

Minutes

Meeting name	Planning Committee
Date	Tuesday, 6 June 2023
Start time	6.00 pm
Venue	Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire, LE13 1GH

Present:

Chair Councillor A. Thwaites (Chair)

Councillors

J. Mason (Vice-Chair)	P. Allnatt
I. Atherton	P. Cumbers
C. Evans	M. Glancy
M. Gordon	L. Higgins
D. Pritchett	S. Atherton (Substitute)

Officers

Assistant Director for Planning
 Planning Development Manager
 Senior Solicitor (TP)
 Senior Planning Officer (AC)
 Planning Officer (HW)
 Democratic Services Officer (HA)
 Democratic Services Officer (SE)

Minute No.	Minute						
PL1	<p>Apologies for Absence</p> <p>An apology for absence was received from Councillor Browne and Councillor Siggy Atherton was appointed as his substitute.</p> <p>It was noted that Councillor Cumbers was not present at the start and was on her way to the meeting.</p>						
PL2	<p>Minutes</p> <p>The minutes of the meeting held on 30 March 2023 were approved as a true record.</p>						
PL3	<p>Declarations of Interest</p> <p>Application 21/01134/FUL – 2 Mill Lane, Long Clawson</p> <p>Councillor Thwaites declared a non-pecuniary interest as the agent who was speaking on the above application was his neighbour and he had not discussed this nor any applications with him.</p>						
PL4	<p>Schedule of Applications</p>						
PL5	<p>Application 22/00006/VAC</p> <table border="1" data-bbox="288 1099 1442 1312"> <tr> <td data-bbox="288 1099 504 1137">Application:</td> <td data-bbox="504 1099 1442 1137">22/00006/VAC</td> </tr> <tr> <td data-bbox="288 1137 504 1182">Location:</td> <td data-bbox="504 1137 1442 1182">Field OS 6260 Canal Lane, Hose</td> </tr> <tr> <td data-bbox="288 1182 504 1312">Proposal:</td> <td data-bbox="504 1182 1442 1312">Removal of Condition 4 (provision of on-site affordable housing requirement) of planning permission 19/00859/OUT</td> </tr> </table> <p>The Senior Planning Officer (AC) addressed the Committee and provided a summary of the application and advised that 2 further letters of representation had been received raising which raised concerns about the viability report that had been submitted and also concerning contributions to the local village facilities. The viability appraisal had already been fully assessed within the report and with respect to the local village facilities the contributions had been previously secured at the outline stage so this was not for consideration as part of this application. The application was recommended for approval for the removal of condition 4 subject to conditions and a Deed of Variation.</p> <p>Responses to Member queries were as follows:</p> <ul data-bbox="288 1868 1474 2083" style="list-style-type: none"> • The viability analysis set out that the profit would be below the viability threshold for this development • If the application was refused, the decision could be appealed by the applicant and based on the figures given in the report, it was likely the Planning Inspector would apply significant weight on the viability test • The affordable housing allocation could initially be ring-fenced for Hose 	Application:	22/00006/VAC	Location:	Field OS 6260 Canal Lane, Hose	Proposal:	Removal of Condition 4 (provision of on-site affordable housing requirement) of planning permission 19/00859/OUT
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- There was an initial viability study in 2019 at the outline stage which was based on generic costs and the independent assessor considered that profitable. However the latest assessment was more robust and with detailed figures and independent assessor now advised that the development was not viable

Pursuant to Chapter 2, Part 9, Paragraphs 2.8-2.28 of the Council's Constitution in relation to public speaking at Planning Committee, the Chair allowed the following to give a 3 minute presentation:

Adrian Kerrison, Agent Plumtree Homes LLP

Following the speaker's presentation, the following points were noted:

- The 10 per cent referred to was gross profit
- There were £680k of abnormal costs which included significant cut and fill to help alleviate the 6 metre slope from the top corner to the bottom corner that required several plateaus, new rising mains to be installed, a large attenuation pond, there was a road widening scheme required by the County Council, archaeology works, various other works such as a newts issue that had been resolved
- Market forces over the past 2/3 year had led the 55 per cent increase in costs
- In 2019 although the independent assessor considered the site was viable, the developer felt sceptical and did not consider the affordables deliverable in the form required by the Council. They were negotiating for a more viable option of a smaller number of 80 per cent market value homes and they had never signed off on the affordable housing requirement
- Since then costs had increased hence the current viability analysis that had been verified by the independent assessor
- The agent advised that they had made it clear from the outset that 42 percent was not achievable
- The land had been purchased in 2019 and the outline application was submitted in 2020
- They were a small high specification builder and had reduced costs and specification and construction costs where possible but this still did not make the site viable
- The homes would range between £220k and up to £600-800k in value
- They were aware of the affordable housing policy when they purchased the land

