

## Minutes of the Meeting of the Planning Committee held on 11 January 2018 at 7.00 pm

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**Present:** Councillors Tom Kelly (Chair), Steve Liddiard (Vice-Chair), Colin Churchman, Graham Hamilton, Roy Jones, Terry Piccolo and Graham Snell and Joycelyn Redsell (Substitute)

Steve Taylor, Campaign to Protect Rural England Representative

**Apologies:** Councillors Tunde Ojetola and Gerard Rice

**In attendance:** Andrew Millard, Assistant Director - Planning, Transport and Public Protection  
Leigh Nicholson, Development Management Team Leader  
Matthew Gallagher, Principal Planner  
Charlotte Raper, Democratic Services Officer

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Before the start of the Meeting, all present were advised that the meeting may be filmed and was being recorded, with the audio recording to be made available on the Council's website.

### **54. Minutes**

The minutes of the Planning Committee meeting held on 7 December 2017 were approved as a correct record.

### **55. Item of Urgent Business**

There were no items of urgent business.

### **56. Declaration of Interests**

### **57. Declarations of receipt of correspondence and/or any meetings/discussions held relevant to determination of any planning application or enforcement action to be resolved at this meeting**

The Chair declared receipt, on behalf of the entire Committee, of an email in support of application 17/01270/DVOB: Aveley Football Club, Mill Road, Aveley, RM15 4SR, which was item 8 on the agenda.

### **58. Planning Appeals**

The Chair informed the Committee that no appeal decisions had been received since the previous meeting.

**RESOLVED:**

**That the Committee noted the report.**

**59. 17/01270/DVOB: Aveley Football Club, Mill Road, Aveley, RM15 4SR**

The Principal Planner provided Committee Members with some background to the application, which sought to vary the s106 legal agreement attached to planning permission ref. 13/01021/OUT, regarding the 'Mitigation Contribution'. Members were advised that at the time that planning permission was granted the Committee showed flexibility in the consideration of planning obligations following an independent review of a financial viability assessment and waived the usual requirement to provide affordable housing and also agreed to a discounted financial mitigation contribution from the developer.

The Principal Planner continued to highlight that a letter had been submitted by the applicant's legal team, which had been seen by both planning and legal officers. This letter highlighted 5 salient points, to each of which he provided a response:

1. *The Mill Road application (for housing) (13/01021/OUT) and the Belhus Park application (for an enhanced football club and community facility at Parkside) (13/01022/FUL) are intrinsically linked. If the viability of one site is in question so too is its linked site.*

The reports presented to the Planning Committee in 2014 noted how the applications were linked; the same applicant, the applications were simultaneous and there was a specification for the continuity of sports pitch provision. The applicant's financial model also linked both sites as the sale of the Mill Road site would generate income, this income minus the construction costs would generate a figure – the mitigation contribution. The s106 recommendations from 2014 referred to viability and build costs, but only in terms of potential additional contributions, to make up the shortfall not further reductions. Although the applicant was entitled to seek a reduction in the mitigation payment, for the reasons set out in the report Officers considered that a reduction was not justified.

2. *Whilst the s106 obligation itself does not include provisions to reduce the mitigation payment, on review of the decisions made by the Council in 2014 it is clear that its intention was for this to be taken into account.*

The Committee reports from March 2014 referred to some 'unknown factors' such as the final land acquisition and remediation costs for the Belhus Park site, which were not known at that time. Members of the Committee at the time were however flexible in allowing an exemption from the standard affordable housing provision and the reduced planning obligation strategy payment. Both the recommendations presented previously to Planning Committee and the s106 agreement only referred to additional payments.

3. *It is incorrect to say that the fundamental planning purpose and aim of the s106 agreement is to ensure that the impact of the residential development on education provision etc. are mitigated because, put simply, no aims or purposes are included in the drafting of the s106. (The s106 latterly becomes a nonsense when at Schedule 2 the Council covenant to only use the monies for the purposes for which they were paid, whilst at no time reciting those purposes anywhere in the s106 agreement).*

The s106 agreement imposed obligations upon the owner of the site to include payment of a contribution defined as 'in order to assist in mitigating the impact of the development (i.e. the residential development) in accordance with the Planning Obligation Strategy'. This Strategy was not quoted verbatim in the s106 agreement however paragraph 1.1 was quite clear regarding the approach to planning obligations as set out in the strategy is to ensure that 'development contributes appropriately either financially or in kind to the infrastructure that needs to be provided' and a list of infrastructure items subject to the standard charge was also included. It was therefore the view of officers that the s106 was clear in referring to the obligation strategy which in turn set out the provenance for contributions.

