

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Planning Committee held remotely on
Tuesday, 21 July 2020 commencing at 10:00 am**

Present:

Chair
Vice Chair

Councillor J H Evetts
Councillor R D East

and Councillors:

G F Blackwell, M A Gore, D W Gray (Substitute for R A Bird), D J Harwood, A Hollaway, M L Jordan, E J MacTiernan, J R Mason, P W Ockelton, A S Reece, P E Smith, C Softley (Substitute for R J G Smith), P D Surman, R J E Vines, M J Williams and P N Workman

also present:

Councillor G J Bocking

PL.12 ANNOUNCEMENTS

- 12.1 The Chair advised that the meeting was being held under the emergency provisions of the Coronavirus Act 2020 and, specifically, the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020. The meeting was being broadcast live via the internet, it was not being recorded by the Council but, under the usual transparency rules, it may be being recorded by others.
- 12.2 The Chair outlined the procedure for the meeting, including public speaking.

PL.13 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

- 13.1 Apologies for absence were received from Councillors R A Bird, L A Gerrard and R J G Smith. Councillors D W Gray and C Softley would be acting as substitutes for the meeting.

PL.14 DECLARATIONS OF INTEREST

- 14.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.

14.2 The following declarations were made:

Councillor	Application No./Agenda Item	Nature of Interest (where disclosed)	Declared Action in respect of Disclosure
P W Ocklelton	Agenda Item 5d – 19/01098/FUL – Land to the East of Horsbere Drive, Longford. Agenda Item 5f – 16/00904/OUT – Land at Chestnut Tree Farm, Twigworth.	Had received correspondence in relation to the applications but had not expressed an opinion.	Would speak and vote.
C Softley	Agenda Item 5b - 20/00453/FUL – The Pavilion, Cold Pool Lane, Badgeworth.	Uses the land on a daily basis and had been in discussion with the applicant regarding the application.	Would not speak or vote and would leave the meeting for consideration of this item.
R J E Vines	Agenda Item 5b – 20/00453/FUL – The Pavilion, Cold Pool Lane, Badgeworth.	Is a Gloucestershire County Councillor for the area.	Would speak and vote.

14.3 There were no further declarations made on this occasion.

PL.15 MINUTES

15.1 The Minutes of the meeting held on 16 June 2020, copies of which had been circulated, were approved as a correct record.

PL.16 DEVELOPMENT CONTROL - APPLICATIONS TO THE BOROUGH COUNCIL

The objections to, support for, and observations upon the various applications as referred to in Appendix 1 attached to these Minutes were presented to the Committee and duly taken into consideration by Members prior to decisions being made on those applications.

20/00049/FUL - Part Parcel 3000, Stanway Road, Stanton

16.1 This application was for the variation or removal of condition 1 of planning permission ref: 08/00827/FUL to allow the existing equestrian yard to be used in association with a horse training and stud enterprise.

