

PLANNING COMMITTEE

Minutes of a meeting of the Planning Committee held in the Council Chamber, County Hall, Ruthin on Wednesday, 12 October 2016 at 9.30 am.

PRESENT

Councillors Raymond Bartley (Chair), Brian Blakeley, Joan Butterfield, Jeanette Chamberlain-Jones, Bill Cowie (Vice-Chair), Stuart Davies, Peter Evans, Huw Hilditch-Roberts, Pat Jones, Bob Murray, Dewi Owens, Merfyn Parry, Pete Prendergast, Arwel Roberts, Anton Sampson, Gareth Sandilands, Bill Tasker, Julian Thompson-Hill, Joe Welch, Cefyn Williams, Huw Williams and Mark Young

Cabinet Lead Member – Councillor David Smith, Lead Member for Public Realm attended for agenda items 11, 12 and 13

Observer – Vice-Chair of the Council, Councillor Win Mullen-James

ALSO PRESENT

Head of Planning and Public Protection (GB); Team Leader – Places (SC); Principal Planning Officer (IW); Strategic Planning and Housing Manager (AL); Planning Policy Officer (KB) and Committee Administrator (KEJ)

1 APOLOGIES

Councillors Meirick Davies, Rhys Hughes, Alice Jones, Barry Mellor, David Simmons and Cheryl Williams

2 DECLARATIONS OF INTEREST

Councillor Huw Williams – Personal Interest – Agenda Item No. 7

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

4 MINUTES

The minutes of the Planning Committee meeting held on 14 September 2016 were submitted.

***RESOLVED** that the minutes of the meeting held on 14 September 2016 be approved as a correct record.*

APPLICATIONS FOR PERMISSION FOR DEVELOPMENT (AGENDA ITEMS 5 - 9) -

Applications received requiring determination by the committee were submitted together with associated documentation. Reference was also made to late supplementary

information (blue sheets) received since publication of the agenda which related to particular applications. In order to accommodate public speaking requests, it was agreed to vary the agenda order of applications accordingly.

5 APPLICATION NO. 10/2016/0664/PF - TAL Y BIDWAL BACH, BRYNEGLWYS, CORWEN

An application was submitted for installation of roof windows in connection with loft conversion at Tal y Bidwal Bach, Bryneglwys, Corwen.

Public Speakers –

Mr. Morley (**Against**) – advised he did not object to the entire scheme but detailed objections regarding the proposed scale of roof glazing which he argued impacted on visual amenity and environmental issues, and highlighted the differences in the roof glazing between the proposed scheme and neighbouring property Heulfryn Bach. Also expressed concerns regarding privacy issues and ecological issues.

Mr. Lockert (**For**) – provided some background to the living arrangements and ownership of the properties together with the orientation of the property. He submitted that the development was in line with the former development at Heulfryn Bach in terms of appearance and overall design with no negative impact.

General Debate – Reference was made to the plan (circulated at the meeting) showing the relationship between the application site and adjoining property and suggested new condition (as detailed on the supplementary blue sheets) in order to minimise the potential for overlooking of the private garden and dwelling at Heulfryn Bach. The Principal Planning Officer (IW) clarified that the new condition would require the cill height of all the rooflight windows to be set at a minimum height of 1.7m so in normal use it would be difficult to overlook the neighbouring property.

Proposal – Councillor Stuart Davies proposed, seconded by Councillor Peter Evans, that the application be granted.

VOTE:

GRANT – 22

REFUSE – 0

ABSTAIN – 0

RESOLVED that permission be **GRANTED** in accordance with officer recommendation as detailed within the report and supplementary papers.

6 APPLICATION NO. 18/2016/0224/PO - LAND OPPOSITE CWM TAWEL, LLANDYRNOG, DENBIGH

[Councillor Huw Williams declared a personal interest because the public speaker for this item was a family friend.]

An application was submitted for development of 0.68ha of land for the erection of 18 dwellings (outline application including details of access and layout) at land opposite Cwm Tawel, Llandyrnog, Denbigh.

Public Speaker –

Shan Wyn Jones (**For**) – spoke on behalf of the applicant advising that the lack of finite housing supply was well established and highlighted the need for new local housing despite the recent planning permission granted for the Maes Llan site. If members were minded not to support the whole development a split decision could be made to grant permission for field one only.

