

Minutes of the Meeting of the Extraordinary Planning Committee held on 19 November 2020 at 6.00 pm

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

Steve Taylor, Campaign to Protect Rural England Representative

Apologies: *There were no apologies but Councillor Churchman and Potter were not expected to attend this meeting under the Constitution, Chapter 5, Part 3(d), 13.5.*

In attendance: Ian Hunt, Assistant Director of Law and Governance & Monitoring Officer
Michael Bedford, QC at Cornerstone Barristers
Leigh Nicholson, Assistant Director of Planning, Transport and Public Protection
Jonathan Keen, Interim Strategic Lead of Development Services
Matthew Gallagher, Major Applications Manager
Julian Howes, Senior Highway Engineer
Caroline Robins, Locum Solicitor
Wendy Le, Democratic Services Officer

Before the start of the meeting, all present were advised that the meeting was being live streamed and recorded, with the video recording to be made available on the Council's website.

60. Item of Urgent Business

There were no items of urgent business.

61. Declaration of Interests

There were no declarations of interest.

62. 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

Members declared receiving an email from the Agent, Gary Coxall which contained information from the Applicant's legal representative, Kevin Leigh, regarding 19/01373/OUT.

63. Monitoring Officer Report On The Decision Of The Planning Committee In Relation To Land Adjacent To Wood View And Chadwell Road, Grays (Application ref 19.01373.OUT)

The report on pages 5 – 32 of the Agenda was presented by Ian Hunt.

Ian Hunt highlighted that:

- Planning application 19/01373/OUT had been called back before Members with the Chairs agreement to review the decision made at the previous committee. This was because of the details in the decision made had raised concerns over the legality of the decision.
- The resolution provided by Members for approving the application had not adequately dealt with the significant test that was set out in the NPPF or the local policies regarding the Green Belt (GB), therefore there had been an omission of the Very Special Circumstances (VSC) test outweighing the harm to the GB. This created uncertainty in the decision made by Members and could be open to a legal challenge.
- It was acknowledged that the Members of the Committee were the decision makers for the application and needed to ascribe weight to VSC with relevant reasoning and explanation within the wider policy and legislative framework to ensure a lawful decision.
- The email that Members had received from the Applicant's barrister, did not fully address the distinction between the two reports (item 6 and 7 of the Agenda) that was before the Committee. The first report asked Members to look at whether their previous decision made on the application was adequately reasoned and sustainable in legal terms. If Members approved recommendation 1.1 to rescind their decision, this would not determine the application, instead they would then go onto consider the application itself afresh in item 7 and Members would not be constrained by their earlier views of 16 July 2020.

Michael Bedford added that the Monitoring Officer's report only asked Members to look at whether there were issues with the decision that they had made at the meeting of 16 July 2020. It was the view of the Monitoring Officer and Michael Bedford, that there were issues with the adequacy of the reasons given for the decision that Members had made on 16 July 2020. The recommendation for Members to rescind that decision provided Members with a chance to resolve those issues through making a fresh decision taking all material factors into account.

The Chair understood that the report recommended that Members rescind their decision due to the reasons given for the decision made so did not think it was Officers looking to necessarily overturn the overall outcome of the decision. He pointed out that other GB applications that Members had made a decision on against Officer's recommendations such as Langdon Hills Golf and Country Club, had also been looked at by the Monitoring Officer and had not returned to Committee.

The Committee was made aware that if recommendation 1.1 was approved, the Committee would then move on to consider the application of 19/01373/OUT immediately after the report.

RESOLVED:

For Members:

1.1 To rescind the decision taken by the Planning Committee on 16 July 2020.

1.2 To reconsider planning application 19/01373/OUT and to determine the application setting out legally adequate reasons for the decision to be sustainable.

64. 19/01373/OUT Land Adjacent Wood View and Chadwell Road, Grays, Essex

The report on pages 33 – 104 of the Agenda was presented by Matthew Gallagher. Members were referred to the seven questions (on pages 46 – 52 of the Agenda) as a means to support their decision making when considering their decision on the application.

Democratic Services read out the Speaker Statements from:

- Shaun Meehan, Resident in objection to the application.
- Joyce Redsell, Ward Councillor in objection to the application.
- Gary Coxall, Agent in support of the application.

Regarding acoustic fencing, Councillor Rice mentioned that he had seen two showroom homes on the Hogg Lane development that had been converted into 40 flats with no acoustic fencing in place. He noted that the current homes in Woodview and other developments also had no acoustic fencing. Matthew Gallagher was unable to comment on the Hogg Lane development as he did not have that information and explained that the standards around noise assessments had changed over time and Woodview was likely to have been built during the war. Other developments may not have had noise issues raised before. He went on to say the Environmental Health Officer had looked at the noise assessment volunteered by the Applicant and following the guidelines of the standards set by the World Health Organisation (WHO) had concluded that acoustic fencing was needed to mitigate the impact of potential noise pollution from the proposed shared gardens and closely built homes.

