

Minutes of the Meeting of the Planning Committee held on 16 July 2020 at 6.00 pm

Present: Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair), Gary Byrne, Colin Churchman, Angela Lawrence, David Potter, Gerard Rice, Sue Sammons and Sue Shinnick

Steve Taylor, Campaign to Protect Rural England Representative

In attendance:

Leigh Nicholson, Interim Assistant Director of Planning, Transport and Public Protection
Jonathan Keen, Interim Strategic Lead of Development Services
Matthew Gallagher, Major Applications Manager
Chris Purvis, Major Applications Manager
Tom Scriven, Principal Planner
Matthew Ford, Chief Engineer
Julian Howes, Senior Highway Engineer
Sarah Williams, Service Manager, Education Support Service
Caroline Robins, Locum Solicitor
Wendy Le, Democratic Services Officer

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.

18. Minutes

Councillor Rice noted on page 6, item 3, that the declaration of interest by the Chair in regards to Tony Coughlin had been inaccurately recorded under application 19/01662/FUL. The declaration of interest would be amended to accurately reflect the interest to be recorded under 19/01058/OUT for that meeting.

Councillor Rice queried the progress of application 19/01662/FUL which Leigh Nicholson explained that the resolution passed by Members was that the conditions and heads of term would be agreed with the Applicant and the Chair. The draft with the heads of terms and conditions had been received earlier that day and officers would be reviewing before discussing with the Chair.

The minutes of the Planning Committee meetings held on 8 June 2020 and 25 June 2020 were approved as a true and correct record subject to the amendments to be made.

19. Item of Urgent Business

There were no items of urgent business.

The Chair informed the Committee that 19/01058/OUT had been deferred to a later date at the Applicant's request.

20. Declaration of Interests

There were no declarations of interest.

21. 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

On behalf of the Committee, the Chair declared correspondence from:

- James Bompas, an agent in relation to 19/01394/FUL;
- Gary Coxall, an agent in relation to 19/01373/OUT; and
- A resident and Hilary Goodban, an agent in relation to 19/01058/OUT.

The Chair reminded the Committee of the upcoming Tremorgan site visit in which Members were to attend as the site visit had been voted for by Members on 19 March 2020.

22. Planning Appeals

Referring to paragraph 4.3 of the report, the Chair asked how the decision would influence future applications for garage conversions. Leigh Nicholson explained that all appeal decisions received are reviewed on a case by case basis and against existing policies. On this occasion, the Planning Inspectorate had taken a different view to the Council.

Referring to application 19/01184/FUL in paragraph 3.3 of the report, Councillor Rice declared an interest in that the property mentioned was adjacent to his property. He sought more details which Officers would provide in an email.

23. 19/01373/OUT Land Adjacent Wood View and Chadwell Road, Grays, Essex (deferred item)

The report which can be found on pages 43 – 90 of the Agenda was presented by Matthew Gallagher. The Officer's recommendation was to refuse planning permission as outlined on page 59 of the Agenda.

Caroline Robins advised Members to be mindful that the decision they would make was lawful as an unlawful decision would not stand. An unlawful decision could also result in a section 5 report (under the Local Government and Housing Act 1989) from the Monitoring Officer or a judicial review which would be costly to the Council. Members also had to ensure that their decision would stand up to scrutiny and the decision made was supported by robust

evidence. The legal implications of the decisions on pages 55 – 58 of the Agenda were highlighted.

(Following Chapter 5, Part 3, para. 13.5 of the Constitution, Councillor Churchman and Councillor Potter could not participate or vote on this item).

Councillor Rice referred to legal advice from Paul Shadarevian QC and said that Members were not bound to accept the officer's recommendation and had the power to move away from this provided that Members acted rationally in their decision making. The Chair disagreed and said that it would be difficult to rationally overcome the issue of an acoustic barrier proposed for the site. He agreed that more homes were needed in the Borough but it would be irrational and irresponsible to allow homes to be built on the Green Belt which most Members aimed to protect on behalf of their constituents. The Chair referred back to 19/01662/FUL where Members had voted to approve development on the Green Belt and highlighted that application differed and that the application before the Committee (19/01373/OUT) was simply a housing development with no special type of design/

The Vice-Chair sought clarification on whether the Committee's reasons for a decision to approve the application were not material considerations relevant to the consideration of whether very special circumstances existed or if it was a matter of a difference in opinion on the weight to be attached to of each the factors highlighted by the officer.

