

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **PLANNING COMMITTEE** held on 1 December 2021
at 2.15 pm

Present

Councillors

P J Heal (Chairman)
G Barnell, E J Berry, S J Clist,
Mrs F J Colthorpe, L J Cruwys, R J Dolley,
F W Letch, B G J Warren, Mrs C Collis and
B A Moore

Apologies

Councillor(s)

Mrs C P Daw and C J Eginton

Also Present

Councillor(s)

R L Stanley

Present

Officers:

Richard Marsh (Director of Place), Karen Trickey (District Solicitor and Monitoring Officer), Maria De Leburne (Operations Manager Legal and Monitoring), Dean Emery (Corporate Manager for Revenues, Benefits and Recovery), Angharad Williams (Interim Development Management Manager), Adrian Devereaux (Area Team Leader), Myles Joyce (Consultant Development Management Officer), John Millar (Acting Area Team Leader), Sally Gabriel (Member Services Manager) and Carole Oliphant (Member Services Officer)

120 **APOLOGIES AND SUBSTITUTE MEMBERS (0.03.59)**

Cllrs Mrs C P Daw and C J Eginton gave apologies and were substituted by Cllrs Mrs C Collis and B A Moore respectively.

121 **PUBLIC QUESTION TIME (0.04.28)**

Cllr B Holdman referring to item 8 (Ashdowne Care Home) on the agenda stated:

The applicant has created a new tarmacked parking provision within the last 12 months that would be buried underneath the proposed extension. This is not some rough patch of grass that is used for occasional overflow parking – this is a dedicated extension of their on-site parking that the applicant created only recently because they themselves are frustrated by the lack of parking on the site.

Mr Millar has given his opinion in the implications report that as there are no new bedrooms in the extension itself then our adopted local plan policy DM5 – which sets out the required minimum parking provision for the entire development– does not need to be considered.

When I spoke before you 4 weeks ago I argued that opinion was not backed up by evidence (or to use the agent's own words: it was unreal) and I still disagree with that opinion.

How can it possibly be correct that removing existing parking provision from the site still does not create a justifiable reason to refuse under policy DM5?

Our local plan sets out how this authority intends to manage the development of Mid Devon. Its policies need to be applied fairly without fear or favour, or not at all. And yet members often find themselves here disagreeing with how the officers have interpreted parts of the plan one way or another in order to justify decisions that on the face of it go against those policies, or stretch them extremely thinly.

Can Mr Millar or another officer please explain why policy DM5 won't apply when they are removing existing car parking provision?

Dr Bratby, referring to item 1 on the plans list stated that ;

Every independent observer considers that the storage of fuel to burn in a power station (and that is exactly what this application is) is an industrial facility. It does not matter what type the fuel is, where it comes from or where it is stored. In 2018 your then planning officer repeatedly told the applicant this, stating that the whole planning team agreed that it was industrial. However, on the 8th January 2019 the planning officer stated that she had "received detailed legal advice on the use of the proposed silage clamp and consequently am willing to accept that the proposed use can be classified as agricultural". The officer's report before you today states that "the officers consider the application to be agricultural". So this is just an opinion of the officers.

Where is this detailed legal advice documented? What exactly does it say? Why has it been kept secret from the public for nearly 3 years? We all know that there are two sides to every legal issue. So I am asking that this legal advice is made public today, so that before making a decision, the public can see the advice and the committee can decide for itself that this is an industrial facility that should not be built on agricultural land?

The officer's report today states that HGVs would transport the silage from the site to the AD plant at Willand. What more evidence do you need to demonstrate that the use of the proposed clamp is industrial?

The minutes of the meeting of 17th June 2020 (incorrectly given in the officer's report as 3rd June 2020) stated that the report should answer the question "Where was the legal advice sought from as stated on 4th February 2020"? I believe this should be 8th January 2020. Why has the officer's report before you not answered this question?