- 16.2 The Planning Officer explained that the application related to a parcel of land of approximately 2.3 hectares, located off Stanway Road on the western outskirts of Stanton village. The site was currently in established private equestrian use and the existing complex included a building used for stabling, a riding arena and other areas of paddock. The site was bounded by existing mature boundary hedges and trees, with the Severn Trent Water Treatment Works situated along its western boundary. The existing gated site access was to the south of the site, fronting Stanway Road, and Liberty Farm lay to the west/north west. Members were informed that the site was located within the Cotswold Area of Outstanding Natural Beauty but outside of the Stanton Conservation Area and Article 4 boundary. It was noted that the site was within Flood Zone 1 and a Public Right of Way ran to the north of the site on the opposite side of Stanway Road. The current proposal sought to vary or remove condition 1 of the previous planning permission dating from 2008, which restricted the use to private equestrian, in order to allow commercial/business equestrian use. The applicant currently operated a horse training and stud business from Gretton Grange which was located approximately 6.5 miles away from this site; however, the lease for that site was due to come to an end shortly and the applicant was therefore in need of a new site from which to carry on the business. It was important to note that the applicant and current site owner were not one and the same, although the requisite notice had been served upon the site owner. It was not intended for the site to be utilised by both the current owner and applicant for both private and business equestrian purposes; should the application be permitted and the site subsequently sold, the site would be used in connection with the applicant's established commercial enterprise only.
- 16.3 The Chair invited the applicant's agent to address the Committee. The applicant's agent explained that the site had been used for equestrian purposes since 2008 and was a use that fully integrated into the rural character of the site. At present, the site was subject to a condition which limited its use to private equestrian only – this dated back to a time when the government's approach was to only support development in towns and cities and most countryside developments were restricted. Since the introduction of the National Planning Policy Framework in 2012, the government and local authorities had taken a much more positive approach toward rural industries in recognition of the importance of the rural economy. As such, the concept of sustainable development had been redefined with much greater emphasis on the economic dimension and support for rural-based industries which could obviously only take place in the countryside. The applicant's agent explained that this proposal was simply to remove the outdated restriction on the equestrian yard with a view to allowing it to be used for commercial equestrian purposes such as horse training. No new built form was proposed as all existing building and outdoor arena facilities would be utilised. As the Committee had already heard, permitting the proposal would enable the applicant to relocate from Gretton where they had rented premises. As set out in the Officer's report, the reason for the condition originally having been imposed no longer applied and this development would assist a rural-based business which would in turn support the borough's rural economy. It fit squarely with the new definition of sustainable development and was exactly the type of use the government expected to be supported in countryside locations. Given there was no built form proposed, there could not be said to be any impact on the Area of Outstanding Natural Beauty and, due to its location, there would also clearly be no impact on neighbouring amenity. The applicant's business was run on a relatively small scale basis with only five to six horses on site at any one time. This was a scale they were comfortable with and it was not intended to grow the business any further. It followed that vehicle movements and staffing numbers were relatively low and there would be no noticeable impact on the highway network as a result of the proposal – in reality there would be no more than three to four vehicles per day. Notwithstanding this, the applicant had carried out a speed survey along this stretch of Stanway Road which showed that speeds were relatively low. The

visibility splay requirements had been calculated based on these speeds and County Highways had confirmed that they met the required standard so, even if there was an intensification of the access, there were no safety issues and visibility was adequate. The applicant's agent considered there were nothing but positives associated with the application and the opportunity to support a local business and the rural economy was paramount, particularly in the context of their being no harms associated with the application. Therefore, he hoped that Members would feel able to support this well-established rural business and permit the application.

16.4 The Chair indicated that the Officer recommendation was to permit the application and he sought a motion from the floor. It was proposed and seconded that the application be permitted in accordance with the Officer recommendation. A Member noted that the Parish Council had objected on highway grounds and he indicated that he often travelled along this road and had noticed it was well-used by pedestrians, cyclists and horse-riders. As such, he sought clarification as to what type of vehicles were taken into account when considering traffic movements, for instance, cars, horse boxes etc. In response, the County Highways representative explained that the nature of the application meant there would inevitably be horse boxes or horse-drawn trailers akin to the size associated with a private equestrian use but he did not expect the size of vehicles to substantially increase and no safety deficiencies had been identified as a result of the proposal.

16.5 Upon being taken to the vote, it was

RESOLVED That the application be **PERMITTED** in accordance with the Officer recommendation.

20/00453/FUL - The Pavilion, Cold Pool Lane, Badgeworth

16.6 This application was for the erection of ball stop fencing, car park safety fencing and a storage container.

16.7 The Planning Officer advised that the application required determination by the Planning Committee as the site was on land owned by Tewkesbury Borough Council. It was an existing sports ground/playing field with a pavilion building as a changing facility with access to the north onto Cold Pool Lane. The site formed part of the Section 106 Agreement for a community sporting facility for public benefit and was used mainly for football and cricket; the applicant promoted grassroots football and had over 30 teams for children and adults of all abilities. The local Parish Councils were supportive of the application and no other representations had been received. It was proposed that the storage container would be sited to the rear of the pavilion building and would be used for equipment that could not be accommodated within the existing building. The container measured six metres in length, 2.44 metres in width and 2.59 metres in height, would be green in colour and screened by planting. The stop ball fence and netting would be sited on the southern boundary to prevent balls from activities on the site entering and damaging adjacent land and property. The fence would be 250 metres in length and seven metres in height and would consist of three metres of weldmesh panels with four metres of netting above.