Councillor Lawrence noted the affordable housing put forward by the Applicant and sought clarification on the education contribution. She felt that the education contribution would help with the demand for school places and residents in the area. Matthew Gallagher explained that the education contribution was a mitigation for the demand in school places that would arise because of the development if it was approved. The Council's Education Team assessed the number of currently available school places against the

potential number of children (requiring a school place) arising from the proposed development and if there were available school places, the Education Team would not have asked for a contribution. By asking for a contribution meant that there were no available school places and a contribution was needed to mitigate the impact of the potential number of children (requiring a school place) arising out of the proposed development.

The Vice-Chair sought clarification on whether the application could be adapted to enable it to be more acceptable for an approval. Matthew Gallagher said that the Officer's report was clear in that the principle issue in the proposed development was inappropriate development and harm to the GB. Members were entitled to undertake a balancing exercise to balance harm against other considerations to reach their conclusion but it was the Officer's views that the Applicant's proposed development and Member's reasons (for minding to approve the application) did not show that the harm was clearly outweighed for VSC to exist, therefore a refusal was the logical outcome.

The Chair commented that the site was GB and if it had potential for development, it should be assessed through the Local Plan process. He went on to say that the need for acoustic fencing around the proposed development clearly suggested that the site was not an ideal area to develop on.

Councillor Rice thought the site was 'scrubland' as it was not used or accessible to anyone. The site was ideal for the development of homes for people who needed it and the Council had a ten year housing waiting list. He went on to say that the Council was failing with no viable or up to date Local Plan; there was a Core Strategy but no call for sites; that the Borough was in a 'growth zone' with the Port of Tilbury and Amazon with people there that needed homes; and that the Council did not have a five year housing supply nor a 20% buffer. He thought that the area of the site had good road, cycle and bus networks with plenty of amenities nearby. He went on to say that the site did not contribute to the GB as the site was not a protected site; was not of special scientific interest; was not a heritage coast or asset; was not a national park; had no flood risk problems; was not near historic towns; but was instead a small area of land that would provide social and economic gains. He pointed out that the Applicant was willing to provide a significant education contribution and noted that the healthcare contribution was £29,000 and felt that if there were healthcare issues, a larger contribution would have been sought.

The Chair pointed out that Ward Councillors and residents did not see the site as 'scrubland' and reiterated the earlier point made about the education contribution which was that it was to mitigate the impact of the potential number of children (requiring a school place) arising out of the proposed development. He pointed out that the development could be placed anywhere else in the Borough and still benefit the 'growth zone' of Port of Tilbury and Amazon. He went on to say that regarding open spaces, he had received an email from Friends of the Earth who had pointed out that Grays had a lack of accessible open green spaces which was not good for mental health.

Clarifying Councillors Rice's points about the site not contributing to the GB, Matthew Gallagher explained that the site was open land which was one of the primary purposes of the defining characteristics of the GB. The openness of the site meant it served a GB purpose and was of use for that purpose. Regarding Councillor Rice's comments (also from the last hearing of the application) on the Council's ten year housing waiting list, pages 91 and 92 of the Agenda summarised with the information provided by the Council's Housing Department which showed the waiting list was less than ten years. Clarifying Councillor Rice's other points made, he went on to clarify that the Council did not have an up to date Local Plan but the Council had an up to date Development Plan on GB policies. He also clarified that the Council had undertaken a call for sites where the Applicant was most likely to promote the site and the healthcare contribution figure of £29,000 had been suggested by NHS England which was to mitigate the impact of the proposed development, but it could not be assumed that there were no healthcare issues in the Borough.

Councillor Byrne thought Councillor Rice's reasons for approving the application was reasonable and felt that if Members were no longer minded to approve the application (which had been the case at the first hearing of the application), it would impact upon other recent GB applications that Members had approved. He stated that he was in favour of the Officer's recommendation to refuse the application. The Vice-Chair disagreed and said that Councillor Rice's reasons were reasonable but not for the proposed development that was before the Committee. He said that he would only look at a GB site as potential development to meet housing needs if the Borough had no available brownfield sites. He felt Officers were clear in that Members' reasons put forward for approval were not sufficient enough to approve building on the GB.

