

PLANNING COMMITTEE

12 March 2020

Minutes of the Planning Committee meeting held at the Council Chamber, Town Hall, Bexhill-on-Sea on Thursday 12 March 2020 at 9:30am.

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

Other Members present: Councillors B.J. Drayson (in part), K.M. Harmer (in part), C. Madeley (in part) and D.B. Oliver.

Advisory Officers in attendance: Executive Director (TL) (in part), Head of Service Strategy and Planning, Development Manager, Team Leader and North Bexhill Manager (in part), Principal Planning Officer (in part), Planning Lawyer (in part) and Democratic Services Officer.

Also Present: Richard Moules – Barrister (in part), Alison Giacomelli – Natural England (in part), 1 member of the press and 64 members of public.

PL19/124. **MINUTES**

(1)

The Chairman was authorised to sign the Minutes of the meeting held on 13 February 2020 as a correct record of the proceedings.

PL19/125. **APOLOGIES FOR ABSENCE AND SUBSTITUTES**

(2)

An apology for absence was received from Councillor J.M. Johnson.

It was noted that Councillor J. Barnes was present as substitute for Councillor J.M. Johnson.

PL19/126. **DISCLOSURE OF INTEREST**

(5)

Declarations of interest were made by Councillors in the Minutes as indicated below:

J. Barnes Agenda Items 7 and 8 – Personal Interest as an elected Member of East Sussex County Council.

Mrs Earl-Williams Agenda Items 7 and 8 – Personal Interest as an elected Member of East Sussex County Council.

Errington	Agenda Item 7 – Personal Interest in so far as she had signed a letter of objection against the application in August 2017 prior to becoming a Councillor in May 2019 and remained open-minded.
Harmer	Agenda Item 7 – Personal Interest in so far as she was a former Member of SPINDAG prior to becoming a Councillor in May 2019.
Langlands	Agenda Item 7 – Personal Interest in so far as she had signed a petition against the application prior to becoming a Councillor in May 2019.
Prochak	Agenda Items 7, 8 and 9 – Personal Interest in so far as her husband is Chairman of the local Campaign to Protect Rural England who made comments on the applications.
Thomas	Agenda Item 7 – Personal Interest as a member of Bexhill Environment Group and Sussex Wildlife Trust.
Timpe	Agenda Item 7 – Personal Interest as a member of Bexhill Heritage.

PART II – DECISIONS TAKEN UNDER DELEGATED POWERS

PL19/127. PLANNING APPLICATIONS - INDEX

(6)

Outline planning permissions are granted subject to approval by the Council of reserved matters before any development is commenced, which are layout, scale, appearance, access and landscaping. Unless otherwise stated, every planning permission or outline planning permission is granted subject to the development beginning within three years from the date of the permission. In regard to outline permissions, reserved matters application for approval must be made within three years from the date of the grant of outline permission; and the development to which the permission relates must begin no later than whichever is the later of the following dates: the expiration of three years from the date of the grant of outline permission or, the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matters to be approved.

In certain circumstances the Planning Committee will indicate that it is only prepared to grant or refuse planning permission if, or unless, certain amendments to a proposal are undertaken or subject to completion of outstanding consultations. In these circumstances the Head of Service Strategy and Planning can be given delegated authority to issue the decision of the Planning Committee once the requirements of the Committee have been satisfactorily complied with. A delegated decision does not mean that planning permission or

refusal will automatically be issued. If there are consultation objections, difficulties, or negotiations are not satisfactorily concluded, then the application will have to be reported back to the Planning Committee or reported via the internal-only electronic Notified 'D' system by means of providing further information for elected Members. This delegation also allows the Head of Service Strategy and Planning to negotiate and amend applications, conditions, reasons for refusal and notes commensurate with the instructions of the Committee. Any applications which are considered prior to the expiry of the consultation reply period are automatically delegated for a decision.

RESOLVED: That the Planning Applications be determined as detailed below.

PL19/128. **RR/2017/1705/P - BEXHILL - SPINDLEWOOD DRIVE - LAND OFF**

(7)

RM

DECISION: REFUSE (OUTLINE PLANNING)

Members had visited the site which was an area of land situated to the south of Barnhorn Road (A259T) and to the south west of Spindlewood Drive. The site currently comprised of five agricultural fields divided by mature hedgrows and tree belts, as well as an area of ancient woodland immediately adjacent to the south west which extended into the Pevensey Levels (PL). The PL was designated as a European Ramsar Site and Special Area of Conservation (SAC) and a Special Site of Scientific Interest (SSSI). The land slopped generally from north to south and east to west towards an existing water course, the Cole Stream along the south eastern boundary. The land was allocated within the Council's Development and Site Allocations Plan adopted in December 2019 – Policy BEX9: Land off Spindlewood Drive, Bexhill.