16.8 Members were informed that the proposal complied with saved local plan policy RCN2 in relation to provision of sports facilities. The National Planning Policy Framework considered that facilities for outdoor sport/recreation were an exception to inappropriate development within the Green Belt provided they preserved its openness and did not conflict with its purposes. The storage container was considered to have limited impact on the openness due to its scale and siting whereas the supporting poles of the stop ball fence and netting on the southern boundary would be more apparent and visible in part above the existing boundary treatment and buildings; this would have an impact on openness and was therefore

considered inappropriate development which required very special circumstances to be demonstrated. The proposed fence would allow the safe use of the site by the football club with minimal impact to the neighbouring properties from balls overshooting the site. The storage container was required for the safe storage of equipment and machinery for the sports club and the proposal would enable the club to maximise use of the existing facility which benefitted public health and wellbeing. This justification was considered to be acceptable in terms of comprising the very special circumstances necessary to outweigh the limited visual harm to the openness of the Green Belt. The design of the storage container was appropriate in terms of its colour, siting, height, scale and mass; the fence was similar to that used on other parts of the site; and the netting would be lightweight and fairly transparent when viewed within the context of the existing buildings and would have less than substantial harm in terms of landscape character. The proposed netting would protect the adjacent livery yard from the sporting activities on the site and enabled the site to fulfil its function as a sporting venue for the local community. The wider public benefit was considered to outweigh the minimal impact to the neighbours' amenity in terms of the openness of the Green Belt and landscape character, therefore, the Officer recommendation was to permit the application.

- 16.9 The Chair indicated that there were no public speakers for this item. The Officer recommendation was to permit the application and he sought a motion from the floor. It was proposed and seconded that the application be permitted in accordance with the Officer recommendation and, upon being put to the vote, it was

RESOLVED That the application be **PERMITTED** in accordance with the Officer recommendation.

20/00212/OUT - Land West of Persh Lane, Maisemore

- 16.10 This was an outline application for the development of eight dwellings (including affordable housing contribution) together with open space, access, parking, landscaping, drainage and associated works. All matters were reserved except for means of access and layout.
- 16.11 The Planning Officer explained that the site was located on the south western edge of Maisemore outside of, but abutting, the settlement boundary as defined in the emerging Tewkesbury Borough Plan. The site was essentially closed on three sides with the south west boundary fronting onto open countryside. The site was not subject to any formal or informal landscape designation. It was currently accessed off Persh Lane via a gravel track, although access could also be gained off Blacksmiths Lane; a public bridleway ran to the north east of the site which incorporated Blacksmiths Lane. Members were advised that the application proposed up to eight dwellings and was in outline form with access and layout to be determined at this outline stage and appearance, scale and landscaping to be reserved for future consideration. In terms of the principle of development, the proposal did not comply with the Council's housing policies due to its location; however, in accordance with Paragraph 11 of the National Planning Policy Framework, due to the Council's current housing land supply position, these policies were deemed to be out of date and the weight that could be afforded to them was reduced. In this situation, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework taken as a whole; this was known as the tilted balance. As set out in the report, some landscape harm would arise as a result of development on a greenfield site but that was considered to be limited and would not outweigh the clear social benefits of providing much-needed housing in the borough. The Planning Officer confirmed

that no other overriding harms had been identified. On that basis, the application was recommended for delegated permission, subject to the completion of a Section 106 Agreement to secure the affordable housing. It was noted that this had been changed from 'permit' as set out in the Officer report. The Planning Officer proceeded to show a video of the application site serving as a virtual site visit for the Committee.