Mrs Patricia Parsons referring to Item 8 on the agenda (Ashdowne) stated: I am confused as to why the applicant is claiming that the proposal will not change the parking provision needed on the site. The proposed extension of the existing kitchen will necessarily remove an existing parking provision that is in regular use by staff of the home, including at times the home's management. This parking provision is shown on the plans the applicant submitted, including on the existing parking plan submitted on 11 August 2021, however for some reason it has not been labelled as being used for parking.

I have a number of photographs showing this that I am happy to share with the chair if he so wishes.

I would like to ask if the committee and the planning officers have considered whether the removal of this parking provision would substantiate a reason for refusal on the grounds of non-compliance with Local Plan Policy DM5, on the basis that the proposal will generate need for additional parking provision to be made to offset that which it removes. If it does not, then what is to stop an applicant from later removing every parking provision on a site to repurpose it under permitted development rights?

The Chairman read a statement from **Mr Parry** again referring to Ashdowne Care Home: Adopted Policy DM5 opens with the following statement: "Development must provide an appropriate level of parking, taking into account:

- a) The accessibility of the site, including the availability of public transport; and
- b) The type, mix and use of development".

It goes on to set out in detail the minimum required parking provision for different classes and uses of development. It has previously been acknowledged by this committee that the parking provision on the site is not just inadequate but barely meets 20% of the minimum under this policy.

Indeed, that inability for the applicant to meet the requirements set out in the Local Plan may have played a part in the original application being revised down to remove additional bedrooms in order to persuade the Highways Authority to withdraw their objection. That is, of course, my conjecture, and the applicant's right to do so in any case.

I understand from the Planning Officer's most recent report that he believes that non-compliance with Local Plan Policy DM5 cannot be considered unless this committee can substantiate that the proposal will generate need for additional parking provision to be made.

I have read Policy DM5 paragraph 4.19a, it appears to state that the figure calculated to be about 60 parking spaces is calculated from the demands of the entire site. It states that the remaining parking provision (and more if preferred) should be distributed appropriately throughout the development. I am unable to locate where it states it should not apply when an application

excludes bedrooms, particularly when staff and visitors will still need to park, but nonetheless, I understand that is the position of your officers.

Questions 1 and 2 are to the officer who prepared the report – why is it your opinion that DM5 should not apply to this application? And does the revised lack of objection from the Highways Authority after the proposal was revised impact on your opinion, and if so, where is that to be considered under Mid Devon’s adopted policy?

Question 3 – is to the committee – do you consider that the removal of the existing parking provision that will be lost under the new kitchen extension generates the need for additional parking provision to be made under the local plan? Finally, if not, please can you justify why the loss should be disregarded?

The Vice Chairman read a statement from **Mr Parsons** again referring to Ashdowne Care Home – I have concerns about the ability of the care home complex to safely evacuate in the event of a fire, gas leak, or similar mass evacuation event where speed and safety are critical.

At present the space along the east facing line of the building provides access from and into the rear of the home, and directly services a number of emergency exits. I have spoken with an active firefighter and in the event of a fire, this is the likely route that the firefighters would take to access the property.

The proposed new line of the building reduces the available space from 4.5 metres to 1 metre alongside the hedge. Whilst you can just about get a single wheelchair through that space to safely access the footpath in an emergency, you would struggle to get a bed through it, and it would be one way traffic only.

Equally concerning is the reduction of the footpath in front of the main entrance from 2.25 metres to just 35 centimetres. There is no way that an able bodied person can safely navigate from the main entrance to the public footpath serving the home without walking onto the public highway. If vehicles continue to park there then there will be no access at all. Even if a wheelchair user were able to park safely within the limited Ashdowne car park, they would still need to access the main entrance via the public highway as the existing off road access would be removed by the location of new roof support pillars. During an active emergency up to 60 vulnerable residents will need to be left on the public road and footpaths amongst fire engines, ambulances and other large vehicles as there would be no safe space to hold them. My question is – have the applicant and the committee considered the safety concerns created by removing the egress route along the east of the site?

