

# Forest Heath District Council

**MINUTES** of the **EXTRAORDINARY DEVELOPMENT CONTROL COMMITTEE** held at the District Offices, College Heath Road, Mildenhall on Wednesday 27 August 2014 at 6.00 pm.

## **PRESENT:**

Councillors:

C J Barker (Chairman)	W Hirst
A Drummond (Vice-Chairman)	R D S Hood
W J Bishop	T J Huggan
J M Bloodworth	G Jaggard
D W Bowman	Mrs C F J Lynch
Mrs R E Burt	T Simmons
S Cole	E Stewart
R Dicker	A J Wheble
D W Gathercole	

Also in attendance:

G Durrant, Principal Planning Officer – Major Projects  
J Hooley, Lawyer  
M Smith, Place Shaping Manager  
S Wood, Head of Planning and Regulatory Services  
S Turner, FHDC Cabinet Officer/Committee Administrator

D Vogtlin - Hyder Consulting (UK) Ltd

## **APOLOGIES**

Apologies for absence were received from Councillor M J Anderson.

## **SUBSTITUTES**

Councillor R D S Hood attended the meeting as substitute for Councillor M J Anderson.

108. **PLANNING APPLICATION F/2013/0257/HYB (i) LAND EAST OF RED LODGE; (ii) LAND SOUTH OF ST CHRISTOPHER'S PRIMARY SCHOOL, RED LODGE (PART OF PHASE 4A OF KINGS WARREN); (iii) LAND SOUTH OF THE VILLAGE CENTRE, RED LODGE (PART OF PHASE 4A OF KINGS WARREN); (iv) LAND SOUTH EAST OF HERRINGSWELL (REPORT NO DEV14/128)**

Councillor T J Huggan declared a local non-pecuniary interest in respect of this item as he was a Governor of St Christopher's CEVC Primary School, Red Lodge.

Hybrid application:

- (i) Outline application - demolition of Hundred Acre Farm and the construction of up to 268 dwellings, new public open space, drainage ditches, associated access, landscaping, infrastructure and ancillary works on land East of Red Lodge and the construction of up to 225 sq., metres of Class A1 retail floorspace on land forming part of Phase 4a Kings Warren.
- (ii) Full application - (Phase A): construction of 106 dwellings (including the relocation of 3 committed dwellings from Phase 4a), new public open spaces, associated access, landscaping, infrastructure and ancillary works on land East of Red Lodge. Restoration of open Breck grassland on land South East of Herringswell, as amended.

Prior to the commencement of the consideration of this application, the Lawyer reminded Members that the Council had received notification from the Department of Communities and Local Government (DCLG), that the Secretary of State (SoS) was exercising his powers, under S25 of the Town and Country Planning Order 2010. Therefore, should the Development Control Committee approve the application this evening, the SoS reserved the right to call-in the application, following this decision.

Councillor W Hirst then referred to the agenda papers which had contained his personal representations, following the Development Control Committee on 6 August 2014. Councillor W Hirst stated, however, that if any new evidence was presented during the determination of the application this evening, then he would reconsider his previous representations accordingly.

Some Members expressed their strong objections to Councillor W Hirst's representation having been included within the agenda papers. They considered that this indicated a pre-determination of the application on the part of Councillor W Hirst and also considered that this was intimidating towards the other Members of the Committee. In response, the Lawyer explained that the Planning Advisory Service recommended that the views of Members were included within agenda papers, in the interests of transparency. The Head of Planning and Regulatory Services also explained, as these were the personal views and concerns of Councillor W Hirst, Members were able to give as much or as little weight to them, as they deemed appropriate.

With regard to the representations made by Councillor W Hirst to monies being recovered against individual Councillors for decisions made which were deemed to be inappropriate or unlawful, the Lawyer clarified that whilst the powers of surcharge were abolished under the Local Government Act 2000, an auditor appointed by the Audit Commission, would continue to play their role in investigating financial impropriety in local government and could recover financial losses from individual councillors.

The Case Officer then presented this application and explained that this had been originally referred to the Development Control Committee on 2 July 2014, as it was a proposal for 'major' development which raised complex planning issues of District wide importance.