Matthew Gallagher explained that it was combination of both and went on to say that one of the reasons given for approval by the Committee included reference to the scheme as being 'shovel-ready'. However, officer's research indicated that the scheme would not be covered by that recent Government initiative so was immaterial as a benefit. The other factors had common features such as the lack of a 5 year housing supply along with the need for affordable housing and the housing waiting list. Although, significant weight was afforded to the factor of a lack of a 5 year housing supply, recent appeal decisions had shown that this factor on its own was not enough to clearly outweigh the harm to the Green Belt.

Continuing on, Matthew Gallagher explained that the Committee had ascribed limited harm to the purposes of the Green Belt, but officer's view was that it could not be concluded that there would be a lesser degree of harm to two of the purposes of the Green Belt. The site was an open site and on the edge of a built-up area and if extended, it would conflict with the purpose of the Green Belt on checking unrestricted sprawl of large built-up areas and to safeguard the countryside from encroachment. He went on to say that the Committee's reason of 'contribution towards sustainable development' because of the lack of a 5 year housing land supply, did not apply to the Green Belt either. Regarding the reason that the scheme would create employment during the construction phase, this would be on a short term basis. It was officer's view that the factors given by the Committee and the Applicant were not enough to clearly outweigh the harm to the Green Belt. The NPPF was very clear about substantial weight being given to harm and the balancing exercise for the

application showed that the benefits identified did not clearly outweigh the harm.

Councillor Lawrence questioned whether there was acoustic fencing in place for the properties built on the site of the former Thurrock Technical College. Matthew Gallagher answered that the properties had been built c.10 years ago but for the current site before the Committee, the Council's Environmental Health Officer had assessed the Applicant's submitted noise report and had advised that noise attenuation was needed.

Councillor Lawrence felt that the site before the Committee was a small patch of land and that the former Thurrock Technical College had been a large Green Belt site which now had over 300 homes on the site. She went on to say that the Core Strategy outlined the guidance for Very Special Circumstances (VSC) and that in the NPPF, parcel 31 was considered to be of small importance that did not undermine the importance of the Green Belt. She also mentioned the Council's housing waiting list.

Matthew Gallagher explained that the former Thurrock Technical College had been a planned release of the Green Belt through the Core Strategy and at the time, the college needed a new campus in a sustainable location which was now in Grays Town Centre and therefore, justified the release from the Green Belt. The need for housing developments should currently be going through the Local Plan and not ad-hoc planning applications. He went on to say that VSC was not set out in any specific policy, but instead it was for the Applicant to promote the benefits or factors to support their scheme and a combination of factors could create VSC but there was no set list for this. Referring to the Council's Green Belt assessment and parcel 31, Matthew Gallagher explained that consultants had been engaged to look at parcels of land across the Borough and the Applicant had relied on this information to support their application. However, this could not be taken into consideration as the consultation only informed the potential options for changes to Green Belt boundaries. Regarding the Council's housing land supply, Matthew Gallagher referred back to previous appeals that had also relied on this factor and said that the Planning Inspectorate had recognised this was a benefit of the development but was not enough to clearly outweigh the harm to the Green Belt.

Steve Taylor noted that the application was for outline planning permission and queried whether the highlighted benefits or contributions would change as there were no design plans in the scheme. He also queried a scenario where a viability study could change agreements within the s106 and heads of terms. Matthew Gallagher explained that an outline planning application established the principle and the parameters. In the application before the Committee, one of the parameters were the 75 units proposed and from this, education contributions, healthcare contributions and affordable housing could be calculated. Regarding changes to s106 agreements, he said that the Committee had seen applications come back to Committee where it was requested that previously agreed s106 contributions be amended. With the application before the Committee, it was an open site and it was presumed

the Applicant would have surveyed the site and taken issues and factors into consideration so that there would not be any unexpected costs. However, the proposed s106 education and healthcare contributions should not be seen as a benefit. The scheme would have an impact on the site and the contributions were provided were to mitigate these impacts.

