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Date Tuesday, 22nd April, 2014
Time 6.30 pm
Venue Council Chamber, Civic Offices, Merrial Street,
Newcastle-under-Lyme, Staffordshire, ST5 2AG
Contact Julia Cleary

Supplementary Agenda Planning Committee

PART 1- OPEN AGENDA

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|-----------|---|------------------------|
| 4 | Application for Major Development - Land to Rear of Rowley House; Ian Moreton/Peter Jackson Associates; 13/00990/OUT | (Pages 3 - 6) |
| 9 | Application for Other Development -21 Rathbone Avenue; C Horne; 14/00183/FUL | (Pages 7 - 8) |
| 11 | Section 106 Quarterly Report | (Pages 9 - 10) |
| 12 | Application for Financial Assistance (Historic Buildings Grant) -Madeley War Memorial; 13/14011/HBG | (Pages 11 - 12) |
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SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
22nd April 2014

Agenda item 4

Application ref 13/00990/OUT

Land rear of Rowley House Moss Lane Madeley

Since the preparation of the agenda report a **further 6 letters of objection** have been received the majority of the concerns raised have already been addressed in the main report. On the matter of the ecological impact of the development a third party has provided comments that have been made to him by Staffordshire Wildlife Trust (which the Trust has not provided the Authority). They are that it is difficult to see how no net loss of biodiversity can be achieved unless more (green) space is provided on site and all gardens and buildings are made as wildlife friendly as possible or an area off-site is enhanced. With this type of development it is very hard to recreate the same type of habitats as are present unless a large enough area is left. The Council needs some ecological expertise to advise them as to the accuracy of the survey report and the overall impacts, some councils buy-in a consultant to help in some cases where they do not have in house expertise. The third party criticises certain aspects of the report and expresses the view that it is essential that the Council seek further independent expert advice.

The other 'new' points are:

- The proposal conflicts with both National and Local Planning Policy
- The proposal has similarity to the recent refused proposal at Baldwins Gate
- Recent appeal decision at Bar Hill and at West Sussex where the appeal was dismissed although the Council could not demonstrate a five year housing supply
- An approval would put the Borough Council in a position where it exceeds its authority and is guilty of procedural negligence placing it in danger of serious legal and financial consequences, most particularly affecting the Council's ability to defend its decision at Baldwins Gate and its position in relation to any claims for an award of costs in those appeal proceedings.

A further letter of representation as been received from **Madeley Conservation Group** raising concerns regarding the potential stability of the adjacent railway cutting.

A further of letter as been received from the **applicants agent** which generally re-emphasises the key issues within the main report, it also advises of a recent planning appeal decision in Cheshire East where the Inspectorate allowed a proposal for residential development at Elworth Hall Farm, Sandbach (94 dwellings). The Council could not demonstrate a five year housing supply. One of the reasons for allowing the development concerned the site's alleged ability to provide housing within the next five years and to reinforce this point the Inspector imposed a reduced time limit condition for the submission of details and the commencement of development. This correspondence also provides some suggested detailed conditions as outlined in the agenda report.

Following reports of trees being felled on the application site, the Borough Council has made a provisional Tree Preservation Order on three trees on the boundary between the field and the existing garden of Rowley House. The trees which are the subject of the Order are a Sycamore and two Birch trees – as indicated in the course of the site visit. None of the trees felled were the subject of a Tree Preservation Order, the arboricultural survey submitted with the application classified them as either Category B or C, some (those classified B) were shown as being retained, others (those classified C) to be removed, but it is understood the Council's Landscape Development Section considered some of the Category B trees in

question to be Category C. According to the agent the immediate requirement to remove them arose as a result of requirements of statutory undertakers .

Your Officer' comments

New issues raised within the letters of objection:-

Is the Council in a position to determine the application without further ecological advice?

The application is accompanied by an Ecological Walkover study report prepared by Leigh Ecology Limited. Enquiries have confirmed the experience and professional qualification of the person involved. The site survey is indicated as following appropriate guidelines. No express reference is provided to the interrogation of the Staffordshire Ecological Records Service, but your officers are checking those Records.

Conflict with National and Local Planning Policy

The agenda report expressly goes through a process of assessing the proposal against both national and local policy in the context of the Council being unable to demonstrate that it has a 5 year supply of housing. As the report indicates paragraph 49 of the NPPF indicates that relevant policies (within Local Planning policy) for the supply of housing should not be considered uptodate in such circumstances, and sustainable development should be approved unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted. That there is conflict with Local Planning policy on the supply of housing is accepted, but that policy has to be considered, at least for the moment, as out of date

Similarity of this proposal with the recently refused Baldwin Gate decision

Whilst there are some similarities between the two proposals such as the development of the greenfield site outside the existing village envelope, there are also some distinct differences. For example Madeley is identified in CSS as a Rural Service Centre whereas Baldwins Gate is not, Madeley provides a higher level of facilities and services to serve its community, and the proposal at Madeley does not involve the use of best and versatile agricultural land whilst that at Baldwins Gate does.