The proposal was for outline planning of a residential development of circa 160 dwellings (including 30% affordable housing) with all matters reserved for future approval except access. Consideration was given to all statutory, non-statutory and third-party representations, including documentation received from Natural England (NE) and comments from a local Development Action Group known as SPINDAG. Members also had regard to an Appropriate Assessment (AA) under the Habitat Regulations.

Members heard from spokespersons from SPINDAG, representing many of those people objecting to the scheme and from a spokesperson for the applicant, in addition to both local Ward Members and Planning Officers. They also heard from the Council's Barrister and a spokesperson from NE. Members asked a series of questions in relation to several issues. These included: matters relating to the Habitats Regulations and the AA procedure; potential foul and surface water drainage solutions and the possible adverse impact on the PL; the deliverability and effectiveness of the long-term maintenance and management of the drainage system; potential overtopping of the Cole Stream; climate change and the likelihood of increased risk of flooding

due to increased levels of rainfall (including the view that current modelling assumptions were out of date and did not take into account current and increasing extreme weather events); impact on the landscape character as a result of possible land raising to accommodate the development and any new drainage system. Members stated that the 2017 Act took priority over other planning considerations and that required the Planning Committee to be confident 'beyond scientific doubt' that the proposed mitigation would ensure that there was no adverse effects on the PL in perpetuity. Members were not convinced that mitigation could be absolutely relied upon and were not satisfied that even with the most robust system with double lining of ponds and pipes, even the best design could not remove all risk from accidental or malicious damage, or a failure due to poor workmanship undetected at the time, or the failure of the management company charged with ensuring the proposed system did not fail. As the development could have a life of one hundred years or more and during that time the system could deteriorate; for example, liners only had a guaranteed life of thirty years. Members felt that pollution initially from the construction itself including construction machinery and then chemicals from the proposed housing estate could find their way into the Cole Stream and onward from there into the PL. Therefore, they felt that they could not reach the level of certainty that there would be no harm in perpetuity to the PL. Given that if any one or more mitigation measures failed or there was a cumulative failure then the damage would have been done most likely without detection and it might be some long time before the breach was discovered. Unlike mitigation measures that could be adjusted or where a failure in a mitigation measure did not have an irreversible effect (e.g. widening of an entrance or moving of speed limits) any failure of mitigation in this case would lead to environmental impacts from this site onto the PL that would be irreversible. The Environment Agency (EA) stated initially that they "object to the proposed development submitted because the assessment of the risks to nature conservation were inadequate" but then removed the objection subject to mitigation. Effectively if mitigation failed for whatever reason beyond the computer modelling's ability (like human error in construction or accidental or malicious damage) then the EA's original objection would be relevant as the assessment of the risks could not take into account non computer modelling issues of failure of the mitigation.

The Planning Committee also raised concerns about the following: accessibility issues particularly from A259 and Meads Road (narrow); increased traffic along the A259; accuracy and validity of transport information supporting the application; unsustainability of the development's location as there was insufficient access to local amenities (including day-to-day shops and services); inadequate access to secondary education; the possible compromised financial viability of developing the site given the likely costs of dealing with appropriate drainage mitigation; similarly whether the provision of 30% affordable housing was achievable; impact on heritage assets and, in particular, archeology, where it was considered that further investigative works should be undertaken; impact on wildlife; the quantum of development which was considered high and not comparable with the density of existing neighbouring development; and

sustainability of the site with particular regard to the Council's declared climate change emergency and whether the development sufficiently demonstrated a positive step towards lower carbon emissions; and impact on the neighbouring properties and local community.

The Planning Committee also considered, in some detail, the comments submitted by Highways England and the County Highway Authority who had no objection subject to conditions and completion of a Section 106 legal agreement. Although neither highway consultee had objected to the proposal, Members expressed concern regarding the increased traffic that would be generated, the impact this would have on traffic safety along the A259, and the potential that the development would create a "rat-run" to avoid traffic build-up along the A259, particularly at Little Common Roundabout. In addition, questions were raised about whether the Highways data was up to date as the surveys had been completed in 2017 some three years earlier and noting that the Highways data had been collected during a period when significant road works were being undertaken.

Councillor Errington withdrew her motion to refuse and Councillor Thomas moved the motion to refuse (outline planning permission) and this was seconded by Councillor Mrs Earl-Williams. The motion was declared CARRIED (8 for / 5 against).