At the Development Control Committee meeting on 6 August 2014, Members resolved that they were '*minded to refuse*' planning permission, contrary to the Officer recommendation of approval, as Members were concerned that the proposal would result in:

- Adverse impact upon the local sewerage infrastructure.
- Adverse short to medium term impact upon primary education provision in the village (specifically St Christopher's School).
- Unsatisfactory vehicular access to the site.

The Case Officer provided updated information and late representations which had been received following the publication of the agenda papers:

1. Comments had been received from Hyder Consulting (UK) Ltd with regard to the sewerage. In relation to the WERM reports submitted by the applicant, Hyder had confirmed that the evidence in these reports was consistent with their understanding of the sewerage infrastructure that served Red Lodge.
2. The applicant had now offered to enter into a further planning obligation, under the S106 Agreement, that would limit no more than 106 dwellings to be occupied before 1 September 2017 (which was the forecasted date for the opening of the new primary school).
3. A letter from a local resident in Red Lodge was read out to the meeting, which stated that the application should be refused on the grounds of prematurity for the following reasons:
  - a firm commitment was required from Suffolk County Council with regard to the funding, provision and location of the new school from September 2017, prior to any further development being commenced.
  - a single point of access to the site (Larch Way) was not acceptable and a second access point should be provided.
  - sewerage and odour related problems in Red Lodge needed to be fully resolved by Anglian Water, prior to any further development being commenced.

The Case Officer then summarised the risk assessment report with regard to the proposed reasons for refusal, which had been identified at the meeting on 6 August 2014:

1. Sewerage Infrastructure

- The evidence submitted demonstrated that the local sewerage system had the capacity to accommodate the additional flows generated by the development proposals. The Council's independent assessment also confirmed that the system had sufficient capacity to accommodate additional flows generated by the development proposals.
- The evidence also confirmed the flows from the development would feed into a sealed sewerage system running from Red Lodge to the treatment works at Tuddenham.

- Anglian Water, custodians of the sewerage infrastructure, had not objected to the proposals and had confirmed the infrastructure would be able to accommodate the increased flows from this development.

Therefore, the Case Officer explained that as no tangible evidence had been provided to demonstrate that these development proposals would have an adverse impact upon the sewerage infrastructure, it was considered that the reason for refusal on these grounds would not be sustainable at appeal.

## 2. Primary Education Provision

- St Christopher's Primary School was the catchment primary school for the proposed development.
- Forecasts indicated that the primary school would exceed its 420 pupil place capacity by the beginning of the 2016 school year.
- If no further planning permissions were granted for housing development, the demand for school places was likely to exceed the 420 pupil place capacity by 84 pupils by the beginning of the school year September 2017.
- A new primary school would need to be built to supplement St Christopher's Primary School, irrespective of any further growth in the village.
- Suffolk County Council (as the Education Authority and statutory provider of school places) was seeking to mitigate this impact by building a new school facility in the village to open in September 2017.
- If planning permission were to be granted and development commenced as soon as practically possible, it was unlikely that new pupils would emerge from the development proposals until September 2016, at the earliest.
- The site of St Christopher's Primary School was constrained and it would be difficult to provide temporary classroom accommodation within its grounds without significantly compromising the use and function of the school playing fields.
- The developer had offered part of their site (0.81 hectares) to the school on a temporary basis to allow the school grounds to expand. The amount of land being offered, in this respect, was in excess that actually would be required to cater for the 17 pupils expected to emerge from the development proposals in the next three years.

Therefore, the Case Officer explained that as no tangible evidence had been provided to demonstrate that these development proposals would have an adverse impact upon primary education, it was considered that the reason for refusal on these grounds would not be sustainable at appeal.

## 3. Unsatisfactory Vehicular Access

- The National Planning Policy Framework (NPPF) stated that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development were severe.
- Principal vehicular access would be provided to the development via Larch Way. This had been designed and constructed to function as a principal access to the application site and was suitable to serve the development proposals.