- 16.12 The Chair invited the applicant's agent to address the Committee. The applicant's agent indicated that the scheme represented an opportunity for a small housing development in accordance with the National Planning Policy Framework's presumption in favour of sustainable development, in the context of a local shortfall and national priority to significantly boost housing land supply. Maisemore was a service village, therefore modest growth was supported in principle, albeit normally within the adopted settlement boundary. Eight homes, including three affordable homes, was a proportionate scale of growth for the village, notwithstanding other recent developments. The site was well-related to the village envelope and would read as a modest, well-integrated addition, slotting in between existing development north and south, typical of the historic pattern of organic growth in this area. A safe access from Persh Lane had been demonstrated, hence no objection had been raised by the Highways Authority. Very minimal increase in peak hour traffic was anticipated and even that was likely to be overstated given the 'new normal' of greater homeworking. Pedestrian access to Blacksmiths Lane to the north was included, helping to integrate the development with the wider village community and reduce car use. The scheme had been thoughtfully designed to provide a soft, informal edge to the village with generous green space including a new pond and play area and properties facing outward rather than backing onto the countryside edge. The layout and number of homes – typical reserved matters – were being fixed at this early stage, giving confidence this was the scheme that would be developed; an entirely new application would have to come forward in order to vary it. Minimising environmental impact had been a key focus with all significant trees being retained; whilst there was a small loss of hedgerow, this had been more than compensated for with the level of new planting. Furthermore, the applicant had already committed financially to a mitigation scheme for great crested newts, which could have been deferred, in order to give Members' confidence that this endangered species would be protected. The applicant's agent indicated that almost all development had a degree of harm, and therefore attracted some objection, but that must be balanced against the benefits as had been shown very clearly in the Officer report. This scheme would provide a modest but significant windfall of housing, including a bonus of three affordable village homes, and the harm had been minimised through careful planning, hence the lack of any technical objection. In due course it would be appropriate for the Parish Council to be involved with the detailed design of the scheme. The applicant's agent hoped that Members could rely on the Officer report, which was very thorough and balanced, and support the recommendation to grant delegated permission for this sustainable development opportunity.
- 16.13 The Chair indicated that the Officer recommendation was to delegate authority to the Technical Planning Manager to permit the application, subject to the completion of a Section 106 Agreement to secure the affordable housing, and he sought a motion from the floor. It was proposed and seconded that the application be refused on the basis that it would result in unacceptable encroachment into the countryside; due to the concerns raised by the Parish Council; and on the grounds that it was not in a service village. The proposer of the motion indicated that he could not support this application for a number of policy reasons, similar to those in respect of the Gotherington application that had been refused at the last meeting of the Committee. A Member noted that the Parish Council was concerned about the speed limit on Persh Lane and she questioned whether it was possible to impose a

reduced speed limit by condition, should Members be minded to grant delegated permission. The County Highways representative explained that speed limit legislation was outside of planning control and he warned Members against mixing legislation. The approach speeds along Persh Lane were 22mph and 25mph and driver behaviour was unlikely to be altered in any event. Another Member noted that access to the site was very narrow and he sought assurance that it would be suitable for emergency vehicles, particularly fire appliances. In response, the County Highways representative confirmed that the access was suitable for emergency vehicles; the lane was frequented by agricultural vehicles, which tended to be larger vehicles, and he had no concerns about it being able to service likely traffic to and from the site. In relation to the comments made by the proposer of the motion to refuse the application, the Technical Planning Manager reminded Members that each application must be considered on its own merits and there were very specific factors in relation to the Gotherington application that had led Members to take a contrary view to Officers. The same approach needed to be applied to this application and Members must decide if there were specific factors which significantly and demonstrably outweighed what Officers had characterised as limited harms. Members had heard from the County Highways representative who was satisfied in respect of the issues raised by the Parish Council and the Technical Planning Manager clarified that Maisemore was a service village within the Joint Core Strategy; the main issue appeared to be encroachment into the open countryside. It was the Officers' view that this would be limited as the development had been sympathetically designed with landscaping but this was a matter for Members' judgement. Notwithstanding this, the presumption in favour of sustainable development was a high bar to overcome so it was important to be clear about the precise reasons for refusal in this case.

16.14 A Member pointed out that the plan at Page No. 92 of the Officer report only showed three passing places along Persh Lane, which was not ideal, but she presumed it was considered by Officers to be workable and might slow traffic down. Another Member noted that the Officer report for a later application on the Agenda referenced best and most versatile agricultural land but the land in relation to the current application had not been given a grading. In response, the Planning Officer indicated that it was a pastoral field but he was not aware of any particular grading. The Member felt that it was difficult to know how the site could potentially be used without a grading. If the Council was able to demonstrate a five year housing land supply then she was sure the application would be recommended for refusal given that it was outside of the settlement boundary and did not comply with either the Tewkesbury Borough Plan or the Joint Core Strategy. A Member noted that the Parish Council objection had set out that there were no schools or health facilities within Maisemore and the Planning Officer confirmed this was correct.