The Chair questioned whether there had been more objections received on the application. He also sought more detail on NHS England's comment in paragraph 2.2. Matthew Gallagher answered that there had been 3 more letters of objection and one letter of support from the Agent. The objections expressed disappointment at how Members had resolved the application at the last meeting and the Agent's letter set out the benefits of the scheme which had already been addressed in the officer's report and did not add anything new to the consideration of the scheme. Regarding NHS's comment, he explained that the response was received after the last Committee meeting and highlighted the impact that the development would have on the capacity of the 3 surgeries close to the site and that there was already a waiting list for each surgery so a financial contribution of £29,700 had been sought (which would be through a s106 agreement) to mitigate this impact.

Councillor Byrne questioned whether the development would potentially reduce the number of people on the Council's housing waiting list. Matthew Gallagher said that the development potentially could and referred to the number of affordable homes in paragraph 3.12 and said that through the s106, the Council would get nomination rights for these.

Councillor Rice commented that Thurrock Council was still working off an old Local Plan from 1996 which hindered the decision making process on applications similar to the one before Committee although each application was judged on its own merit and factors given due weight. Matthew Gallagher explained that the Council was using the Core Strategy from 2015 and currently working on a new Local Plan which was to be in place by 2023, a requirement set out by central Government. He went on to say that each application was judged on its own merits along with the factors surrounding the application. The application before the Committee had been looked at by officers through a balancing exercise and due weight was given to the factors highlighted by the Applicant. Recent appeal decisions on similar applications had been considered alongside this and the Applicant's factors as well as those put forward by the Committee were not significant enough to clearly outweigh the harm to the Green Belt.

The Committee discussed the need for a 5 year housing land supply and the demand for homes in Thurrock which officers accepted as factors weighing in favour of the application. However, the site before the Committee was Green Belt and local and national planning policies had strong policies about protecting the Green Belt. The benefits of the scheme, including the supply of new housing were not enough to clearly outweigh the harm to the Green Belt. The Chair felt that residents had to be protected from too much development in certain areas as this could impact upon their wards and lives. He felt there were not enough material reasons to approve the application. Councillor Rice

felt the site was more of an infill site as opposed to Green Belt and also pointed out that the affordable units would give the Council nomination rights that would help residents that were on the Council's housing waiting list and that there were enough reasons to depart from officer's recommendation.

Leigh Nicholson stated that if the Committee were minded to approve the application, clear and convincing reasons had to be found and these reasons needed to be substantiated by evidence. He highlighted that case law did not permit reasons such as affordable housing or a contribution towards housing to be sole factors that could be relied upon to approve the application. He went on to say that Matthew Gallagher had taken the Committee through the reasons given by the Committee for approving the application at the last meeting and there were no grounds to approve the application. He outlined that each of those reasons were not considered to be unique. He also pointed out that the Council's approach to the new Local Plan is to engaged with residents to allow communities to influence strategic development in their areas through Design Charrettes with landowners and developers. To approve ad-hoc planning applications such as the one that was currently before the committee was not the route to take. He warned Members that at best the approval of the application would be an unwise decision, at worst it would be an unlawful decision.

The Chair proposed the officer's recommendation which was seconded by the Vice-Chair.

(Following Chapter 5, Part 3, para. 13.5 of the Constitution, Councillor Churchman and Councillor Potter could not participate or vote on this item).

FOR: (3) Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair) and Gary Byrne.

AGAINST: (4) Councillors Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

ABSTAINED: (0)

The officer's recommendation was rejected.