- Access arrangements were agreed with the Local Highway Authority (at Suffolk County Council) who had raised no objections to the planning application.
- Off-street car parking provision was adequate and accorded with the existing Parking Standards and also with the new emerging Parking Standards.
- The Local Highway Authority had confirmed that it would resolve persistent inappropriate onstreet parking in Larch Way, retrospectively, should access into the development be compromised.
- Provision of a second principal vehicular access to serve the development was not necessary and, if provided, would cause design and usage conflicts with the use of the public open space.

Therefore, the Case Officer explained that as no tangible evidence had been provided to demonstrate that these development proposals would have an adverse impact upon vehicular access or highway safety, it was considered that the reason for refusal on these grounds would not be sustainable at appeal.

The Case Officer then explained the risks associated with the refusal of this planning application. Officers considered that it would be extremely difficult to defend a refusal of planning permission on the three grounds identified above, given the weight of evidence demonstrating the development proposals would not be harmful in these respects and in the absence of convincing evidence to the contrary. Officers were of the opinion that this application was likely to be granted on appeal and the potential implications of this would be:

- That the Council's reputation would be adversely affected by its inability to properly defend its reasons for refusal at appeal.
- The loss of major appeals was considered poor performance by the Government, which, in turn, could have potentially significant implications for the local planning authority, particularly in relation to the future determination of major developments.
- The applicant would also have the right to request recovery of their appeal costs from the Council, should the Appeal Inspector conclude that the Council had acted unreasonably.

In considering the merits of this planning application, Members were reminded of the requirements set out in the National Planning Policy Framework for the decision maker to balance the benefits of the proposed development against its dis-benefits and only where those dis-benefits would significantly and demonstrably out-weigh the benefits, should planning permission be refused (paragraph 14 of the National Planning Policy Framework).

In this case, the weight of evidence was clear that the dis-benefits of development were significantly outweighed by the benefits of development proceeding and clearly pointed to the grant of planning permission in this case.

Therefore, the Officer recommendation, as set out in Section I of Report No DEV14/128, remained that outline planning permission be granted, subject to the inclusion of the additional Heads of Terms as proposed by the applicant, in that no more than 106 dwellings were to be occupied before 1 September 2017

and also being subject to the Secretary of State resolving not to recover the planning application for his own determination.

The Lawyer also informed Members that the Council had sought independent legal advice, in relation to the potential refusal of this planning application. The advice received had supported the advice of Officers and had concluded that there was no reasonable basis on which to refuse planning permission of this application. If permission was refused on the grounds being suggested (ie primary education provision, sewerage infrastructure and unsatisfactory vehicular access), and taking into account all of the measures being proposed, then it was Counsel's view that planning permission would very likely be granted on appeal. The Council would face a very substantial costs claim on the basis that it was unnecessary for the appeal to have been brought, therefore, making such an appeal very difficult to successfully defend.

Councillor A Drummond commenced the discussion on the application by referring to Section H of Report No DEV14/128. Although he recognised the issues raised by all parties and by Members, he considered that sufficient measures had been identified to alleviate these. Councillor A Drummond also considered that the Council would not be able to successfully defend refusal of this planning application, if it was to go to appeal.

Therefore, Councillor A Drummond proposed that the outline planning permission be granted, as set out in Section I of Report No DEV14/128 and subject to the inclusion of the additional Heads of Terms as proposed by the applicant, in that no more than 106 dwellings were to be occupied before 1 September 2017. This proposal was duly seconded by Councillor W Hirst.

During the discussion of this planning application, other Members continued to raise concerns regarding sewerage infrastructure and primary education provision. Some Members continued to remain unconvinced regarding the evidence, assurances and measures proposed by Suffolk County Council with regard to the adequacy of the primary school provision and by Anglian Water with regard to the robustness of the sewerage system, particularly within Red Lodge itself.

The motion, as proposed by Councillor Drummond, was then put to the vote and with 7 voting for the motion, 7 voting against and with 3 abstentions and with the Chairman exercising his casting vote of approval, it was resolved that

1. Subject to the Secretary of State resolving not to recover the planning application for his own determination, outline planning permission be **GRANTED** subject to:

The completion of a S106 agreement to secure:

1. Affordable housing: 14% for Phase A with a tenure mix of 70% affordable rent and 30% shared ownership.
2. Education contribution: £1,508,416 (towards land and build costs for a new primary school).
3. Healthcare contribution: £130,000.
4. Traffic calming contribution: £45,000.