General Debate – The Planning Officer (IW) clarified the proposal to develop two fields for residential purposes: one within the village development boundary and one outside that boundary. In response to concerns regarding setting a precedent if permission was granted outside the development boundary, the Planning Officer advised that the decision must be made on the material planning considerations in this case which had been set out within the report. Councillor Merfyn Parry (Local Member) reported upon the views of Llandyrnog Community Council advising that the application had been considered in light of the recent grant of planning permission for forty dwellings at the Maes Llan site. Whilst there was no general objection to the development of field one, as it was within the curtilage of the village development boundary, there was objection to the development of field two given that it was outside that boundary and there was sufficient land already allocated in Llandyrnog to meet housing need.

Proposal – Councillor Dewi Owens favoured a split decision and proposed that permission be granted to develop field one but refused for field two. Officers advised that it would not be appropriate to split a decision in this case and the application should be dealt with as a whole. There was a clear officer recommendation for refusal as key tests had not been met to justify development outside the village boundary. Councillor Julian Thompson-Hill proposed the officer recommendation to refuse the application, seconded by Councillor Stuart Davies.

VOTE:

GRANT – 1

REFUSE – 18

ABSTAIN – 2

RESOLVED that permission be **REFUSED**, in accordance with officer recommendation as detailed within the report and supplementary papers.

AGENDA ITEMS 8, 9 & 10 - LAND AT MOUNT HOUSE, BRYNIAU, DYSERTH

The Chair referred to agenda items 8, 9 and 10 which all related to the outline planning permission granted in respect of land at Mount House, Bryniau, Dyserth and the additional correspondence circulated to members since publication of the agenda and reports. Whilst each agenda item would be considered individually officers had been asked to provide an overview of the situation in this case.

The Planning Officer (IW) provided some background information advising that all three items related to one site which had been granted outline planning consent by the Planning Committee in May 2013 for the erection of a single dwelling. Items 8 and 9 related to conditions subject of that consent whilst item 10 referred to the Public Services Ombudsman for Wales report and investigation of the original outline planning application. Reference was made to the Solicitor's letter and Claimant's Application for Judicial Review and Court Bundle which has been made available to members at the request of the Solicitors acting for the Claimant (Mrs. J Walters – owner of two properties neighbouring the site). Members had already had sight of most of that documentation.

The Team Leader – Places (SC) outlined the legal position and reported that Judicial Review proceedings had been brought against the Council in respect of the decision by the Planning Committee on 17 February 2016 not to revoke the original planning consent granted in May 2013 which was due to be heard on 8 December 2016. The Claimant's Solicitors had asked that all items relating to this matter be deferred pending determination of the Judicial Review and were seeking an injunction – however the Team Leader advised that the Planning Committee was in a position to deal with the applications and should do so and there was no basis to apply for an injunction. The Team Leader drew members' attention to the Statement of Facts and Grounds and clearly set out the grounds of challenge for the Judicial Review which related to – (1) the decision is vitiated by apparent bias; (2) breach of natural justice; (3) failure to take into account material considerations, and (4) failure to give reasons. She also highlighted the criticisms of the Public Services Ombudsman for Wales on the case together with steps to address those criticisms which had been set out within the report (item 10).

Having been made aware of the basis of challenge and criticisms of the Public Services Ombudsman for Wales together with steps to address those criticisms, and having regard to legal advice regarding their duty to determine the related applications, the Planning Committee agreed to proceed with determining all matters relating to the outline planning permission as listed on the agenda.

7 APPLICATION NO. 42/2016/0223/PR - LAND AT (PART GARDEN OF) MOUNT HOUSE, DYSERTH, RHYL

An application was submitted for details of layout, scale, appearance and landscaping of dwelling submitted in accordance with condition no. 1 of outline planning permission code no. 42/2012/1638 at land at (part garden of) Mount House, Dyserth, Rhyl.

Public Speakers –

Mr. Guy Evans (**Against**) – on behalf of Mrs. J. Walters raised concerns regarding the scale and layout of the proposed dwelling arguing that it would be overbearing to neighbouring properties and its position was not conducive to good planning and would have a detrimental impact on neighbouring properties and on the AONB setting. Also raised concerns regarding surface water drainage.

Mr. Rhys Davies (**For**) – explained that the scheme had been amended in light of the objector's concerns to ensure any impact on neighbouring properties would be minimised and would be sympathetic to the character of the locality and supported

by the AONB Joint Committee – he disputed any overlooking and overbearing issues. Planning Officers had advised that the surface water disposal issue was not within the scope of the application.