Steve Taylor highlighted that the site was within GB and was protected by this designation so was not scrubland. He pointed out that the application did not state that it would provide social housing so it would not address the Council's housing waiting list for social housing. He went on to say that a new town could potentially be built which was the Arena Essex development and Purfleet-on-Thames (for regeneration) so he did not feel it was justifiable for this proposed development to be approved when there were larger developments that would provide more homes.

The Committee discussed that the decision had been made on 16 July 2020 and was now brought back to Committee with legal advice from Officers to provide legal reasons for their decision. Members felt that future and recent GB applications that Members had approved could potentially be brought back too, where Members would be asked to provide lawful reasons for their decisions. Members said that there had been no legal challenge to the decision on the application that had been made on 16 July 2020. The Chair said that it was not a common occurrence that an application was brought back to Committee for a decision to be rescinded and to be considered again.

Ian Hunt explained that item 6 had covered the reason for the application coming back and that it was a rare occurrence for an application to be brought back to Committee. He said that it was acceptable for Members to put forward an alternative motion to an Officer's recommendation. However, in doing so Members needed to address the key test of whether the identified benefits of the scheme clearly outweighed the harm to the GB and ensure their decision was made within the legal framework. He referred Members to the seven questions (on pages 46 – 52 of the Agenda) to help Members in their decision making process. He said that there had been no judicial review of the decision as planning permission had not yet been issued and therefore such action would be premature.

On the Officer's refusal reason of the 'visual impact of the acoustic fencing', Councillor Lawrence did not feel that weight could be attributed to it as a reason for refusal as the application was for outline planning permission and she had noted that the site had trees surrounding the area which already acted as a barrier to reduce the impact of noise. She went on to say that other special circumstances existed as the SEEVIC and Palmers College may build on the land opposite the site in the future and would have more teachers and the Applicant was providing 35% affordable housing.

Steve Taylor pointed out that the application was an outline application and that the plans were irrelevant as these could change. It was the principle of the design that would be agreed if approved. He said that affordable housing was not social housing and would not address the Council's housing waiting list.

The Chair proposed the Officer's recommendation for refusal and was seconded by Councillor Byrne.

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

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

The Officer's recommendation was rejected.

Councillor Rice proposed an alternative motion to approve with the following reasons:

1. The Council had no five year housing supply or 20% buffer and was failing on delivering its housing target that was set by Government.
2. The Council did not have a Local Plan and no call for sites.
3. The area of the site was a growth area with Port of Tilbury and Amazon with people there who needed homes.
4. The Applicant was providing 35% of affordable homes.
5. There would be a creation of employment opportunities.
6. The Council had a housing waiting list.
7. The site was not a GB site as it was not a protected site; was not of special scientific interest; was not a heritage coast or asset; was not a

national park; had no flood risk problems; was not near historic towns; but was instead a small area of land that would provide social and economic gains.

8. The appeal decision of APP/M150/W20/3246788 Land of London Road, West of Rhoda Road, North Thundersley, Benfleet, Essex had been in favour of the Applicant on 21 July 2020 which was a case brought against Castle Point.

The Chair pointed out that Members had agreed to rescind the decision from 16 July 2020 and to look at the application afresh but the reasons provided were the same reasons that were given on 16 July 2020. Councillor Rice reiterated his reasons and said that the Prime Minister stated that homes needed to be built. He said that affordable homes could be for key workers, teachers and service workers and would help the infrastructure.

Michael Bedford advised that if Members were to make a decision to approve inappropriate development in the GB, the appropriate tests in the NPPF that was also in the Council's Core Strategy had to be applied which Members had not done. He went on to advise that Members were required to give substantial weight to the harm that would be caused to the GB and to any other harm within the proposal. By not doing so, Members would be disregarding national policy and their decision would potentially be susceptible to a legal challenge. Once Members gave substantial weight to the harm to the GB and to any other harm, Members could then assess the weight to be given to the identified benefits of the proposal. This was the balancing exercise that Members needed to undertake and not just adding up the positives of the proposal. If Members concluded that the identified benefits clearly outweighed the harm to the GB, then it would be a positive decision made that could grant a permission on the basis of VSC. He said that the current reasons put forward by Members had already been assessed within the Officer's report. Regarding the appeal decision on Castle Point, he explained that in GB cases, the test of VSC was site and case specific which did not set a precedent as circumstances in each case differed so could not be used as a reason to permit another case or used in addressing the balancing exercise needed. He referred Members to the seven questions (on pages 46 – 52 of the Agenda) in the Officer's report to help Members in their decision making process.