16.15 A Member indicated that she was in agreement with the Officers and would be voting against the proposal to refuse the application. Another Member shared this view and felt the application should go ahead given it was in line with the Joint Core Strategy which included Maisemore as a service village. Whilst he was aware that Maisemore was identified as a service village in the Joint Core Strategy, the proposer of the motion to refuse the application pointed out that the site was not included for development within the Tewkesbury Borough Plan or the Joint Core Strategy, the site adjoined land within Flood Zones 2 and 3 and the village already experienced major problems regarding sewerage so he felt this would be overdevelopment of a very small village. The seconder of the motion to refuse the application raised concern that the layout seemed to suggest there would be more than eight houses so she feared this was just the start of a bigger development. In response, the Technical Planning Manager reminded Members they must determine the application based on the scheme before them rather than what they thought might happen in future. He clarified that the Joint Core Strategy was not

designed to allocate sites of the scale proposed, therefore the site would not be included. He also confirmed that the site itself was located within Flood Zone 1 and there were no objections in terms of flood risk. Whilst he recognised that sewerage and drainage had been an issue in the village, which had been discussed at length by the Parish Council, housing schemes had been permitted at nearby Rectory Farm and Bell House Farm on the basis that Severn Trent Water had a responsibility to ensure that adequate drainage was provided and to undertake any upgrades associated with that, as such, in his view this was not a reason to withhold planning permission. In addition, it would be difficult to refuse the application on the grounds of overdevelopment as it was unclear what impact this would have which would significantly and demonstrably outweigh the benefits of the proposal. He reiterated that landscape harm was a matter of judgement for the Committee but evidence would be needed if Members wished to refuse the application on that basis; the Officer view was that the impact would not be unacceptable, given the titled balance.

- 16.16 The proposer of the motion to refuse the application clarified that this was on the basis of landscape harm due to inappropriate encroachment into the open countryside which was contrary to Joint Core Strategy Policy SD10; insufficient foul and fresh drainage; and as it was not a designated site within the emerging Tewkesbury Borough Plan. The seconder of the motion indicated that she was happy with the reasons suggested. The Technical Planning Manager reiterated that he would be wary about refusing the application on the basis of drainage given there was insufficient technical evidence to demonstrate that it was inadequate or that it could not be secured via an appropriate planning condition. Upon being taken to the vote, the motion to refuse the application was lost. It was subsequently proposed and seconded that authority be delegated to the Technical Planning Manager to permit the application in accordance with the Officer recommendation and, upon being put to the vote, it was

RESOLVED That authority be **DELEGATED** to the Technical Planning Manager to **PERMIT** the application, subject to the completion of a Section 106 Agreement to secure the affordable housing.

19/01098/FUL - Land to the East of Horsbere Drive, Longford

- 16.17 This application was for the construction of two apartment blocks comprising 33 dwellings and associated parking and landscaping.
- 16.18 The Planning Officer advised that the application related to a parcel of land to the north of Longford Lane and to the east of Horsbere Drive in Longford. The site covered approximately 0.31 hectares and was situated within the new residential development at Longford. Existing residential properties bordered the site to the south east; the new primary school, Longford Park Primary Academy, was to the north east; and to the north west were four recently constructed retail units. The site was bounded to the south by Longford Lane. The proposed apartment blocks would be three storeys in height and would front onto Longford Lane, Horsbere Drive and Clock Tower Road with the mix consisting of six one-bedroom units and 27 two-bedroom units. The application had been submitted on the basis that it would deliver a 100% affordable housing scheme. Vehicular access to the development would be via Whitefield Crescent and a proposed pedestrian link would run through the site and connect to Horsbere Drive. A total number of 33 car parking spaces were proposed, set within a courtyard arrangement. An assessment of the material considerations was included at Pages No. 94-114 of the Officer report which set out that the identified harms would significantly and demonstrably outweigh the benefits of the proposed development, therefore, the application was recommended for refusal. It was noted that, since the publication of the Additional Representations Sheet, attached at Appendix 1, comments had been received from

the Council's landscape consultant raising concern about the built form and the fact the site would be overdeveloped and dominated by a housing block. The landscape consultant also found the lack of space to be disappointing, particularly along the streetscene and in terms of meaningful outdoor amenity space. The Planning Officer proceeded to show a video of the application site serving as a virtual site visit for the Committee.