During debate the following points were noted:

- There was concern at housing viability as the need was well established before the land was purchased
- It was felt more legal guidance, case law, previous appeal decisions were needed before a decision could be made and possibly a deferral on this basis may be proposed
- There was concern that affordable homes were needed for people to get on the housing market in Hose
- It was suggested that there was case law and a high court judgement where

- cases such as this were tested and affordable housing was not removed
- It was felt if this application was approved it would set a precedent for other developers
 - The Planning Development Manager advised that the removal of the condition was within the principles of the NPPF and the Local Plan and the Neighbourhood Plan all of which stated viability had to be proven. The Council would also then seek to retain the affordable housing element even though there were those policies
 - It was considered that there was not enough information as the land cost should not be factored into viability and case law of similar cases was required
 - There was a conflicting view that case law and legal opinions were not material documents for lay people in determining a planning application
 - The Senior Solicitor advised that case law was binding but he had not seen the case law and high court judgement referred to and should the application be deferred the applicant could go for non-determination as the deadline for determining the application was only days away. Should this happen, the Planning Inspectorate would determine the application and the Council may lose the opportunity to apply conditions that may be considered by the committee
 - The Ward Councillor considered that 11 affordable homes had been discussed and at no point were they advised they would not be delivered
 - The Senior Solicitor advised that viability was a genuine mechanism and was not concerned with historical information or data
 - It was pointed out that the developer had not accepted the affordable housing position from the start and the 2019 application had stated that the full costs were unknown at that stage
 - There was mention as to whether Homes England had been involved in this application
 - There was a move for deferral to consider the Park Road judgement and other appeal decisions and case law and bring this information back to the committee
 - It was reiterated that the development had been independently assessed on viability and there was nothing further they could do apart from consider previous appeal decisions
 - There was concern on the risks of deferment against the balance of the issues and did viability trump other factors with the Planning Inspectorate
 - The Planning Development Manager advised that the report outlined the policies, the SPD and the NPPF and the Council's compliance with planning policy and as this was a legitimate mechanism it was likely the Planning Inspector would permit the application
 - A Member felt that they should they defer to ask for legal opinions and case law it could cost the Council more money and a lengthy deferment
 - The Senior Solicitor explained that the Legal Team could obtain external legal expert opinion when required. He could not respond on whether viability trumped planning policy and stated officers had to abide by the rules and highlight the risks
 - The Senior Planning Officer advised that viability was a tool and a mechanism and was part of the NPPF

- There was a suggestion to defer to reduce the contributions based on reduced income and a Member referred to some guidance where this had happened

(Councillor Cumbers apologised for her late arrival and asked if she was able to vote. The Senior Solicitor advised she had arrived at 6:05pm during the Senior Planning Officer's presentation, however she had been present for the speakers and debate. The Senior Planning Officer advised there had been no update in his presentation therefore the Senior Solicitor advised that it was the Member's decision whether to vote.)

Councillor Higgins proposed a motion to defer the application to gain more confidence in the reasoning by receiving legal guidance, previous case law and appeal decisions including the Park Road judgement. Councillor Evans seconded the motion. On being put to the vote, there were 5 for and 6 against therefore the motion was lost.

Councillor Allnatt moved the recommendation in the report and Councillor Pritchett seconded.

RESOLVED

That the application be APPROVED subject to :

(1) the conditions set out in in the report;

(2) Deed of Variation to the previously completed agreed Section 106 Agreement to

Continue to secure contributions towards

(i) Primary and secondary education provision.

Include contribution towards

(i) Off-site Affordable housing provision

Remove contributions for

(i) Sustainable transport options

(ii) Waste services

(iii) Library services

(iv) NHS contribution

(3) Include a Late Stage Review Mechanism

(5 for, 4 against, 2 abstentions)

(Councillor Cumbers requested that her abstention be recorded as she advised she did not have enough information to make a decision.)

Councillors Evans, Glancy, Gordon and Higgins requested that their votes against the motion be recorded.)

REASONS

The application has been supported by a viability assessment which indicates that the provision of affordable housing on-site as required by the condition would not be viable.

The Council have sought external and independent advice on the submitted viability assessment, the results of which state that should affordable housing be provided as part of the development, then the scheme would not be economically viable. The application would still provide the same amount of financial contributions that were secured by the originally agreed Section 106 agreement under planning permission (reference 19/00859/OUT), however the lower priority contributions would be redistributed and from an off-site affordable housing contribution. The independent viability assessment included these contributions within the overall assessment

The original outline application (reference 19/00859/OUT) was supported with a viability assessment where the applicant aimed to demonstrate that the scheme was unviable in order to remove the affordable housing provision. However during the course of the original outline application, officers were concerned that given the scheme was in outline form it was difficult to understand the associated costs and values of the development as no detail of the proposal has been determined. Therefore the affordable housing provision was secured at outline stage.