In weighing up all the issues identified above, the Planning Committee felt that its obligation to be certain that there would be no risk of damage to the PL Ramsar, SAC and SSSI site gave it no option but to refuse the application, as it believed that the proposal rested on assumptions which were not assured. It was not convinced that the 'worst case scenario' covered all eventualities, as climate change could cause rainfall to exceed present predictions to an unknown extent, especially as the area had recently experienced a 250 year rainfall event. In addition to all the issues identified above, the Planning Committee was not satisfied that the proposed development was sufficiently detailed, particularly in respect of drainage because even with the mitigation of the worst-case scenario presented by the Applicant, it had not been demonstrated that the adverse impacts of the development on the PL Ramsar, SAC and SSSI would be avoided in perpetuity. Therefore, the Planning Committee was not convinced that the benefits of the development clearly outweighed the adverse impacts on the PL Ramsar, SAC and SSSI. Furthermore, the rainfall assumptions underpinning the worst-case scenario were not accepted. Additionally, as NE had noted, it had not been demonstrated that the worst-case scenario mitigation could be engineered. Even if an engineering solution was possible, the uncertainty regarding the design of the entire drainage system, would mean that substantial land raising across the site might be required and the Council could not be certain that this would result in an acceptable landscape impact. Therefore the proposal was contrary to Policies EN1 (iii), (v), (vii) and (viii), EN5 (ii), (vii) and (ix) and EN6 (iii) and (ix) of the Rother Local Plan Core Strategy and paragraphs 8(c) and 175(b) of the National Planning Policy Framework. It was also considered that the proposed development was poorly located with insufficient access to shops and

services to meet day-to-day needs and that there was inadequate access to secondary education.

Members agreed that this was a unique site in an exceptional location within the district and the detail to support approval was found lacking. The Planning Committee considered that the application should be refused. Members felt their primary objective was to absolutely guarantee the integrity of the PL in perpetuity and felt that the only certain way to achieve this was to turn down development which bordered on the site.

REASONS FOR REFUSAL:

1. The proposed development is not sufficiently detailed, particularly in respect of drainage, because the Planning Committee is not satisfied, even with the mitigation of the worst-case scenario presented by the applicant, that it has been demonstrated that the adverse impacts of the development on the PL Ramsar, SAC and SSSI would be avoided in perpetuity. Therefore, the Planning Committee is not convinced that the benefits of the development clearly outweigh the adverse impacts on the PL Ramsar, SAC and SSSI. Furthermore, the rainfall assumptions underpinning the worst-case scenario are not accepted. Additionally, as Natural England note, it has not been demonstrated that the worst-case scenario mitigation could be engineered. Even if an engineering solution is possible, the uncertainty regarding the design of the entire drainage system, means that substantial land raising across the site may be required and the Council cannot be certain that this will result in an acceptable landscape impact. Therefore the proposal is contrary to policies EN1 (iii), (v), (vii) and (viii), EN5 (ii), (viii) and (ix) and EN6 (iii) and (ix) of the Rother Local Plan Core Strategy and paragraphs 8(c) and 175(b) of the National Planning Policy Framework.
2. The proposed development is poorly located with insufficient access to shops and services to meet day-to-day needs and inadequate access to secondary education.

NATIONAL PLANNING POLICY FRAMEWORK: In accordance with the requirements of the Framework (paragraphs 186 and 187) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively with the Planning Committee identifying matters of concern with the proposal. However, the issues are considered fundamental to the proposal and it is the Planning Committee's considered view that it is not possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reasons for the refusal, approval has not been possible.

In accordance with the Council's Planning Procedures, it was noted that Councillor Mier spoke on the application, but did not vote as he had not attended the Site Visit.

(When it first became apparent Councillors J. Barnes and Mrs Earl-Williams both declared a personal interest in this matter in so far as they were elected Members of East Sussex County Council and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Errington declared a personal interest in this matter in so far as she had signed a letter of objection against the application in August 2017 prior to becoming a Councillor in May 2019 and remained open-minded and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Harmer declared a personal interest in this matter in so far as was a former Member of SPINDAG prior to becoming a Councillor in May 2019 and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Langlands declared a personal interest in this matter in so far as she had signed a petition against the application prior to becoming a Councillor in May 2019 and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Prochak declared a personal interest in this matter in so far as her husband is Chairman of the local Campaign to Protect Rural England who made comments on the application and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Thomas declared a personal interest in this matter in so far as he was a member of Bexhill Environment Group and Sussex Wildlife Trust and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Timpe declared a personal interest in this matter in so far as she was a member of Bexhill Heritage and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

PL19/129. **RR/2019/2115/P - PETT - PANNEL PLACE, OAK VALLEY CAMPING, PANNEL LANE**

(8)

DECISION: GRANT (FULL PLANNING)

CONDITIONS:

1. This permission is granted as an alternative to that granted under Application No. RR/2017/1714/P on 15 November 2018 to the intent that either permission, but not both, shall be implemented in respect of Passing Bays 1 and 5 only.