Councillor Rice suggested adding another reason which was that the site was self-contained physically by the highway and existing development so it would not create unrestricted sprawl, merge towns or cause encroachment other than on the development of the site itself, contrary to what the Officer's report outlined on sprawl and encroachment of the wider countryside. He went on to say that there were no historic town issues and the site was not derelict but was located between developed urban lands. He commented that paragraphs 3.14 and 3.15 on pages 92 and 93 of the Agenda, where Officers had assessed the impact on the GB, were for Members to judge and was another reason in addition to the previous ones given, to depart from policies. He went on to say that it was then up to the Secretary of State to make the decision as it was a departure from the Council's GB policy.

The Committee discussed that the motion put forward could be put to the vote and the process of the application going to the Secretary of State. The Chair felt that the reasons were not enough for VSC to exist and that substantial reasons were needed.

Councillor Lawrence highlighted that the benefits of the proposal was that the area was growing at a rapid speed with many companies and businesses growing and Thurrock did not have the capability to house the people that wanted to work in this area. She said that people were travelling into Amazon to work and that in the future, the Thames Enterprise Park would be there and DP World was constantly expanding. She pointed out that this was a small area that was not encroaching on or joining on areas next to it. She said that the VSC was that the Applicant was offering 35% affordable homes which may not be offered at a later date and along with the other reasons, this should be enough for the balancing exercise required of Members. She pointed out that the site had been neglected and did not look like the photos in the Officer's presentation.

The Committee agreed to suspended standing orders at 8.21pm to enable the rest of the Agenda to be completed.

The Vice-Chair was concerned that Members were expected to think of reasons to meet the required legal tests and was not given enough time as Officers had time to put together the reasons of refusal that was given within the report.

Councillor Rice referred to a paragraph in Kevin Leigh's (legal representative for the Applicant) email and read out:

"I appreciate that the effect on the GB is the driver behind the officers' concern. In this regard it is important to recognise that none of the five purposes of the GB would be undermined by the development. These are set out in paragraph 7.13 of the report dated 25 June 2020. This is also something that can constitute a very special circumstance in itself. Namely that the GB purposes are not actually harmed. The site, being self-contained physically by highway and existing development is naturally constrained. It therefore will neither create unrestricted sprawl, nor merge towns; nor cause encroachment other than the development of the site itself (contrary to what the officers opinion on sprawl and encroachment); the wider countryside will be undisturbed; there are no historic town issues; and the land isn't derelict although it already nestles between developed urban land. I also note the concessions in the later report dated 16 July 2020 in paragraphs 3.14 and 3.15 where the officers accept the impact on the GB in terms of sprawl and the quality of the land are matters of judgment – and therefore matters for the members to judge too."

Councillor Rice said that this paragraph from Kevin Leigh's email was enough to place weight along with the other reasons given to allow a departure (from the GB). He reiterated the reasons and said that Thurrock was within two

miles of a growth zone and the Government's advice was to build homes near a growth zone so people could walk or cycle to work. He said that there was an education contribution and healthcare contribution and the area had a good bus, road and cycle network with lots of parks nearby. The Chair pointed out that the whole of south Thurrock was within two miles of the growth zone but was not a reason to build on every part of the GB there. He said that the visual impact of the acoustic fencing had not been addressed and that the proposal was an outline application with all matters reserved including the acoustic fencing. The issue of the GB still had to be addressed and the QC's (Michael Bedford) advice should be taken into account.

Ian Hunt highlighted that the key test that Members had to undertake was paragraph 3.43 on page 49 of the Agenda where substantial weight to the harm to the GB and to any other harm had to be assessed before weight could be placed on the identified benefits of the proposal. It would be then that Members could conclude that VSC existed.

In regards to the process of the application going to the Secretary of State as discussed earlier, Michael Bedford explained that the Secretary of State could not be used as a safety net to ensure the lawfulness of decisions. A judicial review was used if the decision was seen to be unlawful. The Secretary of State's function was in the operation of the planning system with the power to call in decisions that was brought to his attention or referred to him but his tests were based on policy matters or if the issues raised were more than local importance rather than whether a decision was made lawfully or not. It was for Members to make a decision that was lawful. He referred Members to paragraph 3.43 on page 49 of the Agenda and advised Members to give reasons to indicate that they had applied the test as set out in the NPPF and the Council's policies. He went on to say that the site had been designated as GB regardless of Members' opinions that it was not good quality they had to give it substantial weight to the harm caused to the GB by allowing inappropriate development on it. He reiterated the balancing exercise needed and Members had to show that the policy had been applied in order to make a lawful decision.

Councillor Rice read out:

"In the context of an out-of-date plan, which Thurrock had, where some sacrifice of the GB is unavoidable in order to provide enough homes in the Borough, this scheme provides substantial social benefits relative to its size by the contribution made to the housing need."