Following approval at outline stage, the reserved matters for the layout of all 34 dwellings and scale and appearance of 5 dwellings have been approved under application (reference 20/01135/REM).

As the reserved matters have now been approved showing the layout of all 34 dwellings, consideration can be given to the detail of the development (something which was difficult to assess at outline planning stage). The viability assessment that has been submitted is in accordance with the detail of the development that has been approved through application 20/01135/REM. Therefore the viability assessment which has been submitted is considered to be an accurate representation of the costs that would be incurred.

Overall, it is considered that up to date, acceptable and robust evidence of viability has been provided which demonstrates that the development is not capable of providing the policy target of 32% (11 Affordable Housing units).

A number of different options have been considered within the viability assessment which demonstrate that any provision of on-site affordable housing (across any tenure mix forms) would not be economically viable.

The loss of affordable housing provision would not be in line with Policy C4 of the Melton Local Plan or Policy H6 of the Clawson, Hose and Harby Neighbourhood Plan. However the submitted viability assessment has been considered in detail

during the course of the application of which the independent viability assessment concluded that the removal of the affordable housing provision is absolutely necessary in order to make the development financially viable and deliverable.

To emphasise this further, the conclusion of the viability assessment showed that there would still be an overall loss as a result of the development, despite removing the on-site affordable housing provision.

Whilst the proposal would not be in line with the aforementioned policies of the Melton Local Plan and Neighbourhood Plan, the Council have adopted both the Affordable Housing SPD and Developer Contributions SPD. Both of these SPD's are material considerations within the determination of the application and do allow for the submission of viability assessment. The Affordable Housing SPD provides clear guidance and advice on the submission viability assessments and what detail and level of information should be contained within them. The viability assessment submitted is considered acceptable in this regard as a starting point and contains all the required information and detail in order to make a decision.

Following the independent review of the submitted assessment, a number of options and varying proposals have been 'tested' however again the outcomes would all result in an overall loss.

The Developer Contributions SPD sets out the relative infrastructure priorities where a viability assessment has been submitted. As such, in accordance with the Developer Contributions SPD, a deed of variation to the original Section 106 is proposed which removes the contributions to priorities 2b, 2c and 3 in lieu of a contribution to off-site affordable housing provision (priority 2a) – approximately £43,185.04. The contribution towards Education provision (priority 1) will be retained.

Whilst the provision of affordable housing provision is a key priority, the submitted viability assessment has been independently reviewed in detail. The conclusions of which demonstrate that the site would result in an overall loss should on-site affordable housing provision be provided.

Given that the development is currently being developed and circumstances may change within the construction market, a clause within the deed of variation is proposed securing a 'late stage review' of the viability position. This is in line with section 3.5.5 of the Affordable Housing and Housing Mix SPD – 'Viability Reviews (clawback) and deferred payments'. This is considered reasonable to place on the permission to ensure that a further viability review is undertaken which would be based on actual sales values and known build costs.

Therefore, it is recommended that the application is permitted.

(There was a short adjournment before the next application was considered.)

Application 21/01134/FUL

Application:	21/01134/FUL
Location:	2 Mill Lane, Long Clawson
Proposal:	Demolition of existing bungalow and storage buildings, erection of 3 no. new single storey dwellings, construction of new driveway, replacement of existing vehicle bridge over brook + new flood compensation area.

The
Senior
Planning

ning Officer (AC) addressed the Committee and provided a summary of the application and advised that 3 further letters of objection had been received which raised concerns around flooding, access, traffic, footpath to the village and that not everyone was notified of the application. All of these matters were assessed within the committee report and he confirmed that everyone that was required to be notified was notified and a site notice and a press notice was also posted. The application was recommended for approval subject to conditions as set out in the report.

The Senior Planning Officer advised that the building to the south-west corner of the site on the neighbour's boundary was a gym/games room which had planning permission.

Pursuant to Chapter 2, Part 9, Paragraphs 2.8-2.28 of the Council's Constitution in relation to public speaking at Planning Committee, the Chair allowed the following to give a 3 minute presentation.