4. *A reduction in the mitigation payment because the football club has encountered additional costs services the same planning purpose as the Council and the Committee identified in 2014. That Committee Report (and resolution) accompanying application (13/01021/OUT) ("the 2014 report") identifies a viability formula to redirect any residual monies in accordance with a then (likely unlawful, now disbanded) Planning Obligations Strategy. This Committee would be unsound to proceed without Members undertaking a thorough review of their decision in 2014 (as the writer has done in preparing this letter) and making this decision, in 2018, in line with the same principles.*

The application for the replacement football facilities presented in 2014 identified that those facilities would comply with core strategy policies which formed part of the justification for development of the Green Belt. A judgement was however required as to whether a reduction in the mitigation payment was justified. At the time Education and Highways identified the need for contributions; the Mill Road site offered no affordable housing provision and the mitigation contribution was reduced therefore, on balance, it would be legitimate for Members to consider the community benefits of the sports facilities against other community benefits but officers had concluded that the balance had been tipped too far and there was a pressing need for education contribution which would outweigh any benefit of reducing the contribution in favour of a community sports hub.

5. *With that in mind it can be seen that a contribution was sought in 2014 to mitigate the impact on bus services, nursery and primary education it does not then follow on from that the 2018 Report now concludes that the mitigation contribution will be required to address on the new demands on already oversubscribed local primary school provision and*

*for the contribution to be the same level as before, without reference to any justification for the contribution on the Council's part.*

The report referenced the Pupil Place Plan which highlighted a steep increase in the primary school age population. The forecast for the two nearest primary schools for the period of 2017-2021 were overcapacity, factoring in the child-yield from the residential development. Applying the education department's standard formula, the education contribution for the Mill Road site would exceed c.£550,000 and therefore the existing s106 contribution was potentially already insufficient and in any case justified.

It was the officer's recommendation that the existing s106 agreement should stand and the application should therefore be refused.

Councillor Snell noted a large amount of the difference had been an increase in land acquisition costs. He queried why the applicant had assumed such a low acquisition cost and why this had not been the case. The original financial model assumed the land could be acquired at no cost, save for transaction costs. The Council had been the freeholder however Impulse Leisure had an outstanding leasehold interest and therefore wanted a commercial return on the site. The applicant had been keen that the Committee considered the application expeditiously despite the issue of land acquisition remaining unresolved at the time. Members were also advised that while the land acquisition costs had increased the receipt for the Mill Road site had also increased by circa £1.3million.

Councillor Hamilton questioned whether there had been any contingency plans in place on the part of the applicant in anticipation of this variation in price. In the report from 2014 for the replacement football facilities officers referenced that despite the outstanding queries in relation to land value, the leasehold interest of Impulse Leisure and the cost of developing the facilities the applicant was keen for the Council to proceed with the determination of the application in order for the new facilities to be made available. Any developer would have a contingency plan however between the Planning Committee meeting in March 2014 and the final signing of the s106 agreement in March 2015 the issue was not raised with Council Planning Officers.

Councillor Redsell sought clarification regarding the Council owning the land and the 'costs' of the flying club. The football club had to submit a scheme to assist in the relocation of the model flying club as one of the planning conditions. This was a prime example of the difficulty in comparison between the original viability assessment with the current as the headings did not all carry across. Those negotiations were not within the remit of the planning authority so officers could not comment. The Council did own the land, as the freeholder, however Impulse Leisure had a leasehold interest. The land was now owned by the football club

Councillor Jones asked why there had been no consideration to the provision of affordable housing. The basic model had been the proceeds from the sale

of the Mill Road site minus the combined acquisition and remediation costs for the football club facilities would have left the funds for mitigation contribution. The provision of affordable housing was a planning consideration in 2014, however Committee had resolved that other factors outweighed this consideration.

Councillor Piccolo queried whether the original residential development, had it been a standalone application, would have been subject to the affordable housing provision and full mitigation contribution. Members were advised that, in line with Council Policy, this would have been the case.

The agent, John Jowitt, was invited to the Committee to present his statement of support.

The Campaign to Protect Rural Essex Representative sought clarification as to who had liability for the S106 responsibilities. At the time the application was first determined Aveley Football Club, as the landowner, were liable. The requirements related to the former ground which had now been acquired by Persimmon and the liability had therefore transferred to them.

It was proposed by the Chair and seconded by the Vice-Chair that the application be refused, as per the Officer's recommendation.

For: Councillors Tom Kelly (Chair), Steve Liddiard (Vice-Chair), Colin Churchman, Graham Hamilton, Roy Jones, Terry Piccolo, Graham Snell and Joycelyn Redsell.

Against: (0)

Abstain: (0)

**RESOLVED:**

**That the application be refused.**

**The meeting finished at 7.43 pm**

Approved as a true and correct record

**CHAIR**

**DATE**

**Any queries regarding these Minutes, please contact  
Democratic Services at [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)**