Reason: To minimise the extent of works within Pannel Lane, an historic routeway, and thus maintain the character and appearance of the rural lane located within the High Weald Area of Outstanding

Natural Beauty, having regard to Policies OSS4 and EN1 of the Rother Local Plan Core Strategy and Policies DEN1 and DEN2 of the Development and Sites Allocations Local Plan 2019.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and details:
Drawing No. as submitted with the application:
Revised red-line diagram from Drawing No. 4824-01 Rev.A, Passing Place 5
Revised red-line diagram from Drawing No. 4824-01 Rev.A, Passing Place 1
Enlarged extract from Drawing No. 3717/09 Rev.A, Passing Place 5
Enlarged extract from Drawing No. 3717/09 Rev.A, Passing Place 1
A4-3717/09 Rev.A
A4-3717/01 Rev.B
A4-3717/05 Rev.C
Reason: For the avoidance of doubt and in the interests of proper planning, as advised in Planning Practice Guidance Paragraph: 022 Reference ID: 21a-022-20140306.
3. Construction of the passing bays are only to be undertaken in accordance with the following reasonable avoidance measures (RAMs), having regard to the potential for protected species in the area:
 - Clearance work should be undertaken during the 'active' season, i.e. from end of February to mid-October.
 - A Suitably Qualified Ecologist (SQE) is to conduct a fingertip search of habitats to be cleared, immediately prior to works starting.
 - The clearance to be supervised by the SQE after the fingertip search has been undertaken.
 - In the unlikely event that a Great Crested Newt is found, works would cease to assess the next steps which may include gaining a European Protected Species Licence from Natural England, prior to works re-starting on site.
4. Prior to commencement of the works details of the SQE shall be provided to the Local Planning Authority along with a timetable for the RAMs and completion of the works.
Reason: These details are required prior to commencement of works to ensure the protection of protected species in accordance with Policy EN5 of the Rother Local Plan Core Strategy and DEN5 of the Development and Sites Allocations Local Plan 2019.
5. The proposed passing places shall be surfaced with tarmac and the passing places shall be created in accordance with the approved plans and in agreement with the Highway Authority, prior to commencement of the use of the campsite as specified in the associated approved application RR/2017/1714/P.
Reason: To provide for the free flow of traffic on Pannel Lane in the interests of road safety for both vehicular and pedestrian traffic, having regard to Policies CO6 (ii) and TR3 of the Rother Local Plan Core Strategy.

NOTE:

1. With regard to Condition 4, the Applicant is reminded that these works require a Section 278 Agreement of the Highways Act, 1980 – Works within the Highway. The Applicant will be required to enter into a Section 278 legal agreement with East Sussex County Council, as Highway Authority, for the off-site highway works. The Applicant is requested to contact the Transport Development Control Team (01273 482254) to commence this process. The Applicant is advised that it is an offence to undertake any works within the highway prior to the agreement being in place.

NATIONAL PLANNING POLICY FRAMEWORK: In accordance with the requirements of the Framework (paragraphs 186 and 187) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

In accordance with the Council's Planning Procedures, it was noted that Councillor Mier spoke on the application, but did not vote as he had not attended the Site Visit.

(When it first became apparent Councillors J. Barnes and Mrs Earl-Williams both declared a personal interest in this matter in so far as they were elected Members of East Sussex County Council and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

(Councillor Prochak declared a personal interest in this matter in so far as her husband is Chairman of the local Campaign to Protect Rural England who made comments on the application and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

PL19/130. **RR/2019/2405/P - EWHURST - CRICKETERS FIELD - LAND TO EAST OF, NORTHIAM ROAD, STAPLECROSS**

(9)

DECISION: GRANT MODIFICATION OF Clause 1 of the Fourth Schedule, to read:

- 1.1 **Prior to Occupation of the 15th Dwelling to pay the County Council the Education Contribution.**
- 1.2 **Not to Occupy or cause or allow the Occupation of any more than 14 Dwellings until the Education Contribution has been paid to the County Council; in full.**

(Councillor Prochak declared a personal interest in this matter in so far as her husband is Chairman of the local Campaign to Protect Rural England who made comments on the application and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

PL19/131. **APPEALS**

(10)

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.

PL19/132. **TO NOTE THE DATE AND TIME FOR FUTURE SITE INSPECTIONS**

(11)

Tuesday 14 April 2020 at 8:30am departing from the Town Hall, Bexhill.

CHAIRMAN

The meeting closed at 3:40pm.