Rob Hughes, Agent, Hughes Planning

During debate the following points were noted:

- The Ward Member drew the committee's attention to the Parish Council's concerns and that there had been 3 flooding events in Long Clawson in recent years and the Councillor requested that it be recorded that the statutory bodies and the County Council had not dealt with these flooding issues. On the principle of development on the site, there was still a concern regarding the impact on the Neighbourhood Plan view with this proposal
- There was concern at new matters being raised by the Ward Councillor from previous applications which were not part of this application and therefore it was difficult for new Members without this knowledge to deal with that information
- The Planning Development Manager confirmed that previous discussions had been held on the design, impact and drainage but there was one single reason for the refusal which was the impact on the view. The report was balanced and covered all matters and this new application had overcome the reason for refusal therefore there was no other reason that would warrant its refusal
- The Senior Solicitor advised that this was a new application and although the previous reason for refusal had been concerned with the impact on the view, that did not prevent the committee from reviewing the whole application
- With regard to flooding, the Senior Planning Officer advised that there was a site specific flood risk assessment which included a drainage strategy and

technical note which the applicant had commissioned in response to public and Parish Council concerns and this had been submitted to the Lead Flood Authority, Severn Trent Water and the Environment Agency and they had all advised they had no objections to these proposals. He confirmed that the strategy would improve and control the current water flow

- The Ward Member was concerned at whether there was a blocked culvert as a previous independent investigator had advised that no one could be sure of the extent of a blockage and there had been sewage in previous flood water in the vicinity of the site
- The Senior Planning Officer advised that that report and flooding event referred to had been sent to the applicant and the Lead Flood Authority which had triggered the applicant to commission the independent drainage strategy
- The Planning Development Manager advised that the drainage package proposed would improve the run off rate and reduce the likelihood of flooding for the future

Councillor Gordon proposed that the application be approved. Councillor Allnatt seconded the motion.

RESOLVED

That the application be APPROVED subject to the conditions set out in Appendix A.

(9 for, 1 against, 1 abstention)

(Councillor Evans requested that his vote against the decision be recorded.)

REASONS

The proposal accords with the requirements of Policies SS1 and SS2 which emphasise the need to provide housing in locations that can take advantage of sustainable travel. Long Clawson is a 'Service Centre' under policy SS2 and identified as appropriate for a limited quantity of development in the form of allocations and accommodation of 'windfall'.

The proposed dwellings all sit within the limits to development within the Neighbourhood Plan as identified within Policy H3 of the Neighbourhood Plan.

As such, the proposal would represent a sustainable form of small scale residential development that would be considered acceptable under the provisions of Policies SS1 and SS2 of the Melton Local Plan and Policies H3 and H4 of the Neighbourhood Plan. The principle of development is therefore acceptable subject to appropriate design and appearance and other material planning considerations.

The access and parking is deemed acceptable, there would be no significant adverse impact upon adjacent residential properties and the proposal is considered to be sympathetic to the Conservation Area and setting of heritage assets and

overall would not be considered to have an unacceptably detrimental impact on important views identified in the Neighbourhood Plan. The proposal is considered acceptable on grounds of flooding/drainage, ecology and archaeology.

The reason for refusal on the previous application is considered to have been overcome, by virtue of the removal of the car park and its impact which was specifically referred to as the sole reason within the refused decision notice.

PL7

Application 23/00034/DIS

Application:	23/00034/DIS
Location:	Crossroads Farm, Eastwell
Proposal:	Approval of Conditions 3 (external materials), 5 (scheme for the disposal of foul and surface water), and 10 (construction traffic management plan) attached to planning permission ref.21/01204/FUL

The Planning Officer (HW) addressed the Committee and provided a summary of the application and advised that work had begun on site. Formal comments had been received from the highway authority with no objection.

The applicant was an elected member, Councillor Hewson. The constitution therefore required that this application be determined by the Planning Committee.

There were no public speakers.

During debate the following points were noted:

- There was concern that the works had started
- The Senior Solicitor advised that a decision was required regardless of whether the works had started
- This simple application was before the committee for reasons of transparency as the applicant was a Councillor

Councillor Evans proposed that the application be approved. Councillor Glancy seconded the motion.

RESOLVED

That the application be APPROVED as submitted.

(Unanimous)

REASONS

The proposed external materials are considered appropriate to the site context and are of a high quality which would enhance the setting of the adjacent listed buildings. Surface water runoff would be directed to an existing open water body

which is identified as option 2 in the drainage strategy set out in the National Planning Practice Guidance.

Foul sewage would be directed to package sewage plants within the site which is considered to be an acceptable approach where no access to mains sewage is practicable. The construction traffic management plan provides details of the routing of construction traffic and details of mitigation measures which would ensure highway safety.

PL8

Urgent Business

There was no urgent business.

The meeting closed at: 8.19 pm