Leigh Nicholson referred the Committee to Chapter 5, Part 3, Paragraph 7.4 of the Council's Constitution and highlighted that this needed to be fulfilled before the decision made was passed to the Monitoring Officer to consider whether the decision made was lawful or unlawful. If the decision was not considered to be an unlawful decision, it would then go through the drafting of the s106 legal agreements and conditions and then referred to the Secretary of State as a departure. The first step was that Members had to provide rational reasons for going against the officer's recommendation for refusal which was on paragraph 6.0 on page 59 of the Agenda.

Councillor Rice put forward an alternative motion to approve the application for the following reasons

1. The scheme would create employment during the construction phase.
2. The scheme would contribute toward the 5 year housing supply.
3. Significant weight should be afforded to the contribution towards sustainable development.
4. Delivering a sufficient supply of homes had significant weight.
5. Making effective use of land had significant weight.
6. Achieving well-designed places had significant weight.
7. The scheme was shovel-ready project because it would come back with an application for the approval of reserved matters and if the current application was passed, the Committee would be 'duty-minded' to approve future applications.
8. The site was a windfall site.
9. Soft landscaping could be used to mitigate the impact of the acoustic fence.
10. The Council did not have a local plan.

Leigh Nicholson reminded Members to use extreme caution around factors which were not unique particularly where it was easily repeatable on other sites. Going through Councillor Rice's given reasons for a motion to approve the application, Leigh Nicholson said that:

- Any building project would create employment opportunities during the construction phase and would not overcome the Green Belt harm.
- Contribution toward the 5 year housing land supply had already been given significant weight in the officer's report.
- The weight applied by Officers to VSC factors was consistent with the weight applied by the Planning Inspectorate and was based upon case law. Attributing a higher amount of weight to the mentioned factors had to be substantiated by evidence.
- The scheme could not be considered as a 'well-designed place' as the application was an outline application with all matters reserved. The application only proposed 75 dwellings and a parameter plan. National and local planning policies sought good design as a minimum requirement
- The scheme was not 'shovel-ready' as discussed and highlighted in the officer's report as the application was an outline application.
- The site was a Green Belt site and not a windfall site.

The Chair discussed the concern that the acoustic fencing would have on the visual impact of the site. Councillor Rice said that planting bushes and trees would help to visually soften the effect of the acoustic fence around the site similar to that of the acoustic fencing along the Manorway on the A13. The Chair felt that an acoustic fence could not be completely blocked out as the fencing would be 2 metres high.

Referring to Councillor Rice's given reasons for a motion to approve the application, Caroline Robins said that no weight could be given to the design of the site as it was an outline application and shovel ready was not a policy.

The weight attributed to the other factors were also weak and unsubstantiated by evidence.

Councillor Rice also added the absence of a Local Plan to the reasons given for a motion to approve the application.

The Chair queried the next step to progress the motion proposed. Leigh Nicholson explained that the proposed motion would require a seconder to the motion before the Committee went to the vote. He reiterated the points on a potential unlawful decision and that the decision would be for the Monitoring Officer to consider. Caroline Robins reminded the Committee again that if the decision was found to be unlawful, this would result in a section 5 report (under the Local Government and Housing Act 1989) from the Monitoring Officer and would go to Full Council.

(The Committee agreed to suspend standing orders at 8.24pm to allow the Committee to continue to the end of the Agenda).

Councillor Shinnick seconded Councillor Rice's proposed motion to approve the application for the following reasons:

1. The scheme would create employment during the construction phase.
2. The scheme would contribute toward the 5 year housing supply.
3. Significant weight should be afforded to the contribution towards sustainable development.
4. Delivering a sufficient supply of homes had significant weight.
5. Making effective use of land had significant weight.
6. Achieving well-designed places had significant weight.
7. The scheme was shovel-ready project because it would come back with a full planning application and if the current application was passed, the Committee would be 'duty-minded' to approve future applications.
8. The site was a windfall site.
9. Thurrock did not have a Local Plan.

FOR: (4) Councillors Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (3) Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair) and Gary Byrne.

ABSTAINED: (0)

19/01373/OUT was approved subject to consideration by the Monitoring Officer, then drafting of s106 agreements and conditions and referral to the Secretary of State.

