUTLINE FOR THE ERECTION OF 60 DWELLINGS AND CONSTRUCTION OF NEW VEHICULAR ACCESS ONTO HIGHWAY TO THE WEST OF THE SITE - LAND AND BUILDINGS AT NGR 302469 114078, HIGHER TOWN, SAMPFORD PEVERELL**

Returning to open session:

The Planning Committee **RESOLVED** to continue with the defence of the appeal of Application 17/01359/MOUT in accordance with the current position.

(The meeting ended at 7.10 pm)

**CHAIRMAN**