Each application should be dealt with on its own merits and as such this proposal has been assessed and the recommendation reached on the merits of this particular submission.

Appeal Decisions

Whilst the Bar Hill decision is referred in the main report (paragraph 2.11), the other appeal decision referred to (West Sussex authority) whilst verbally reported to the Committee at its previous meeting on 3rd April it has not been referred to in the main agenda report. In that case the Inspector dismissed an appeal for 100 houses on a greenfield site as the proposal was poorly laid out and turned its back on the surrounding area even though the Council could not demonstrate a five year housing supply and their Local Plan was out of date.

The Inspector was satisfied that the impact arising from the layout of the development outweighed any benefits of that particular proposal. It should be noted that the reasons for dismissing the appeal related to a poor layout and its relationship to existing properties.

Members are reminded that the application under consideration is an outline planning application, with all matters reserved with the exception of the means of access to the site and the layout plan provided with the application is for purely indicative purposes. Urban Vision Design Review Panel indicated their conditional support for the development of this site for residential purposes.

The danger of legal or financial consequences if the application is permitted

The assertion made is of a general unspecific nature – reference being made to the Council exceeding its authority, being guilty of procedural negligence and in danger of serious legal and financial consequences. Aside from a complaint about the manner in which the views of the Wildlife Trust were reported, which has been corrected in the current report, your Officer is not aware of the alleged procedural negligence. The application has been appropriately publicised, representations that have been made have been taken into account, and appropriate advice has been sought and taken with respect to a number of issues, including from the Environment Agency and the Highway Authority. There is no reason to consider that the Council if it were to grant planning permission would make its liable to a claim of negligence. The Borough Council as the Local Planning Authority does have the power to approve the application. Any party with an appropriate interest in the matter can apply for a Judicial Review of the decision if they wish, but they would have to demonstrate to the Court the basis for such a challenge. The Council has received no substantive notification of such an intention to seek a Judicial Review and the basis for it.

The argument is put that refusal would undermine the Council's decision with respect to Baldwin's Gate (13/00426/OUT, which is now expected to go to appeal, and could expose the Council to an award of costs. The fundamental principle is that each application (and appeal) should be considered on its own individual merits. As indicated above there are significant dissimilarities between the two cases. It is the case that the first reason given for the refusal of the Baldwin's Gate application refers to that development as being contrary to the targeted regeneration and spatial principles set out in the Core Spatial Strategy. That said the Core Strategy does expect a certain level of residential development within the rural areas, albeit primarily within the village envelopes of the Rural Service Centres. Your officer's view would be that whilst reference might be made by an appellant as to inconsistency a valid counter argument would be that by permitting development such as that at Madeley that it considers to be in a sustainable location the Council is acting responsibly, is taking into account the NPPF, and that such developments assist in the provision of a 5 years supply of housing (and thus strengthen the Council's position where it considers that the harm arising significantly and demonstrably outweighs the benefits of a proposal).

Stability of the railway embankment

Network Rail have been consulted regarding this proposal and have raised no objection to the proposal in respect of the stability of the railway embankment as a result of the proposed development.

The early delivery of residential development on the site

As indicated above the applicant's agent has advised of a recent appeal decision where the Inspector in allowing a proposal for residential development, imposed a reduced time limit condition for the submission of details and the commencement of development. The agent is indicating his client's willingness to accept conditions which would require the submission of the reserved matters within two years of the outline permission date and the development to commence one year after the date of approval of the last reserved matters to be approved, providing a commencement of development within a maximum of 3 years of the approval of an outline permission. This second period is normally 3 years – providing a commencement within a maximum 5 years of the date of the outline consent.

The Authority does have the power to vary such conditions, having regard to the provisions of the development plan and any other material considerations.

There is a justified interest (on the part of the Planning Authority) in giving weight to the probability that if granted housing development does come forward promptly – hence the significance of the correspondence between the applicant and a potential developer purchaser of the site that is referred to in the agenda report. The suggested conditions if imposed might be interpreted as securing an early delivery of the development, however,

Members should be aware that these conditions relate to the commencement of the development only rather than its completion. There is always the possibility that a developer will make a lawful commencement of the development but not then pursue the completion of the development. Whilst there is no reason to consider it will happen in this instance, some developers will make a lawful commencement of development to keep a permission live to then be able to complete the development when market factors are more favourable.

Your officers whilst acknowledging the offer of a shorter time limit to commence the development are not recommending this revised time limit condition.

The recommendations remain one of approval of the application unless the sought for planning obligations are not secured by 20th May, all as detailed in the Agenda Report.

SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
22nd April 2014

Agenda item 9

Application ref 14/00183/FUL

21 Rathbone Avenue May Bank

Since the preparation of the agenda report, a further **2 letters of representation** supporting the application have been received as well as further correspondence from the **applicant**. Correspondence has also been received from the applicant's partner

The letters supporting the proposal are from the occupiers of 1 and 3 Brampton Road stating that the previous conservatory erected was not harmful to their living conditions, that they were disappointed and surprised with the Inspector's decision and in the case of No.3 they consider the proposed conservatory to be an improvement to their own property's boundary.

The applicant and her partner dispute the conclusions of the officer report. They comment that contrary to your officer's findings:-

- The reduction in the length of the proposed conservatory has significantly improved the proposal from that previously considered by the Authority and its massing is now acceptable. The development is not overbearing unlike others approved by the Council (specific reference is made to a development off Sandy Lane)
- It is not feasible to move the conservatory away from the boundary by 1 metre due to the position of an existing back door serving the property which is around half a metre away from the boundary.
- The proposal will allow additional security to the occupiers of numbers 1 and 3 Brampton Road since a previous garage which stood against the boundary has been removed and they are also in support of the proposal. Due to this factor the proposal will have a positive impact.
- In addition the applicant also points out that the Inspector who dismissed the appeal for a larger conservatory did not have direct access to the allegedly affected properties in making his judgement as acknowledged in his report.
- Permitted development rights could be exercised to achieve a similar extension only just over a metre less in length

Your Officers' comments

The Authority needs to take into account the additional information received in reaching a decision on this application.

Members should note that the Inspector expressly considered the support given to the previous conservatory by the occupiers of some of the adjoining properties, but he still concluded that the development that was before him had a significant negative impact on the living conditions of the occupants of a number of nearby dwellings. He noted that paragraphs within the NPPF require planning authorities to take decisions that ensure a good standard of amenity for all existing and future occupants is maintained and that proposals provide positive improvements to people's quality of life, and that this applies not only to dwellings that are subject to development but also to neighbouring properties. The application now being considered is a different proposal but the principles underlying the Inspector's approach are not open to dispute.

That said there has been reference to the potential exercise in permitted development rights as a material consideration – i.e what is the applicant likely to do in the event of a refusal. Your officer to date has not placed any weight upon these rights as a fallback consideration, but with the further comments now received (and the deadline for late representations falling

on the 15th April without any objections to the current proposals being received from the occupiers of adjoining properties) it is relevant to revisit this aspect. As members may be aware a householder can erect certain extensions without requiring to obtain planning permission. Under new rights introduced last year a single storey extension projecting up to 6 metres from the original rear wall of the property (and meeting various other criteria) can be built as permitted development without the LPA having any opportunity to consider its merits if no adjoining neighbour makes an objection to it within a specified period. The other criteria are met here but in this case 6 metres equates to an extension that is just over a metre shorter than that which is proposed in the planning application here being considered. The absence of any objection to this larger scheme suggests, although not conclusively, that the applicant does have a significant fallback position which the LPA now needs to consider

However the fact remains that what is applied for is over one metre longer and there is no particular benefit that can only be secured by the grant of a planning permission. Thus whilst the potential exercise of a fall back position is a consideration, it is not one which your Officer considers tips the balance in favour of the application.

Your Officer's recommendation as given within the main agenda report remains unaltered.

SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE

22nd April 2014

Agenda item 11

Fourth Quarter Report on extensions to time periods within which obligations under Section 106 can be entered into

Since the agenda report was prepared there have been developments with respect to the **Linley Trading Estate** case. The previously agreed deadline being the 22nd April it has become apparent that the Section 106 could not be completed by that date. Your officer following consideration of the reasons for this has now agreed to extend the period within which the agreement can be completed – to the 22nd May - subject to the proviso that the applicant similarly extends the statutory period (within which no appeal may be lodged) and that should your officer consider at any time short of engrossment of the agreement (the production of the final agreed copy for signature by the parties) that there has been a material change in planning circumstances he has the right to bring the matter back to the Committee for reconsideration.

At the time of writing there has been no change in the position with respect to the **Old Springs Farm** case

An extension is expected to have to be agreed to with respect to the **Maer Hall** case of about a week as completion by the 25th April is now looking increasingly unlikely.

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SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
22nd April 2014

Agenda item 12

Application for financial assistance (Historic Building Grant) from the Conservation and Heritage Fund – Madeley War Memorial , Junction of Newcastle and Keele Road (Ref 13/14011/HBG)

The **Conservation Advisory Working Party** support a grant of £2160 subject to the appropriate standard conditions

The recommendation remains unaltered as per the agenda report

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SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
22nd April 2014

Agenda item 13

Application for financial assistance (Historic Building Grant) from the Conservation and Heritage Fund – 2 Court Walk, Betley (Ref 13/14014/HBG)

The **Conservation Advisory Working Party** support a grant of £2,250 for the repair of the wall subject to the appropriate standard conditions and a specific condition that the height of the wall should remain the same as existing

The recommendation remains as per the agenda report

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