General Debate – The Planning Officer (IW) advised that the application dealt purely with reserved matters and whether the scale, layout and appearance were acceptable on the site. Councillor Mark Young sought further clarification on the legalities of the decision making process and the Team Leader – Places (SC) advised of the general legal principle to determine applications linked to extant planning permissions.

Proposal – Councillor Stuart Davies noted that the scheme had been amended in order to address concerns raised by the objector, and given that there had been no objections from AONB Joint Committee or Dyserth Community Council, he proposed, seconded by Councillor Merfyn Parry, that the application be granted in accordance with officer recommendation.

VOTE:

GRANT – 20

REFUSE – 1

ABSTAIN – 1

RESOLVED that permission be **GRANTED** in accordance with officer recommendation as detailed within the report and supplementary papers.

8 APPLICATION NO. 42/2016/0322/PS - LAND AT (PART GARDEN OF) MOUNT HOUSE, DYSERTH, RHYL

An application for variation of condition no. 2 of outline planning permission code no. 42/2012/1638 to allow an additional 2 years for the submission of an application for approval of reserved matters and deletion of condition nos. 4 and 5 relating to code for sustainable homes at land at (part garden of) Mount House, Dyserth, Rhyl.

The application related to 3 conditions attached to an outline planning permission. Officers considered it reasonable to remove condition nos. 4 and 5 relating to the code for sustainable homes given the change in Policy from Welsh Government on that matter. However officers recommended that the application to vary condition no. 2 to allow an additional 2 years for approval of reserved matters be refused due to changes in planning circumstances since the original grant of consent.

Councillor Julian Thompson-Hill sought clarification regarding the legality of making a split decision which was contrary to advice given in respect of an earlier application on the agenda. Officers explained the differences between the two types of applications and considered a split decision to be appropriate in this case. The Chair advised that the recommendations would be voted upon separately.

Proposal (1) – Councillor Stuart Davies proposed the officer recommendation to refuse variation of Condition 2, seconded by Councillor Bill Cowie.

VOTE:

GRANT – 20
REFUSE – 1
ABSTAIN – 1

RESOLVED that permission to vary Condition 2 be **REFUSED** in accordance with officer recommendation as detailed within the report.

Proposal (2) – Councillor Stuart Davies proposed the officer recommendation to approve deletion of Conditions 4 and 5, seconded by Councillor Bill Cowie.

VOTE:

GRANT – 20
REFUSE – 0
ABSTAIN – 1

RESOLVED that permission to delete Conditions 4 and 5 be **GRANTED** in accordance with officer recommendation as detailed within the report.

9 RECOMMENDATIONS OF THE PUBLIC SERVICES OMBUDSMAN FOR WALES FOLLOWING INVESTIGATION INTO THE COUNCIL'S HANDLING OF PLANNING APPLICATION NO. 42/2012/1368/PO - LAND AT MOUNT HOUSE, BRYNIAU, DYSEARTH

A report was submitted on the findings of the Public Services Ombudsman for Wales Report on the case, land at Mount House, Bryniau, Dyserth.

Public Speaker –

Mr. Rhys Davies (**on behalf of the applicant**) – referred to the late representations submitted by the complainant and legal advice given to the committee to proceed with their determinations. The complainant had submitted that compensation costs should not be considered as an issue but if planning permission was revoked the owner of the land would need to be compensated.

The Head of Planning and Public Protection briefly outlined events leading up to submission of the report and request for members to reconsider the findings of the Ombudsman's investigation in this case and whether to revoke the outline planning consent. Planning Committee had initially considered the Ombudsman's report in February 2016 and determined that it would not be appropriate to revoke the permission it had granted. The complainant had since brought Judicial Review proceedings against that decision which were due to be heard in December 2016. In accordance with legal advice the matter had been brought back before members to reconsider taking into account the basis of the claim in the Judicial Review and grounds of challenge. If members were minded to reaffirm their decision not to revoke in line with officer recommendation the Council would be in a stronger position going into the Judicial Review. If members were minded to seek formal revocation of the planning permission the Judicial Review would not proceed but the applicant would be entitled to compensation. It was clarified that, if permission was revoked, the decision taken on the reserved matters would also fall.

The Team Leader – Places (SC) reiterated that there had been criticisms about the way the Council had dealt with the planning application which had been set out within the report. She highlighted the legal test for revocation as set out under Section 97 of the Town and Country Planning Act 1990 and definition of ‘expedient’ within that context and whether it was appropriate in this case given all material considerations including the fact that if the application came before the Planning Committee today permission was unlikely to be granted, the Ombudsman’s findings on the Council’s handling of the application, and compensation considerations.

