

## **PLANNING COMMITTEE**

### **Minutes of a meeting of the Planning Committee held on Wednesday, 25 August 2021 at 6.00 pm in Lillywhites Suite, AFC Telford United, New Bucks Stadium, Watling Street, Wellington, Telford, TF1 2TU**

**Present:** Councillors G H Cook, N A Dugmore, I T W Fletcher, J Jones, J E Lavery (as substitute for R Mehta), K Middleton, K S Sahota (as substitute for J Loveridge), P J Scott and C F Smith (Chair)

**In Attendance:** V Hulme (Development Management Service Delivery Manager), A Gittins (Area Team Planning Manager, West), T Carruthers (Planning Assistant), G Onions (Tree and Woodland Officer), I Ross (Legal Advisor), H Rea (Legal Assistant), N Fisher (Democracy Apprentice) and J Clarke (Senior Democracy Officer)

**Apologies:** Councillors J Loveridge and R Mehta

#### **PC185 Declarations of Interest**

In respect of the Tree Preservation Order, Councillor G Cook advised that he was Ward Member for Haygate but had not been involved in any discussions on the Tree Preservation Order.

#### **PC186 Minutes of the Previous Meeting**

**RESOLVED** – that the minutes of the meeting of the Planning Committee held on 28 July 2021 be confirmed and signed by the Chairman.

#### **PC187 Deferred/Withdrawn Applications**

None.

#### **PC188 Site Visits**

None.

#### **PC189 Tree Preservation Order**

The Committee considered the report of the Assistant Director: Policy & Governance which sought confirmation of a provisional Tree Preservation Order (TPO) (Borough of Telford & Wrekin (Trees on land to the north of Haygate Road, Wellington, Telford TF1 2FP) Tree Preservation Order 2021. The report detailed an objection received from the owner of the land that had been circulated to members prior to the Committee meeting and raised concerns which included the condition of the trees, the successful retention of the trees within the TPO and they were no longer subject to encroachment or possible damage.

The Legal Advisor outlined the process and explained the background to the making of the Provisional Order. Members were advised that the focus in this case should be on the amenity value of the trees and whether it was expedient to protect them. If members were minded to confirm the Order the property owner could apply for consent to lop, prune or fell the tree at any time. The current recommendation was to confirm the order without modification but T15, the sycamore tree, had already been felled due to its condition. An amendment to the recommendation was therefore requested for the Tree Preservation Order to be confirmed in respect of Trees T1-T14 inclusive but for T15 be excluded from the order, if Members were minded to confirm the order.

The Chair, at his discretion, had allowed public speakers at the meeting and the Objector had provided a letter prior to the meeting, which had been circulated to all parties and made available on the website as they were unable to attend the meeting.

Councillor J Seymour fully supported the Tree Preservation Order which was now for 14 trees as one had already been removed. Condition 3 of the reserved matters application TWC/2017/0643 specified which trees were to be protected together with the root protection areas (RPAs). This condition had been breached by the developer with construction machinery impacting on the RPA and was continuing to be breached even within areas where development had been completed. Meetings that had previously taken place with the developer and the residents association had now ceased following consultation regarding the trees and in particular T1. She felt that following the advice of the Tree Officer that the remaining 14 trees, with care, could be saved she asked Members to confirm the order.

Mr J Pattinson spoke on behalf of local residents who fully supported the Tree Preservation Order to protect the beautiful old trees and did not understand the objections by the consultant who had only visited the site once. The developers had boycotted the liaison meetings which was a discourtesy to local residents. The subcontractors had pressed on regardless without protecting the trees and in particular to T1 at the entrance to the site. Inadequate protection, equipment and plant and unauthorised changes to the levels of the site had left T1 in a pool of water for much of the winter months and other trees on the site have been endangered in a similar manner and it was essential that this Tree Preservation Order be confirmed to protect the trees on this site.

The Legal Advisor addressed Members saying that the objector had asked that the Tree Preservation Order not to be confirmed but as could be seen from the information provided and the summaries that Members had heard the trees were under threat of damage and harm and it was felt that the TPO should be confirmed on the grounds of expediency and amenity

The Tree and Woodlands Officer addressed Members saying that the remaining 14 Oak Trees all appeared on the 1882 historic map which only contained mature trees at that time so they are in the region of 140 years old.

