

**PLANNING COMMITTEE**

16 January 2020

Minutes of the Planning Committee meeting held at the Council Chamber, Town Hall, Bexhill-on-Sea on Thursday 16 January 2020 at 9:35am.

Committee Members present: Councillors J. Vine-Hall (Chairman), S.M. Prochak (Vice-Chairman), Mrs M.L. Barnes, S.J. Coleman, G.C. Curtis, Mrs D.C. Earl-Williams, S.J. Errington, J.M. Johnson, L.M. Langlands, A.S. Mier, G.F. Stevens, R.B. Thomas and H.L. Timpe.

Other Members present: Councillors B.J. Drayson and P.J. Gray (in part).

Advisory Officers in attendance: Head of Service Strategy and Planning, Development Manager and Democratic Services Officer.

Also Present: 5 members of public.

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**PL19/101. MINUTES**

(1)

The Chairman was authorised to sign the Minutes of the meeting held on 17 December 2019 as a correct record of the proceedings.

**PL19/102. APOLOGIES FOR ABSENCE AND SUBSTITUTES**

(2)

Apologies for absence were received from Councillors T.J.C. Byrne – Chairman of the Council and A.E. Ganly.

**PL19/103. DISCLOSURE OF INTEREST**

(4)

There were no declarations of interest.

**PART II – DECISIONS TAKEN UNDER DELEGATED POWERS**

**PL19/104. DEVELOPER RE-NEGOTIATIONS OF SECTION 106 AGREEMENTS IN RELATION TO AFFORDABLE HOUSING**

(5)

At the November meeting, Members were advised of the procedure for dealing with requests to modify Section 106 Agreements (planning obligations), specifically in relation to affordable housing. Essentially when these requests were received, they were considered by officers who then, in accordance with the current scheme of delegation, made a recommendation to the Planning Committee where the final decision

was made. At the time there had been no re-negotiated planning obligations in last two years.

Following this report and after a number of protracted discussions around affordable housing and development viability at recent meetings, a request was received from the Chairman of the Planning Committee to reconsider the current arrangements for handling these modification requests.

Members were reminded that planning obligations could be modified at any time with the agreement of the Local Planning Authority (LPA). Where the LPA did not agree to the modification, developers could make a formal application under Section 106A(3) to modify or discharge agreements, but only if the planning obligation was more than five years old. If such an application was refused, in those instances developers could appeal the decision to the Secretary of State (i.e. The Planning Inspectorate).

The Head of Strategy and Planning advised that since publication of the agenda further advice was received from the Council's Legal Service which had been disseminated to the Committee prior to the meeting. The advice identified that the proposed changes might leave the Council open to judicial review should the new procedure be adopted without further exploring the legal (as opposed to planning) reasons for refusing to consider a Section 106 re-negotiation which occurred within five years of signing the Agreement.

The following salient points were noted:

- frustration was aired that developers had the ability to re-negotiate and modify affordable housing requirements. Members felt that developers should be encouraged to submit robust / viable applications from the outset. The Committee was advised that there was a legal and policy framework to allow reconsideration of developments on viability grounds and that developers did not have to show their proposals were viable upfront; it should be assumed they were unless the developer advised otherwise;
- it was noted that applicants had a number of options when raising development viability as an issue including the submission of a fresh planning application to re-negotiate and modify obligations;
- before consideration of Section 106 modifications, the Planning Committee should consider officer / legal advice to be able to make articulate, well informed, reasoned decisions;
- whilst not the subject of discussion but related, it was suggested that the Planning Committee received viability training and sought advice from Affordable Housing Providers (e.g. Optivo) and the Local Government Association. The Head of Strategy and Planning advised that viability training was scheduled to be held in February or March; information would be forwarded to Members once finalised;
- Members considered that developers should be refused a re-negotiation on viability grounds within the first five years of a Section 106 Agreement, when it resulted in a reduction of affordable housing or a commutable sum and where the reasons for

- the application for the viability was well known at the time of the original application e.g. topography of the land or the introduction of Community Infrastructure Levy;
- whilst Committee Members were not entirely unfettered in their ability to refuse an application, Section 106A(1)(a) existed to allow and have the discretion for the LPA to refuse such applications. This section existed to distinguish that discretion from an application made after five years under Section 106A(3); and
  - it was noted that all officer or Planning Committee decisions were open to judicial review and like all decisions should reflect advice taken and risk exposure on a case-by-case basis.

Following discussion, Members agreed to defer this item until the next meeting to allow further discussion / consideration by officers and Members and explore the approach taken by other authorities with input from the Council's Legal Service.

**RESOLVED:** That the item be deferred until the next meeting to allow further discussion / consideration by officers and Members and explore the approach taken by other authorities with input from the Council's Legal Service.

**PL19/105. APPEALS**

(6)

Members noted the report on Appeals that had been started, allowed or dismissed since the Committee's last meeting, together with the list of forthcoming Hearings and Inquiries.

**RESOLVED:** That the report be noted.

**PL19/106. TO NOTE THE DATE AND TIME FOR FUTURE SITE INSPECTIONS**

(7)

Tuesday 11 February 2020 at 8:30am departing from the Town Hall, Bexhill.

**CHAIRMAN**

The meeting closed at 10:25am.