General Debate – Councillor Stuart Davies advised that no further material considerations had been put forward which changed his view. In considering the statutory test for revocation Councillor Davies felt that the impact of a new single dwelling on the complainant’s properties would be minimal, particularly in light of the amendments made by the applicant in responding to the concerns raised, and having regard to the Ombudsman’s recommendations and compensation issues. Having taken into account the legal position and representations submitted Councillor Davies proposed the officer recommendations detailed within the report. The Chair advised that the recommendations would be voted upon individually.

Councillor Mark Young sought clarification that it would be appropriate for him to vote on the matter given that he had not been a member at the time the original outline planning consent had been approved. The Team Leader – Places (SC) advised that, having completed the necessary planning training and as a member of the Planning Committee, it was appropriate for him to participate in the decision making process.

Councillor Huw Hilditch-Roberts highlighted that during training members had been advised of the need to consider each application on its own merits which was at odds with the Ombudsman’s view that members should have been made aware of two previous refusals at the same location in this case which could have had an impact on the decision. Officers confirmed that they had not considered the historic refusals of planning permission to be a material consideration although the Ombudsman felt it was of relevance. Having considered the Ombudsman’s view officers tried to include more historical background in planning application reports but still believed that the two refusals were not relevant in this case. Councillor Huw Hilditch-Roberts stated that considering historical applications would ‘muddy the waters’ and as a Planning Committee members should consider the current application as submitted on its own merits. Councillor Hilditch-Roberts asked that this point be recorded in the minutes of the meeting.

In terms of compensation considerations, the Team Leader reported upon advice provided by the District Valuer with regard to potential compensation sums payable following the Planning Committee’s decision whether or not to revoke permission.

The Chair took the opportunity to thank the officers for their advice and wealth of information presented in order for the committee to make a fully informed decision.

Proposal (1) – Councillor Stuart Davies proposed officer recommendation (a) be accepted as detailed in the report, seconded by Councillor Mark Young.

VOTE:

FOR – 21

AGAINST – 0

ABSTAIN – 1

RESOLVED that members note and accept the Public Services Ombudsman for Wales recommendations a) to c) having regard to the measures agreed and implemented by officers.

Proposal (2) – Councillor Stuart Davies proposed officer recommendation (b) be accepted as detailed in the report, seconded by Councillor Dewi Owens.

VOTE:

FOR – 21

AGAINST – 0

ABSTAIN – 1

RESOLVED that after due consideration of the issues and advice of the report that the Council confirms it will not be seeking the formal revocation of the planning permission in accordance with officer recommendation and for the reasons set out in the report.

Proposal (3) – Councillor Stuart Davies proposed officer recommendation (c) be accepted as detailed in the report, seconded by Councillor Dewi Owens.

VOTE:

FOR – 21

AGAINST – 0

ABSTAIN – 1

RESOLVED that members agree to further instruct the District Valuer (DV) to assess the impact of any completed development (the subject of a reserved matters application linked to the outline consent) on the complaints properties, within one month of the completion of the development, and pay her an amount which equates to the difference in value before and after the development.

10 APPLICATION NO. 15/2016/0828/PF - 19 MAES IAL, LLANARMON YN IAL, MOLD

An application was submitted for erection of single storey extension to rear of dwelling at 19 Maes Ial, Llanarmon Yn Ial, Mold.

Proposal – Councillor Arwel Roberts proposed the officer recommendation to grant the application, seconded by Councillor Dewi Owens.

VOTE:

GRANT – 22

REFUSE – 0

ABSTAIN – 0

RESOLVED that permission be **GRANTED**, in accordance with officer recommendation as detailed within the report.

At this juncture (10.50 a.m.) there was a short refreshment break.

11 'RESIDENTIAL DEVELOPMENT' SUPPLEMENTARY PLANNING GUIDANCE (SPG) - ADOPTION OF FINAL DOCUMENT

Councillor David Smith, Lead Member for Public Realm submitted a report recommending adoption of the draft Supplementary Planning Guidance (SPG) on Residential Development. He reminded members of the different stages in the process before final adoption of SPG documents by the Planning Committee.