He explained the characterising features of a veteran oak and that they were irreplaceable habitats within the landscape, although the developers had classed this in the U category of 10 years or less estimated remaining contribution. With a little work and the decompaction of the previous damage caused there would be merit to the amenity of the area for years to come. The TPO would allow the Council to ask for replacement of any of those 14 trees so the amenity to the area would continue long after the planning conditions had lapsed

During the debate some Members asked if a replacement for T15 could be insisted on and how would the protection of the trees be monitored and if the trees that had already been felled could be protected. Other Members fully supported the protection of Trees T1-T14 in order to give the trees another layer of protection

The Tree Officer confirmed that a replacement had always been agreed as T15 had been felled together with an ash tree and a sycamore tree and this was the subject of the planning conditions and these would have to be replaced if they died within 5 years of the development of the site and replacements were being arranged. The TPO would also provide a further layer of protection to the trees and an element of control for pruning and any works being undertaken would be via a work order and a tree management plan and that the trees were protected under the planning conditions for a period of five years.

The Legal Advisor confirmed that the replacement of any trees removed in breach of planning control could be undertaken via the enforcement action.

The Legal advisor confirmed that as a Committee, Members could confirm the order with modifications.

The motion to confirm trees T1-T14 but exclude T15 was proposed and seconded and upon being put to the vote it was, unanimously:

**RESOLVED – that Borough of Telford & Wrekin (Trees on land to the north of Haygate Road, Wellington, Telford TF1 2FP) Tree Preservation Order 2021 be confirmed with modification in that tree 15 is removed from the Tree Preservation Order.**

**PC190     Planning Applications for Determination**

Members had received a schedule of planning applications to be determined by the Committee and fully considered each report and the supplementary information tabled at the meeting regarding the planning application.

**PC191     TWC/2010/0828 - Land at Ironstone, Lawley, Telford, Shropshire**

This was an application for the variation of condition 16 of outline planning permission W2004/0890 to exclude the areas comprised within the reserved

matters application ref TWC/2010/0627 and within plots G4 and G5 as defined within the phasing plan drawing number 006 rev L from the effect of condition 16 (amended description) and land at Ironstone, Lawley, Telford, Shropshire.

The Planning Officer advised Members that a request had been brought before Members in order to vary the affordable housing element of Lawley Phase 10 urban extension. The developers sought permission from the Authority to agree a zero percent affordable housing. The developers would be seeking to apply for Homes England Funding which could provide 10% affordable housing on site.

At their 30 June 2021 meeting, Members resolved to grant the Deed of Variation to secure the provision of 10% affordable housing on site. It was established that the resolution that was agreed on 30<sup>th</sup> June, based on the update to Planning Committee, could not be implemented and that the request from the applicant had been misinterpreted. The correct request was outlined within the report..

Councillor J Yorke spoke against the application on behalf of the Parish Council who raised concerns regarding zero percent affordable housing and the incorrect information presented to the 30 June Committee. He raised at that Committee that the Developers had endorsed the ten percent affordable housing and the Parish Council reluctantly accepted this due to paragraph 64 of the NPPF which requires at least ten percent affordable housing contribution. He raised further concerns regarding the incorrect information, performance, the viability and the affordable contribution, the profitability of the development and the lack of assurance regarding the Homes England Grant. He said that the requirement from the 2005 application for twenty five percent affordable housing will no longer materialise together with the grant of the community facility. He said that there had been continued failures and that applications should be heard upon planning merit and adherence to policy and conditions.