- 16.19 The Technical Planning Manager indicated that he wished to make a few comments in terms of clarifying and responding to the issues that had been raised in the letter from the applicant's agent. Officers wanted to support any scheme for affordable housing where possible and they had been proactive throughout to try to achieve this. It had always been made clear, including at the pre-application stage, that there were concerns with regard to the scale and massing and he reiterated that this was an amended scheme that was before Members today. Ultimately, it was considered that the design solution was unsuitable for this location and the terms of reference for entering into Planning Performance Agreements were very clear this was not a passport to planning permission. He pointed out that the applicant had been insistent that the application be brought to this Committee, therefore it was incumbent upon Officers to express a view on all matters referenced in the applicant's letter at the point of writing the report. The Officer report confirmed that there were three storey buildings in the wider Longford development and this was not disputed; however, that did not mean that three storey buildings would be acceptable everywhere and Officers had taken a different view to the applicant in this particular instance. The agent had referenced the comments made by the Council's Urban Design Officer but their role was that of urban designer - they were not a specialist in architectural design. The whole team had a responsibility in terms of design and the Urban Design Officer was an important part of that; however, the clear consensus within the senior planner group was that this development did not respect the character of its immediate surroundings and did not constitute high quality design. It was unfortunate there had been a late change to the material circumstances in terms of the adoption of the Neighbourhood Development Plan and the policy requiring a certain level of car parking. As set out in the Officer's report, the County Highways Officer and the applicant's transport consultant had agreed the methodology for the proposed number of car parking spaces but, in light of the adopted Neighbourhood Development Plan policy, Officers had taken a different view; Officers considered that the references to Kingsholm were not hugely relevant in this context and the Neighbourhood Development Plan policy was clear. Whilst the applicant was critical of the policy, it was, as a matter of fact, part of the development plan. With regard to the Section 106 Agreement, the issue of education contributions was a significant one for the county - if not the country - and the Technical Planning Manager apologised that the Council had not responded in full to previous correspondence from the agent; however, there was an emerging position and a statement on the matter was being prepared. Nonetheless, it was clear as a matter of law that contributions – where they were justified by robust evidence – could be lawful. It was interesting to note that the applicant strongly refuted the assertion they had failed to agree to enter into a Section 106 Agreement yet continued to assert that such obligations would be unlawful. The applicant's barrister's advice in respect of Gloucestershire County Council's emerging local development guide was appreciated, and it was fully accepted that only limited weight could be given to the document, nevertheless, as a matter of planning judgement it was considered that the County Council had provided sufficient evidence to justify its request for an education contribution. The applicant talked about the fact that the County Council did not normally require education contributions for affordable housing but the Technical Planning Manager clarified that this was not the case as the County Council always considered the likely number of children arising from a particular number of dwellings and the subsequent infrastructure required which was not dependent on whether this was affordable. He stressed that Officers always tried to find an appropriate balance between

affordable housing and other infrastructure needs within the area but Members may take a different view and that was a matter of judgement for the Committee. In terms of the applicant's conclusions, it was for the Committee to decide whether the design was appropriate in this location and whether there were sufficient car parking spaces to serve the development, based on the evidence and in light of the Neighbourhood Development Plan. Officers did not consider that the contributions requested by the County Council were unlawful. The Technical Planning Manager reminded Members this must all be considered in light of the presumption in favour of sustainable development; there was no dispute that the principle of development was acceptable and it was recognised that affordable housing was a significant benefit which weighed in favour of the proposal, rather it was the detail that was in question. From an Officer perspective, it was considered that the harms identified did significantly and demonstrably outweigh the benefits as set out in the report.