Following an eight week consultation period a number of amendments had been proposed in response to representations received which had been highlighted in the final document and detailed in the Consultation Report. The Strategic Planning and Housing Manager (AL) drew members' attention to the main changes which included landscape and visual impact, flood risk, protection of trees and the inclusion of relevant contact details. The LDP Steering Group had also raised an issue regarding street naming and an additional paragraph (7.06) had been included in that regard. If adopted the document would replace a number of SPGs linked to the previous Denbighshire Unitary Development Plan.

The following issues were raised during the ensuing debate –

- in response to questions regarding the forthcoming LDP review members were advised that background work was currently being carried out with a view to commencing the review end of this year/beginning of next year – with regard to issues raised in terms of affordable housing and density, officers advised that those elements could be included as part of that review process
- reference was made to the SPG 'Planning and the Welsh language' and assurances were provided that Welsh Language and culture would be taken into account when reviewing the LDP and this element was also included in the Site Development Briefs in order to raise awareness at the outset
- some discussion focused on the street naming process and whilst not a planning function officers agreed to look into the street naming process for the 'HM Stanley' housing development in St. Asaph which was of particular concern to local members Councillors Bill Cowie and Dewi Owens – whilst noting the input of City/Town/Community Councils in the process those members felt that more should be done to involve local members and at an early stage
- members noted that reference to the street naming policy had been included in paragraph 7.06 in the SPG document in order to bring the matter to the attention of developers at an early stage.

Proposal – Councillor Huw Hilditch-Roberts proposed the officer recommendation to approve the draft SPG for adoption, seconded by Councillor Cefyn Williams.

VOTE:

FOR – 19

AGAINST – 0

ABSTAIN – 0

RESOLVED that members adopt the draft Supplementary Planning Guidance on Residential Development attached as Appendix 1 to the report, in line with proposed amendments as outlined in the Consultation Report, attached as Appendix 2 to the report.

12 DELETION OF SUPPLEMENTARY PLANNING GUIDANCE (SPG) NOTES NO. 3, 5 AND 21

Councillor David Smith, Lead Member for Public Realm submitted a report recommending deletion of Supplementary Planning Guidance (SPG) Notes relating to: No. 3 Children’s Day Care; No. 5 Taxis and No. 21 Retail Kiosks as they were either factually incorrect or not used by Development Management. The reasoning behind the recommendation for the deletion of each SPG had been detailed within the report and had been accepted by the LDP Steering Group.

Proposal – Councillor Stuart Davies proposed the officer recommendation to delete the SPGs as detailed within the report, seconded by Councillor Peter Evans.

VOTE:

FOR – 22

ABSTAIN – 0

AGAINST – 0

RESOLVED that deletion of the Supplementary Planning Guidance Notes in respect of No. 3 Children’s Day Care, No. 5 Taxis and No. 21 Retail Kiosks be approved.

13 DENBIGHSHIRE LOCAL DEVELOPMENT PLAN (LDP) 2006 - 2021: DRAFT ANNUAL MONITORING REPORT 2016

Councillor David Smith, Lead Member for Public Realm presented the report informing members of the content of the Local Development Plan (LDP) Annual Monitoring Report 2016 (attached as an appendix to the report) prior to its submission to Welsh Government and publication on its website.

Councillor Smith highlighted that the calculation method prescribed by the Welsh Government for a 5-year housing land supply continued to be a matter of concern but he would continue to lobby for change. The Head of Planning and Public Protection reminded members of the process for allocation of readily developable housing land within the Local Development Plan (LDP) and the Council believed that the number of allocated sites more than met the 5-year requirement. However, as the calculation method had been changed and based on previous build rates the Council had been left with less than the required availability of housing land. Members and officers also discussed the potential for planning appeals in respect of speculative sites outside the LDP if the current calculation method remained. Members noted that the concerns regarding the calculation method and effect on local authorities would continue to be raised with the Welsh Government.

Councillor Win Mullen-James highlighted problems with travellers moving onto particular sites advising that the issue needed to be resolved as a priority. The Strategic Planning and Housing Manager (AL) provided an update on the situation advising that a Gypsy and Traveller Accommodation Needs Assessment had been undertaken and submitted to Welsh Government. Discussions were ongoing with Welsh Government regarding that Assessment and the next stage would involve Ministerial approval. The intention was to designate one transient site between Denbighshire and Conwy.

RESOLVED that members note the contents of the Local Development Plan Annual Monitoring Report 2016 attached as Appendix 1 to the report.

The meeting concluded at 11.45 a.m.