

Appendix 1

Extract from minutes of Area East Committee – 2nd September 2008

Application No. 08/02183/FUL – the erection of 212 dwellings/apartments together with new estate roads and footpaths on land off Deanesly Way, Wincanton – Taylor Wimpey (UK) Ltd

Councillor Colin Winder asked for clarification on the status of planning application 06/01621/FUL. The Head of Development and Building Control explained that the Regulation Committee had resolved to grant planning permission (subject to the prior completion of a Section 106 planning obligation) in September 2006, but as the Section 106 planning obligation has not been signed the decision notice has not been issued. He further clarified that, should the present applicants sign the Section 106 planning obligation, the decision notice would be issued. This would mean that the development could be built under the plans submitted with application 06/01621/FUL.

The Legal Officer clarified that until the decision notice (which was the legal grant of planning permission) was issued, in legal terms, the application was classed as undetermined.

With the aid of slides and photographs the Head of Development and Building Control indicated:

- the application site and residential properties to the west of the site;
- an aerial view of the site;
- the layout of application 06/01621/FUL and the current application - he explained that both applications proposed the same access and area of open space;
- the contour lines and sloping nature of the site;
- the proposed house styles and dwelling heights - which he explained responded to the topography of the site, unlike the previous application which went against the grain of the contours; and
- the landscaping proposals - commenting that the applicants had upgraded the landscape in response to the Landscape Officer's comments.

He gave a brief explanation of the background to the application, reminding Members that there was an extant permission on the site for 119 dwellings that had been granted permission by the Planning Inspector on appeal with no planning obligation requirements.

He drew attention to what he saw as the key issues, namely:

- Archaeology – he confirmed that the County Archaeologist had now confirmed that he was happy for the development to proceed subject to appropriate conditions which would have to be implemented before the development commenced;
- Sport & Leisure – he explained that whilst the Council's Leisure and Recreation Officer had requested facilities in line with the development of 212 dwellings, this had been done in order not to set a precedent for other developments. However, the Leisure and Recreation Officer accepted that the planning obligation would only refer to the uptake figure of 108 dwellings;
- Open Space – he explained that the proposed area of open space, whilst sparsely maintained for conservation habitat, was above that required by Local Plan Policy CR2. The Council's Ecologist was satisfied with the mitigation proposals for the slow worm population;

- Landscape – he explained that the Landscape Officer had raised some concern over the split level dwellings in the north-east corner of the site. However, there were already prominent dwellings at the top of the site which broke up the horizon line;
- Technical Information – he confirmed that the proposals put forward by the applicants to deal with flood risk, drainage, reptile survey and traffic impact had been accepted by the experts.

Because of the previous resolution of the Regulation Committee to grant planning permission (subject to the prior completion of a Section 106 planning obligation) in September 2006, he was of the view that the only issues that Members should be considering how the design and layout of the present scheme compared to the 2006 scheme, i.e. 06/01621/FUL.

He recommended that the application be approved subject to the prior completion of a Section 106 planning obligation and appropriate conditions because, in his view, the application:

- would respond well to the topography of the site;
- would deliver 38 units of affordable housing;
- was in context with the neighbouring estate, but reflected modern day densities;
- was essentially the same development that had already been accepted by the Council in September 2006.

He drew Members' attention to the list of amended conditions that had been circulated at the meeting stressing that in essence the conditions had not changed but, at the request of the Legal Officer, the wording had been changed to ensure clarity of meaning and consistency of wording. One additional condition had been included relating to the requirements of the County Archaeologist.

Members sought clarification of the following points:

- Whether the Planning Inspector, when making his decision in October 2001, had expressed any reservations about the scheme. The Development Control Team Leader confirmed that the Inspector's principal reservation related to the height of the proposed dwellings at the top of the site fronting Bayford Hill. She clarified that this area of land no longer formed part of the application site.
- Whether there were any sketch drawings showing the distances between proposed properties and existing properties, and how the distances compared with the previous application. The Head of Development and Building Control explained that the impact on neighbouring properties was essentially the same for both applications.
- The wording in the officer's recommendation, in effect, delegated the completion of the Section 106 planning obligation to the Council's solicitor(s). Concern was expressed that this was a different process to that of the previous application. The Legal Officer explained that the wording of the recommendation:

“That application no. 08/02183/FUL be approved subject to: a) the prior completion of a S106 planning obligation (in a form acceptable to the Council's solicitor(s)) before the decision notice granting permission is issued, the said planning obligation to cover the following matters [...]”

only referred to the actual written form of the Section 106 planning obligation and not the content - the wording of the recommendation was a standard form of

wording now used and it was designed to ensure the protection of the Council and clarity in the recommendation. He stressed that the content of the planning obligation would be informed by the instructions received from the Council and the Head of Development and Building Control as his clients.