The Planning Officer explained that since the economic downturn the consortium of Developers had found it necessary to reduce the number of affordable dwellings on phases approved since 2008. Viability evidence had been presented to the Committee on the land value today which showed that Phase 10 was unviable and even without affordable housing the development would still not provide the financial return that would meet the guidance set out in the NPPF. The viability report had been assessed by an independent consultant who supported the applicant's position. The developers were seeking to provide 10% affordable housing on the site via Homes England which would result in the delivery of four less affordable units. However, in order for the development to be eligible for the Homes England funding, these could not be obligated through S106 or condition, and the Local Authority must first agree to zero percent affordable housing through planning obligation. Taking all of the information into consideration officers accept the applicant's justification that the S106 obligations as approved were unviable in respect of Phase 10 and needed to be reconsidered in order to bring forward the site and prevent it stalling. Officers considered that the benefits would

significantly outweigh harm and it was recommended that the reduction to the affordable housing be approved.

During the debate some Members raised concerns regarding the true representation of the facts and figures and that they felt they had been “backed into a corner” and “held ransom” with regards to affordable housing. Other Members felt that there would always be a change of land value and that this should have been taken into account, the lack of up to date figures in the reports, lack of garage space and electric charging point. There was a suggestion of an incentive scheme for affordable housing. The position was also queried regarding how the land cost was taken into account in the viability appraisal; was it based on its current value or the value in 2005 and how it was considered with the continual increase in land value? Some Members asked if the application was refused would the site be left vacant and an eyesore with no dwellings. They recognised that housing was needed and required by Government guidelines and Members felt that they were stuck between a rock and a hard place. Other issues raised by Members included whether there had been an over-estimation of costs, whether the cost of re-building of the wall should have been taken into consideration and had the costs been spread over all of the phases of the development. Some Members felt frustrated with the change of circumstances but felt they had no legal room to refuse the application.

The Planning Officer explained again that the 30 June 2021 committee report stated that there would be 10% affordable housing but that it should have referred to zero per cent and that the 10% may be provided by the Homes England Funding. At section 6.33 of the report it showed the developers would be in deficit even with zero percent affordable housing contribution.

The Development Management Service Delivery Manager confirmed that the original June Report stated that there would be zero percent under the S106 and that the 10% could come forward through the Homes England Grant Funding at a later date. She explained that an update report was then presented to Committee and it later became apparent that the update report contained erroneous information which Members had resolved to approve. Independent advice was sought with regards to viability and the information had been assessed and, in relation to the land value changes, the development could no longer facilitate the affordable housing contributions coming forward through the S106 agreement. Costs of construction had increased and there had been some remediation and redesign issues on the site. There was a residual value framework that had to be considered which looked at the enhanced value from sustainability and design standards of the site. It also looked at the development land, profit and cumulative policy costs, infrastructure contributions and mitigation of the impact of the development. The Service Delivery Manager confirmed that whilst house values had risen, so had the cost of construction such as the price of steel and timber which had significantly increased. Queries would have to be referred back to the independent assessor so answers to Members questions would not be available during the meeting. The viability assessment had not

changed from the Committee held on 30 June 2021 in that the site could not afford to offer any affordable housing.

The Legal Advisor confirmed that the viability report was a technical report and viability was a recognised material consideration. If Members were minded to refuse the recommendation it did create a difficulty for officers in the event of an appeal to the Planning Inspectorate. If Members' refusal was based on an objection to the viability report, on what grounds would the rejection be based. Viability was a material consideration. His advice to Members was that the viability report would be given weight at an appeal. The Legal Advisor felt that, without evidence, the Committee were not in a position to question the viability report as it was a technical report based on technical grounds and it would be technically difficult to challenge. He suggested to Members that if they felt they had questions that still needed to be answered and they required further information that they may ask for a deferment of the application.

The recommendation as follows was proposed and seconded.

"It is recommended that the Deed of Variation to the Section 106 Agreement be approved"

And upon being put to the vote, it was by a majority defeated.

The Chair asked Members to consider their reasons for not supporting the application.

A motion was put forward that the application be deferred in order for Officers to address the questions members raised on the viability report and for the item to be reported back to Committee. It was proposed and seconded that the application be deferred to the September meeting.

Upon being put to the vote it was, by a majority:

**RESOLVED – that further consideration of this application be deferred in order to allow officers and the applicant opportunity to provide additional clarification on matters raised by Members in relation to the viability report and the delivery of affordable housing.**

The meeting ended at 7.23 pm

**Chairman:** .....

**Date:** Wednesday, 22 September 2021