Councillor Rice said that this paragraph could also be added to the reasons (for approving the application) as a departure from GB policy. He reiterated the reasons and felt Members could go to a vote and it would be for the Secretary of State to decide.

The legal advice on the key test highlighted on paragraph 3.43 on page 49 of the Agenda was reiterated. Members were advised to acknowledge the harm

that would be caused to the GB. Councillor Rice reiterated his reasons and the paragraphs he had previously read out.

Councillor Lawrence said that the main reason was that the location was ideal in helping Palmer's College as it would provide homes for the college's teachers and there was the Applicant's £600,000 education contribution that would help. She felt this reason outweighed the loss of this GB site. She also suggested that a condition could be included that affordable homes should be made available for key workers first.

Councillor Sammons commented that the site was a small piece of land that could be built on. She said that the Members' views of VSC differed to Officers but that Members had heard the legal advice and that Members had provided VSC to approve.

Michael Bedford reiterated that Members had to acknowledge that there would be substantial harm caused to the GB. Councillor Rice reiterated his reasons and said that the scheme was making use of a viable piece of land. He said that harm was recognised but that the site was self-contained and once developed, the harm would no longer be there.

The Chair noted that the acoustic fencing was a reserved matter and said that the WHO had advised it was needed due to reduce the noise impact to the development. He sought more details on this. Michael Bedford explained that the Council's Environmental Health Officer had advised the need for an acoustic fence based on the guidance on acceptable noise levels issued by the WHO. It was for Members to decide how much weight to give to the Council's Environmental Health Officer's advice and for Members to take into account the adverse visual impact that the acoustic fencing would have in the area when assessing the harms. He referred to paragraph 3.43 on page 49 and reiterated the advice that Members had to acknowledge that there would be substantial harm caused to the GB.

The Chair felt that Members had not addressed the issue of the visual impact of the acoustic fencing and the key test of substantial harm to the GB. Councillor Rice said Members were not lawyers and it was for the legal representatives to guide Members in this decision.

Michael Bedford explained that Members who were minded to approve the application needed to give and acknowledge that there would be substantial harm caused to the GB. Councillor Rice said that Members had recognised and given substantial weight to the harm caused to the GB. He reiterated the reasons for approving the application.

With the key test addressed, Leigh Nicholson stated that if approval was to be granted for this application, the process would be a drafting of the appropriate planning conditions in conjunction with the Chair and himself as the Assistant Director; then referral to the Secretary of State subject to the application not being called in; and then the completion of the section 106 agreements to

secure 35% affordable housing and a financial contribution for health care provision, education provision and for Essex Rams.

The following reasons provided by Members to approve the application were:

1. The Council had no five year housing supply or 20% buffer and was failing on delivering its housing target that was set by Government.
2. The Council did not have a Local Plan and no call for sites.
3. Housing was needed to support the growth area of Port of Tilbury and Amazon as employees there needed homes and to provide homes for teachers in Palmer's College.
4. The Applicant was providing 35% of affordable homes.
5. There would be a creation of employment opportunities through the construction phase.
6. The contribution that the development would make towards the Council's housing waiting list.
7. The site was 'scrubland' as it was self-contained so was not a GB site as it was not a protected site; was not of special scientific interest; was not a heritage coast or asset; was not a national park; had no flood risk problems; was not near historic towns; but was instead a small area of land that would provide social and economic gains.
8. The appeal decision of APP/M150/W20/3246788 Land of London Road, West of Rhoda Road, North Thundersley, Benfleet, Essex had been in favour of the Applicant on 21 July 2020 which was a case brought against Castle Point.
9. There were good bus, cycle and road networks in the area with lots of surrounding parks.

Leigh Nicholson commented that it was unclear what weight had been given to each of the reasons put forward for an approval of the application. Ian Hunt stated that Members must in voting for the proposed motion have given substantial weight to the harm to the GB and any other harms identified within the Officer's report. He highlighted that Members must have given full consideration to the test in paragraph 3.43 on page 49 of the Agenda and to the list of reasons for approval that clearly outweighed the harm to the GB in Members' views to enable them to conclude that VSC existed.

The alternative motion to approve the application having considered the harms to GB and given these substantial weight, and that the balance of the reasons listed outweighed these was proposed by Councillor Rice and seconded by Councillor Shinnick.

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

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

ABSTAINED: (0)

The application was approved subject to a drafting of the planning conditions, referral to the Secretary of State subject to the application not being called in, and then the completion of the section 106 agreements.

The meeting finished at 9.32 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**