- 24. 19/01058/OUT Land part of Little Thurrock Marshes, Thurrock Park Way, Tilbury (deferred item)**

This item was withdrawn from the Agenda and deferred to a later date at the Applicant's request.

25. 19/01394/FUL Little Malgraves Farm, Lower Dunton Road, Bulphan, Essex, RM14 3TD

The report was presented by Chris Purvis which can be found on pages 155 – 222 of the Agenda. Officer's recommendation was to approve subject to conditions as outlined on pages 201 – 219 of the Agenda.

Councillor Rice questioned the progress of the hospice on the site. Chris Purvis confirmed that the hospice was on track with building works recently commencing again following the recent easing of lockdown restrictions.

The Agent, James Bompas' statement of support was read out by Democratic Services.

Councillor Rice proposed officer's recommendation A and was seconded by the Chair.

FOR: (9) Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair), Gary Byrne, Colin Churchman, Dave Potter, Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (0)

ABSTAINED: (0)

Councillor Rice proposed officer's recommendation B and was seconded by the Chair.

FOR: (9) Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair), Gary Byrne, Colin Churchman, Dave Potter, Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (0)

ABSTAINED: (0)

19/01394/FUL was approved subject to conditions.

26. 19/01739/CV Unit E2, Stanhope Industrial Park, Wharf Road, SLH, Essex SS17 0EH

The report was presented by Chris Purvis which can be found on pages 223 – 230. Officer's recommendation was to refuse planning permission as outlined on pages 228 – 229 of the Agenda.

Councillor Byrne questioned whether HGV drivers had riparian rights over residents on Wharf Road. He went on to say that the name of the road was termed to mean a road that provided access to the wharf so the road was a right of access for HGV drivers. Councillor Byrne also noted that the site was owned by the developers, Mersea Homes, who would lose contracts if they did not follow the time restrictions in place and result in job losses. He questioned if riparian rights were outdated as other legislations were in place such as the Road Traffic Act 1984. Matthew Ford explained that the classification of Wharf Road was an adopted highway of Thurrock Council and was the responsibility of the Council to maintain the road. Operators had the right to access the development site as it was the only access route into the site and as it was an adopted highway which the public also had the right to pass on Wharf Road. There was no particular group that had more right than another to access Wharf Road. He went on to say that the Highways Act 1980 and Road Traffic Act 1984 would have superseded previous legislations.

The Chair questioned if there was a difference between road access and access times as the application requested an extension of operation times. Chris Purvis explained that the planning application was to vary a planning condition to allow for works on the site to start at 6am instead of the current time of 7am and the main issue with the application was the consideration over earlier traffic movements along Wharf Road where there were houses and therefore there is a consideration to protect residential amenity for local residents living in that road which was why the application was recommended for refusal.

Councillor Byrne raised the issue of riparian rights again and pointed out that the wharf was on the site before residents had moved into the area. He raised concerns on the jobs of those who worked on the site. Chris Purvis explained that the application sought to vary the hours for 5 HGV movements to start from 6am instead of 7am so it was not clear how this would cause job losses from a refusal of the application. He reiterated the point on residential amenity.

The Vice-Chair questioned if the extra hour would result in more HGV movements along Wharf Road. Chris Purvis reiterated the application details for 5 HGV movements between 6am to 7am and the point on residential amenity.

Referring back to riparian rights, Matthew Ford said that riparian rights were access rights for the maintenance of water courses but not access right to the water course. He gave an example where a roadside ditch owned by a farm would have riparian rights that would enable them to maintain the ditch from the roadside. This was not the case for the application before the Committee as there were no roadside ditches that the Applicant would need to access from the highway. He went on to say that the site was located on the southern side of the DP World Gateway and the adopted highway was close to that and in terms of the riparian rights the Applicant would not necessarily have riparian right to Wharf Road. Through the Road Traffic Act 1984, there was also a weight limit on Wharf Road that would limit unauthorised HGV access

and there were also the planning conditions to the original planning permission that sought to reduce the amenity harm to residents through the current hours of movement.