5. Early Years Education contribution: £225,367.
6. Libraries contribution: £80,136.
7. Open space contribution: circa £437,107 (dependant upon the housing mix of the later phases and development viability of the later phases).
8. Phasing (including delivery and management of the circular footpath and delivery village centre extension and land required temporarily for St Christopher's Primary School).
9. Travel plan implementation and monitoring.
10. Delivery and management of the Herringswell Mitigation site and the 2 (no.) replacement planting sites.
11. Provision of 0.8ha of land adjacent to St Christopher's Primary School for a temporary period for education use (precise term to be agreed with the applicant and Local Education Authority).
12. Review and re-appraisal of the scheme proposals for viability (Phase A to be re-appraised if not implemented within a reasonable period, later phases (currently at outline stage) to be re-appraised at reserved matters submission stage (and re-appraised should a policy compliant scheme not be secured from later phases and the later phase/s are not implemented within a reasonable period).
13. Right of passage for construction vehicles over third party land (the route as generally illustrated on applicants drawing number CN059-PH1-13 Rev00).
14. No more than 106 dwellings to be occupied before 1 September 2017.

and subject to conditions, including:

1. Outline time limit (later phases).
2. 3-year commencement (Phase A)
3. Reserved Matters to be agreed (appearance, scale, layout [including internal site layout of roads and ways] and landscaping)
4. Compliance with approved plans.
5. As recommended by the Local Highway Authority (not including S106 contributions).
6. Archaeology – investigation and post investigation assessment.
7. Contamination – further investigative work.
8. Drainage details, including foul water and SUDS.
9. Construction Management Plan.
10. Details of boundary treatments.
11. Use of materials as proposed (phase A).
12. Details of Materials with subsequent Reserved Matters submissions (later phases).
13. Detailed scheme of hard and soft landscaping, including the open spaces.
14. Details of informal play equipment.
15. Tree protection.

16. Landscaping management plan.
  17. Recommendations of Ecological Assessment to be implemented.
  18. Provision of fire hydrants.
  19. Waste minimisation and recycling strategy (including for demolition of Hundred Acre Way).
  20. Quality assurance plan for each development phase, with particular focus on energy and water efficiency.
  21. Bin and cycle storage strategy.
  22. Noise mitigation (later phases – dwellings adjacent to sports pitches).
  23. Ecological and Landscape Management Plan.
  24. Any additional conditions considered necessary by the Head of Planning and Regulatory Services.
2. That, in the event of the Head of Planning and Regulatory Planning Services recommending alternative (reduced) Heads of Terms from those set out at Recommendation 1. above, the planning application be returned to Committee for further consideration.
3. That, in the event the applicant declines to enter into a planning obligation in full, or in part, to secure the Heads of Terms set out at Recommendation 1. above, for reasons considered unreasonable by the Head of Planning and Regulatory Services, planning permission be refused for the following reasons (as may be appropriate):
- i) Unsustainable form of development not mitigating its impact upon, education provision, open space, sport and recreation and libraries (contrary to the Framework and Core Strategy policy CS13 and saved Local Plan policy 10.3).
  - ii) Non-compliance with affordable housing policy (contrary to Core Strategy policy CS9 and supporting SPD document).
  - iii) Adverse impact upon the SPA and/or Stone Curlews nesting attempts outside the SPA.

Speakers: Dr Allan Marchington (Five Villages Preservation Trust) spoke against the application  
Mr Paul Evans (Herringswell resident) spoke against the application  
Mr Bill Rampling (Rural Parish Alliance) spoke against the application  
Councillor Ben Graveston (Red Lodge Parish Council) spoke against the application  
Mrs Gloria Hicks (Herringswell Parish Council) spoke against the application  
Mr Chris Rees (Applicant) spoke in support of the application

The meeting closed at 7.40 pm.