The Chairman read a statement from **Mr and Mrs Roberts** again referring to Ashdowne Care Home: This proposal creates additional office space. The applicant’s builders are currently on site and I have been told they are building out new amenity space. In the implications report the officer writes that the recently provided floor plans demonstrate the building has no space for further internal development. Yet surely if space can be found for new amenity

usage, a small portacabin sized space can be found for office or administration needs?

Can you commit to removing the portacabin on the car park that has long exceeded its temporary planning permission (and any enforcement action). I understand it is being used as office space. It should be possible to accommodate it internally alongside all these new bedrooms and amenity space being created over the past few years.

The Chairman read a statement from **Mrs Wood** again referring to Ashdowne Care Home: she thanked the officers for answering the questions about the CEMP (Construction Environment Management Plan) when this was last before the committee on 3 November. Sadly, I remain wholly unconvinced at the applicant's ability to meet the requirement such a plan would impose, nor of this planning authority's ability to enforce them given the likely 6-8 week development period needed and the public interest test.

My concerns are based on the past activities of the applicant and their construction contractors who have shown poor regard for mitigating disruption to the public highway and neighbouring residents; and that the only effective enforcement remedy available to the council is to ask for any deviation to be stopped. By the time any action is issued, and representations and appeals discussed, the works will be complete and the CEMP could be proven worthless and a waste of many good officers time.

I do appreciate that scenario is entirely conjecture at this point, and I dearly hope that should the application be approved then the applicant will work diligently to follow the CEMP – and ensure their contractors do too. However, even over the last few weeks since the committee meeting on 3 November, the applicant has instructed construction works on the site and allowed the contractors to double park on the public highway fully blocking the turning head. At the same time as the applicant's agent was sending emails to your officers disputing the sanity of this committee, the applicant's contractors were actively engaging in the very activities that the CEMP would aim to prevent. It would appear they care the same for this committee as they do the residents.

My question is perhaps better asked to the officers rather than the committee members – what realistic enforcement actions would you be able to take to ensure compliance with an agreed CEMP and what are the timescales involved?

The Chairman read a statement from **Mrs Day** again referring to Ashdowne Care Home: after it was clear the original planning application with additional bedrooms was going to be refused, the applicant and their agent delayed and submitted revised plans removing the bedrooms. The applicant has indicated that the kitchen that would be extended is a secondary serving room rather than a full kitchen where the additional space would be productive. The office area is reconfigured but largely of a similar volume and the covid secure visiting pod could easily be sited internally by extending the lobby back to the existing store room. The only productive space being created by this proposal is the treatment room. Can the officers please confirm how they will ensure the proposed condition to prevent the use of this new room as a future

bedroom will be enforced more rigorously than the temporary planning permission for the now permanent portacabin was?

Mrs Jenner again referring to Ashdowne Care Home stated that on the most recent care home floor plans sent by the agent to your officers, you will see that the dining room has been cut in half with two large bedrooms created in that space (labelled bedrooms 12 and 13). These do not appear on previous plans and have sprung up alongside the original application being revisited to remove any bedrooms.

Whilst it is within the rights of the applicant to repurpose and redevelop the existing property as they see fit (at least as regards the planning process) it does appear that these changes might have been made after the understanding that permission to create those same bedrooms in the new building would be refused.

I understand that your officers have proposed a condition that no part of the new building can be used as a bedroom in the future. However, this is a business that only makes money from bedrooms, these alterations need to be paid for.

My question is – given that you have indicated you cannot set any conditions on the use of the existing property, and given the recent history of development on the site gets around such conditions (intentionally or otherwise), how can you prevent the new treatment room being turned into a lounge or dining room area and the equivalent space elsewhere on the site being converted into yet another two bedrooms?

The Vice Chairman read a statement from **Mr Wood** again referring to Ashdowne Care Home: At the last meeting on 3 November, the residents handed in two petitions in objection to the Ashdowne Care Home application. Please can the Chairman confirm he has received these petitions and if not ask members services to make them available.

The Chairman confirmed that the petitions had been received alongside a document received that day.

The Chairman announced that answers to the questions would be provided when the item was discussed.