16.20 The Chair indicated that the applicant's representative had been due to speak in favour of the proposal; however, they had been unable to join the remote meeting and, in accordance with the addendum to the Scheme for Public Participation at Planning Committee, the statement would be read out an Officer. The statement set out that Members would already have received technical details on this application from their planning consultant which it was hoped had been informative and that, no doubt, the matters it raised would be debated later. It also stated there was no wish to dwell on those matters, instead it was intended to talk about this site and the fantastic opportunity it raised. After the marketing for retail at this site had failed, it had been offered to the applicant for affordable housing and it was felt there could not be a more sustainable and suitable site for those on the housing waiting list – it was right next door to existing shops and services, opposite a brand new primary school and with a bus stop just outside the proposed front doors. The applicant had listened very carefully to feedback from Officers and consultees at the pre-application stage and prepared an application in accordance with that advice. They had also entered into a Planning Performance Agreement knowing that the proposal formed a suitable basis to allow for a positive recommendation to be made. The applicant had worked hard with the Council's Housing Enabling Officer to help secure grant funding for this project from Homes England as well as additional funding to provide some socially rented apartments; it was following the largely positive pre-application advice that funding was secured. There had been a Facebook campaign objecting to this application but the applicant wished to point out that the majority of those objecting were more than likely to be fortunate enough to have a home - those needing the accommodation proposed rarely had a voice and certainly did not in this case as they would not know about the proposal. The applicant wished to give those people a voice and pointed out there were 1,800 on the housing waiting list in Tewkesbury Borough. At the time the application was made, there were 128 households registered as waiting for a one-bedroom property and 90 households waiting for a two-bedroom property in Longford – no doubt that would have risen following the economic consequences of the global pandemic. The development would allow the applicant to continue its track record of delivering quality affordable homes in a highly sustainable location and to do anything other than permit the application would place Homes England funding at significant risk, and seriously harm the ability to meet what was a desperate need in some cases. Despite the Officer recommendation, the applicant trusted that the quality of the submission, alongside the work that the team had put into it, would make the proposal worthy of the Committee's support.

16.21 The Chair invited a local Ward Member to address the Committee. The local Ward Member raised concern that the applicant had attempted to mislead Members in their letter through selective quotation which meant that key phrases had been missed. For instance, what the Urban Design Officer had actually said was that the loss of a retail, employment or community use would be disappointing and would have a negative effect on the overall quality of the new place that had been created

at Longford; long term this area would see significant residential growth and there was a risk of creating very unsustainable developments where people must drive to access facilities. Paragraph 127e of the National Planning Policy Framework required planning decisions to optimise the potential of a site to accommodate and sustain an appropriate mix of development and support local facilities and, in terms of national urban design, well-designed spaces had a mix of uses including local services and facilities to support daily life. This mirrored the multiple Parish Council objections and some of the 175 objections received from the public and seriously risked making the whole Longford development very unsustainable. The applicant had also stated that the Neighbourhood Development Plan parking policies, such as CHIN1, were only to be applied “where possible” – as this piece of land was a blank canvass, this was easily possible and only a conscious decision by the developer could make it difficult. In terms of the car parking numbers, using Kingsholm Ward to calculate the requirements was farcical as it was within a short walk of Gloucester City centre, bus station, railway, post office, doctors etc. Using Innsworth with Down Hatherley Ward showed a 26% increase in need, though this was still inaccurate as this was also within walking distance of the post office, doctors, dentists etc. so it would still fall short of what this development required to allow easy access to basic amenities. Parking around the school would also present issues. In summary, the development would be contrary to Paragraphs 102 and 127 of the National Planning Policy Framework and the guidance within section 12; JCS policies INF4, INF6, INF7 and SD4 of the Joint Core Strategy; Policies TRAC9 and RES5 of the pre-submission Tewkesbury Borough Plan; and Policies CHIN1, CHIN2 and CHIN3 of the Churchdown and Innsworth Neighbourhood Development Plan. The local Ward Member urged the Committee to be very careful not to set a dangerous precedent that could potentially undermine the strength behind the policies - this development contravened several and risked making the overall large development unsustainable. As such, he encouraged the Committee to support the Officer recommendation for refusal.

- 16.22 The Chair indicated that the Officer recommendation was to refuse the application and he sought a motion from the floor. It was proposed and seconded that the application be refused in accordance with the Officer recommendation. A Member queried what percentage of affordable housing was required across the site and raised concern that it should not all be concentrated in one area. The Technical Planning Manager confirmed that the policy position at the time the site at Longford was approved was for 30% affordable housing which equated to 179 properties of the 595 dwellings overall. He reminded Members that there was an incredible need for affordable housing and, whilst it was always better to “pepper pot” across developments where possible, clearly there were affordable housing providers who were trying to deliver affordable homes wherever they could and sometimes there was a proposal for all plots to be affordable – this was not ideal in terms of creating a diverse community but should not be determinative in his view. The proposer of the motion drew attention to Page No. 94 of the Officer report and pointed out that the site was within Innsworth but was still referenced as being in Longford. He asked what the reason was for increasing the density over and above the masterplan for the last phase of development and why the affordable homes had not been built earlier in accordance with the phasing plan. He was wary of allowing this amount of affordable housing in one area and questioned whether the Crime Prevention Design Adviser had been consulted. He also queried why no traffic impact or capacity assessment had been undertaken given this was a major development. He went on to indicate that the Secretary of State had granted outline planning permission in July 2008 for a development comprising 570 dwellings, community uses, a local centre with a mix of retail uses and associated physical infrastructure and open space. In March 2011, condition 5 of the planning permission required the submission and approval of a detailed masterplan for the whole site; condition 6 related to the detailed phasing scheme; and condition 7 required the submission of a design code. A similar application had been refused