- Whether agreement had been reached with the applicants on the extent and quantum of the planning obligation. The Head of Development and Building Control confirmed that officers were pursuing the same requirements as covered by the previous application, the only difference was the contribution to the Education Authority which had risen in line with inflation.
- When considering the previous application the applicant had confirmed at the Committee meeting the extent and quantum of the Section 106 planning obligation. It was felt that until this confirmation was given, any consideration of the application would be premature. The Head of Development and Building Control confirmed that the applicants had accepted the requested obligations and the Section 106 planning obligation had been drafted in accordance with the previous heads of agreement. He felt that they were in a far more advanced position with the present Section 106 than they were with the previous one. He drew Members' attention to the details of the Section 106 planning obligation as set out in the report. The Chairman concurred with the officer's comments that the report clearly set out the principles of the planning obligation.
- What would happen if there were to be a problem with the Section 106 planning obligation? The Head of Development and Building Control gave an undertaking that should there be a problem he would bring the application back to the Committee.
- Had the split of affordable housing been confirmed? The Head of Development and Building Control confirmed that the split would be 50% rented accommodation and 50% shared ownership.

Mr David Norris, representing Wincanton Town Council, commented that:

- the proposed planning conditions had addressed many of the Town Council's concerns and, whilst the Town Council was not against the development in principle, they still had a number of reservations and in particular the quality of the supplementary evidence, e.g.
 - the monitoring of the noise pollution took place in January 2006 and was not representative of the normal traffic flow at other times of the year, such as during the summer months when there was heavy holiday traffic. Also, at the time of the monitoring, the wind was blowing in the opposite direction to the normal prevailing wind. In essence, it was felt that the evidence was flawed and should be reassessed;
 - the transport survey took place on just one day in June 2004 after the majority of people had left for work, thus it was four years out of date;
- the proposed building material of red brick and render was not the naturally material for Wincanton – this should also be reassessed;
- the times of the public transport system did not match the times needed by people travelling to work;
- the housing density was originally 119 dwellings which equated to 20 dwellings per hectare; the present density is 44 dwellings per hectare, at the upper end of the Government's target, which will lead to overcrowding. 30 dwellings per hectare would be an improvement;

- there was only one access to the site, which approximately 15% of the town's population would be using. Drivers would use Balsam Fields as a rat run to the bottom of the town, which was permanently clogged with parked cars;
- the public open space should be dispersed throughout the site;
- the Town Council had severe reservations regarding the Section 106 planning obligation, particularly with regard to the sports and leisure facilities.

In concluding his remarks he asked that the Regulation Committee be invited to reconsider the application.

Mr Parsons, representing Stoke Trister with Bayford Parish Council, informed Members that the Parish Council's concerns regarding the use of Devenish Lane as an access to the site and the burning of materials on site had both been dealt with through the proposed conditions.

Six members of the public spoke in opposition to the proposal. They concurred with the comments made by the Town Council and made the additional comments:

- the proposal will result in a ghetto-type development;
- no development should take place unless there are at least two access roads;
- there is no provision for visitors' parking;
- Balsam Fields would become a rat run;
- traffic calming of Balsam Fields would exacerbate the already appalling traffic problems;
- the junction of Common Road and Bayford Hill will become an accident blackspot;
- the development will cause traffic congestion in the High Street;
- due to other developments, there is little parking available in the town car parks;
- the traffic will have a detrimental affect on the elderly residents of the sheltered accommodation and put residents way of life at risk;
- residents' vehicles and service vehicles would all be using the same access;
- the application should be rejected until a realistic traffic survey has been undertaken
- thought should be given to the future and a relief road provided;
- the number of dwellings should be reduced in line with the Key Site;
- the field end of Balsam Lane should be blocked off before work commences to prevent contractors' vehicles using the grade 4 narrow lane, the surface of which is little better than a farm track;
- a two metre wooden fence should be erected around the gardens of 'Uplands' and 'The Beeches' at Balsam Lane before work commences;
- there is still some dispute on the boundary line, particularly with regard to 'The Beeches';
- the lack of any stone built houses was an insult to Wincanton;
- dwellings should be no higher than two storey in line with nearby development;
- the town is losing its identity;
- residents have no control over the density and local opinion counts for nothing;
- the Sustainable Community Act 2007 says that in considering development the local authority must have regard for the number of local jobs. There are not enough jobs in the vicinity of Wincanton to cater for an additional 212 dwellings;
- there are not enough recreation facilities and the application should not be determined until this has been dealt with;
- the water table and disposal of sewage is of concern.

Mr Taylor, the applicant's agent, confirmed that the proposed Section 106 planning obligation followed the exact terms as the previous planning obligation.