122 **DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT (0.26.49)**

The following interests were declared:

Application Number	Member	Type of Interest Declared	Reason
18/0174/MFUL	1. Cllr P J Heal 2. Cllr G Barnell 3. Cllr E J Berry 4. Cllr S J Clist 5. Cllr Mrs C Collis 6. Cllr Mrs F J	Protocol of Good Practice for Councillors dealing with Planning Matters	Correspondence received from objectors

	Colthorpe 7. Cllr L J Cruwys 8. Cllr R J Dolley 9. Cllr F W Letch 10. Cllr B A Moore 11. Cllr B G J Warren		
18/0174/MFUL	1. Cllr B A Moore	Personal	Ward member
20/01458/FULL	1. Cllr Mrs C Collis 2. Cllr Mrs F J Colthorpe 3. Cllr G Barnell 4. Cllr L J Cruwys 5. Cllr B G J Warren	Protocol of Good Practice for Councillors dealing with Planning Matters	Correspondence received from objectors
16/01707/MOUT	1. Cllr S J Clist	Disclosable Pecuniary Interest	Related to applicant

123 MINUTES OF THE PREVIOUS MEETING (0.27.15)

The minutes of the meeting held on 3rd November 2021 were agreed as a true record and duly **SIGNED** by the Chairman.

124 CHAIRMAN'S ANNOUNCEMENTS (0.28.30)

The Chairman reminded Members of a briefing taking place on Monday 6th December and requested that every effort be made to attend.

125 DEFERRALS FROM THE PLANS LIST (0.28.45)

A decision on 21/00782/FULL | Siting of a temporary rural workers dwelling (mobile home) | South West Game Birds Crediton Devon was withdrawn

126 THE PLANS LIST (0.29.13)

The Committee considered the applications on the *Plans List

Note: *List previously circulated and attached to the minutes

a) Application 18/01711/MFUL - Formation of an open clamp (4630m2) for the storage of silage and provision of new access at Land and Buildings at NGR 288069 117081 (Gibbet Moor Farm), Rackenford, Devon.

The Consultant Development Management Officer outlined the application by way of a presentation which highlighted the site location, larger farm plan, reasons for deferral, block plan, silage clamps and elevations.

The Officer explained that since the previous application the Mid Devon Local Plan had been adopted, legal advice had been received and that an updated transport assessment had been received.

In response to public questions he stated:

- The legal guidance that the application was agricultural
- The committee were informed that the legal advice received was privileged.

Consideration was given to:

- The views of the Ward Member who felt that for transparency that the application should be refused and determined by the Planning Inspectorate at appeal as he had concerns over the integrity of the applicant
- Members views that if more silage product was permitted on site it would cause an increase in traffic movements to and from the site
- The removal of soil to create the clamp was controlled by conditions 13 and 14
- As the development was on uncultivated land an ecological assessment was not required
- Previous alleged pollution incidents by the applicant were not a material planning consideration
- That the end use of the silage, whether this was for livestock or as a fuel for an anaerobic digester was not a material planning consideration
- Members views that the end product of many agricultural practices ended up in an industrial process but this did not conclude that the operation to produce the product was also industrial
- The legal advice provided which confirmed that the operation was agricultural
- Members concerns that the type of material stored in the clamp and where it had come from needed to be tightly controlled by conditions

RESOLVED that planning permission be granted as recommended by the Consultant Development Management Officer subject to conditions and that delegated authority be given to the Interim Development Management Manager in consultation with the Chairman and Ward Members to amend Condition 11 to limit the source of and the type of material permitted to be stored in the clamp.

(Proposed by Cllr B A Moore and seconded by Cllr Mrs F J Colthorpe)

Reason for the decision: as set out in the report

Note:

- (i) Cllrs S J Clist, L J Cruwys, R J Dolley and B G J Warren requested that their vote against the decision be recorded
- (ii) Cllrs G Barnell and F W Letch requested that their abstention from voting be recorded
- (iii) Cllr R J Stanley spoke as Ward Member

127 APPLICATION 20/01458/FULL - ASHDOWNE CARE CENTRE, ASHDOWNE HOUSE, ORKNEY MEWS, TIVERTON (1.41.00)

At the meeting of 3rd November 2021, the Committee were minded to refuse the application and requested that an *implications report be produced to consider the reasons for refusal.