A resident, Tara Haroon's statement of objection was read out by Democratic Services.

The Ward Councillor, Terry Piccolo's statement of objection was read out by Democratic Services.

Some of the Committee Members felt that there was already enough amenity harm caused to residents in Wharf Road as there was also HGV movements on the road during Saturdays. There were comments that the site could be moved into a non-residential location and that there were environmental harms caused by HGVs. Matthew Ford said that vehicles could only be operational during the hours of operation agreed under planning conditions and within the weight limits under legislation.

Councillor Rice proposed the officer's recommendation and was seconded by Councillor Shinnick.

FOR: (7) Councillors Tom Kelly (Chair), Colin Churchman, Dave Potter, Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (2) Councillors Mike Fletcher (Vice-Chair) and Gary Byrne.

ABSTAINED: (0)

19/01739/CV was refused planning permission.

27. 20/00251/FUL 32 Lancaster Road, Chafford Hundred, Grays, Essex, RM16 6BB

The report was presented by Tom Scriven which can be found on pages 231 – 240 of the Agenda. Officer's recommendation was to refuse planning permission as outlined on page 238 of the Agenda.

The Vice-Chair sought more detail on the uniformity of the appearance of the homes along Lancaster Road. Tom Scriven answered that the uniformity of the appearance of homes was not the issue, the refusal was in regards to a development flaw that would lead to a cramped form of development that was a siting issue as it would not be in character with the streetscene.

The Vice-Chair referred back to an earlier application on Meesons Lane, Grays and commented that application had been recommended for approval and that amenity space had not been issue. However, with the current application before the Committee, the amenity space was an issue and questioned why this was the case. He also noted that there were no objections mentioned within the officer's report. Tom Scriven explained that each application had to be assessed on its merits and that the Meesons Lane,

Grays application had proposals for multiple dwellings whereas the current application before the Committee was for one dwelling which considered the amenity space for future occupants and that it would be out of character in the appearance of the area. He went on to say that there were no neighbour objections to the application but that the application had to be assessed against planning policies and where there could be potential future objections from future occupants.

The Agent, Matthew Wood's statement of support was read out by Democratic Services.

The Committee discussed whether the proposed dwelling could be moved to allow for a larger amenity space but the Applicant had amended the first proposal that had been refused by officers and the application before the Committee was the amended proposal. The Vice-Chair mentioned that he had been approached by the Applicant about the application and had asked officers and the Applicant to discuss the application but had no personal interest in the application.

The Vice-Chair commented that development in Chafford Hundred should be considered carefully but felt that the officer's reason for refusal was a matter of opinion in terms of amenity space. He felt the reason was based on assumption and evidence based as future buyers may have a different opinion on amenity space. The Chair said that if there was a potential for development on the site, this would be better undertaken under a pre-application.

The Vice-Chair proposed a site visit which was seconded by Councillor Rice.

FOR: (6) Councillors Mike Fletcher (Vice-Chair), Gary Byrne, Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (3) Councillors Tom Kelly (Chair), Colin Churchman and Dave Potter.

ABSTAINED: (0)

20/00251/FUL was deferred for a site visit.

28. 20/00593/TBC Former Whiteacre, Daiglen Drive, South Ockendon, Essex

The report was presented by Tom Scriven which can be found on pages 241 – 248 of the Agenda. Officer's recommendation was to approve subject to conditions as outlined on page 245 of the Agenda.

Councillor Lawrence commented that the site had been vacant for 14 years and that hoarding would be in place for another 3 years. She felt the site would be suitable for the development of bungalow homes that was needed in the area.

Councillor Rice proposed the officer's recommendation which was seconded by the Chair.

FOR: (9) Councillors Tom Kelly (Chair), Mike Fletcher (Vice-Chair), Gary Byrne, Colin Churchman, Dave Potter, Gerard Rice, Angela Lawrence, Sue Shinnick and Sue Sammons.

AGAINST: (0)

ABSTAINED: (0)

20/00593/TBC was approved subject to conditions.

The meeting finished at 9.45 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**