Following the comments from the members of the public, the Head of Development and Building Control responded that:

- the technical reports had all been endorsed by the experts. If Members wished to refuse the application on highway grounds, for example, then the Council would have to find a technical expert that could provide counter evidence;
- because of the planning history of the site the Council could only ask for a local play area;
- the Land Registry had been asked to clarify the disputed boundary around 'The Beeches' but two different responses had been received. However, even if the application was approved, this would not give the developer the right to develop land not within its ownership;
- the development would be phased to ensure disruption to local residents was minimised;
- if necessary, additional fencing could be agreed and erected before the development commenced;
- he had no particular issue with the proposed materials of red brick and render, but if Members felt strongly about this he would negotiate with the applicant regarding the inclusion of some stone dwellings within the site;
- the Regulation Committee had found 212 dwellings on the site to be acceptable;
- there was no requirement on the applicant to demonstrate that there were sufficient jobs for the number of dwellings within the Wincanton area.

During the ensuing discussion Members commented on the importance of phasing the development; incorporating other materials into the development and the need to erect boundary fences before development commenced on site.

Members also expressed serious concerns regarding the following key points:

- The position of the open space area was too near to the A303 and it would be preferable to have the play area in a more suitable location within the site where children could be observed and where they would have a safe route to the play area. The building of 212 dwellings without a multi use games area and youth shelter would result in anti-social behaviour, which would have to be dealt with some time in the future.

The Head of Development and Building Control reminded Members that the Regulation Committee had already agreed the siting of the open space and he felt that it would be unreasonable to ask the developer to consider a new site. He indicated a proposed footpath to the site, which he explained would keep children away from the roads. He also explained that the Planning Inspector, in granting the 119 dwellings, had not asked for any planning gain.

- Because of the sloping nature of the site, the water that would result from a 1 in 100 year storm plus 30% allowance, as indicated in the Flood Risk Assessment, would result in a major problem for residents.

The Development Control Team Leader clarified that storm water would be held in under-road storage areas, plus there would be a major water storage area at the bottom of the site.

- The traffic flow survey was seriously flawed due to the time at which it was carried out, after workers had left for work, and because of the omission of a survey of Mundays Mead and Southway Drive - which many motorists use as a rat run. The flaw was further compounded by using the same figures to calculate the air quality. No checks have been carried out on the existing level of traffic numbers or air pollution.
- Officers had not taken into account the Sustainable Communities Act 2007 which requires the local authority to take account of the employment in the area.
- The decision to only apply the planning gain to the uplift figure had been the opinion of a planning officer made some 6 years ago. As this was a new application, it was felt that it would be reasonable to apply the full tariff of planning gain over the whole of the 212 dwellings - which would result in a better infrastructure for traffic, more recreational facilities and additional affordable housing. Whilst the High Court Judge, in considering the previous application, had quashed the decision notice (the grant of planning permission) he had not passed a judgement on the requirements of the Section 106 planning obligation.

The Head of Development and Building Control advised that, in his view, it would be wholly unreasonable to pursue anything different than what had been requested for the previous application. He stressed that the only difference between the present application and the previous application was the change of design and layout of the site.

In response to a Member's question, the Legal Officer advised that he could not give a legal opinion on an opinion expressed by a planning officer some 6 years ago as he had not seen any paperwork associated with that opinion.

The Legal Officer also clarified that when the High Court Judge had quashed the previous decision notice (the planning permission) he had confirmed that once the Section 106 had been entered into there would be no need for the application to be re-considered by the Regulation Committee and that the officers could issue the decision and grant planning permission.

In response to a Member's comments the Legal Officer advised that should Members wish to refuse the application, they must put forward cogent planning grounds for refusing. Any decision to refuse made on grounds that could not be justified on appeal would almost certainly result in costs being awarded against the Council. If Members wished to refuse the application on grounds that the planning obligation should apply to the whole site then he would have to seek Counsel's opinion.

Councillor Tim Carroll proposed and Councillor Antonio Capozzoli seconded that:

- (1) Application 08/02183/FUL be referred to the Regulation Committee with a recommendation that it be refused on the grounds that the application had not been treated as a fresh application and, therefore, the full Section 106 planning obligation tariff had not been applied (when it should have been applied).
- (2) The Solicitor to the Council be instructed to seek Counsel's advice prior to consideration of the application by the Regulation Committee on the amount of uplift in respect of planning obligation contributions that can be applied to application 08/02183/FUL.

On being put to the vote the motion was carried by 6 in favour, 1 against with 2 abstentions.

- RESOLVED:
- (1) Application 08/02183/FUL be referred to the Regulation Committee with a recommendation that it be refused on the grounds that the application had not been treated as a fresh application and, therefore, the full Section 106 planning obligation tariff had not been applied (when it should have been applied).
 - (2) That the Solicitor to the Council be instructed to seek Counsel's advice prior to consideration of the application by the Regulation Committee on the amount of uplift in respect of planning obligation contributions that can be applied to application 08/02183/FUL.

(Vote: For 6 in favour, 1 against, 2 abstentions)