The Interim Area Team Leader recapped on the history of the application and the previous reports that the committee had considered and the reasons for deferral.

The County Councillor had updated officers that the request to provide yellow lines was being progressed at County level.

In response to public questions he stated:

- Only internal plans for the Pinnex unit were required for this application
- The existing kitchen would remain in place
- The applicants agent had confirmed that the proposed extension did not encroach onto a designated parking space and therefore no parking would be removed
- In his opinion Policy DM5 did not apply as the extension would not create any additional traffic on the site

Consideration was given to:

- The need to focus on any real need to increase parking for the use for the facility proposed
- Members views that the proposal may increase traffic movements due to other rooms in the centre being converted to additional bedrooms

RESOLVED that planning permission be refused contrary to Officers recommendation for the following reason:

The proposed development would comprise over development of the site and an intensification in use of Pinnex Moor House, leading to increased levels of traffic. Taking into account the under provision of car parking facilities on site, and the restricted width of the public highway, this intensification of use will lead to increased likelihood of parking on the public highway, which would create a severe impact on the highway network. The development is therefore considered to be unacceptable and contrary to policies DM3 and DM5 of the Mid Devon Local Plan 2013-2033.

(Proposed by Cllr L J Cruwys and seconded by Cllr G Barnell)

Notes:

- (i) Cllrs Mrs F J Colthorpe, P J Heal and B A Moore requested that their vote against the decision be recorded
- (ii) In the event of an appeal it was agreed that G Barnell, S J Clist and L J Cruwys would defend the decision
- (iii) *implications report previously circulated and attached to the minutes

128 16/01707/MOUT - MODIFICATION TO THE S106 PLANNING OBLIGATIONS - LAND AT NGR 295527 113644 (SOUTH OF LEA ROAD, TIVERTON) (2.05.04)

The Committee had before it a report of the Interim Development Management Manager presenting a modification to the S106 planning applications for the above application following conclusions of a Financial Viability Assessment (FVA).

The Area Team Leader explained the outline permission already approved and the S106 conditions attached to that. He explained that a Financial Viability Assessment had been conducted that had concluded that the site was no longer viable for development with the existing S106 obligations attached to it.

Consideration was given to:

- The views of the agent who stated that although the site had been extensively marketed that it had been difficult to sell due to the S106 agreement in place and that the site as was could not sustain the amount of affordable housing required. He further explained that the site would still contain an element of open market low cost housing

Members were disappointed that the affordable housing element of the S106 obligations would now not be delivered but were assured by Officers that further FVA's would be conducted as the site progressed to see if any S106 monies could be collected, if the site became viable.

RESOLVED that the changes to the S106 agreement be supported as recommended

(Proposed by Cllr E J Berry and seconded by Cllr R J Dolley)

Reason for the decision: In order for this site to be developed for housing, a policy compliant scheme would not be possible based on the evidence submitted and assessed.

Note:

- (i) Cllr Mrs C Collis requested that her vote against the decision be recorded
- (ii) Cllr S J Clist had declared a Disclosable Pecuniary Interest as he was related to the applicant and was not present for the deliberations or vote
- (iii) Mr Preston spoke as the Agent
- (iv) *report previously circulated ad attached to the minutes

129 **MAJOR APPLICATIONS WITH NO DECISION (2.33.45)**

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

It was **AGREED** that: application 21/02137/MFUL - Land and Buildings at NGR 302094 104175 Westcott Park Westcott be brought before the Committee for determination and that a site visit take place.

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

130 **APPEAL DECISIONS**

The Committee had before it, and **NOTED**, a *list of appeal decisions

Noted: *List previously circulated and attached to the minutes

(The meeting ended at 5.04 pm)

CHAIRMAN