on the site in 2015 on the basis that the design of the flats and position of the building within the streetscene were not considered to be of sufficient quality, furthermore, there was no empirical evidence of housing need and he was particularly dubious of the comparison with Kingsholm given that Innsworth was a semi-rural Ward. The outline planning permission provided for 30% affordable housing across the site and its provision was set out in the unilateral undertaking signed in March 2008; this stated a tenure mix of 50% social rented and 50% shared ownership and that affordable housing was to be distributed throughout the site in groups of not more than eight houses or 16 flats. This application went completely against the masterplan for the site and he hoped Members would support the motion to refuse the proposal.

- 16.23 A Member queried whether consideration was given to using materials other than red brick and asked if architects could be more imaginative in future to include as much communal space as possible within the design. The Technical Planning Manager shared these views – Officers always looked for the highest possible quality design which he did not feel had been achieved in the case. In response to the points raised by the proposer of the motion, in terms of the relationship between the application before Members and the outline planning permission that had been granted in 2008, he recognised it was frustrating when developments were not constructed entirely in accordance with what had been granted permission and he indicated there had been similar issues at Bishop’s Cleeve with the Homelands and Cleavelands developments. He explained that, when outline planning permission expired, it was no longer possible to submit applications for approval of reserved matters - in this case, land had returned to the previous agricultural use and all aspects of the agreed Section 106 Agreement, masterplan and conditions included on the outline application no longer applied; however, the rationale behind them was not forgotten. The site had historically been referred to as Longford, despite being in Innsworth Ward, and he apologised for any confusion caused. In terms of housing numbers, the outline planning permission had been for 570 dwellings but this had ultimately been 595 and he clarified this was not to do with the fact there was insufficient affordable housing; whilst there had been a shortfall in the first two phases, it was always the case that this would be made up in phase three. A further application had been submitted for phase three, originally for 213 dwellings but reduced to around 190, which was more than the outline application but Officers had taken the view it could be satisfactorily accommodated and appropriate affordable housing had been secured. In terms of the tenure mix and the reference to the previous Section 106 Agreement and pepper potting, he reiterated his earlier comments that, ideally, affordable housing would be fully integrated but this was not always possible. In principle, 33 affordable houses in one place was not a determinative factor and was not a reason to withhold planning permission in this case.
- 16.24 A Member expressed her concern about a number of points raised, particularly the loss of affordable housing which was desperately needed in the borough and also what would happen to the piece of scrubland opposite the shops and entrance to the site and if it would be viable for a developer to put whatever they wanted on that land. She would be uncomfortable voting in favour of the proposal but did not think it could be refused either and therefore would be abstaining. Another Member expressed the view that the development was too bulky for the size of the site and there would be too many apartments in one place which would ruin the appearance of the overall site. A Member agreed with the majority of points that had been raised and, whilst she acknowledged the extreme need for affordable housing, she felt this must be in the right place, and of the right size, and yet one third of the proposed apartments were below standard size, She accepted the need but also felt that accommodation should be decent and not based on getting as many units into one space as possible.

- 16.25 The proposer of the motion to refuse the application reminded Members that Innsworth Parish was scheduled for 1,400 houses with up to 40% being affordable across all tenures and he questioned whether 33 apartments were really needed in this location. The Parish Council had suggested that the land be returned to green open space, such as allotments or orchards, and he felt this would be preferable. He had one further question about whether the housing numbers would count towards the allocation within Tewkesbury Borough or Gloucester City – his understanding was that Gloucester City already had an uncontested housing supply in excess of five years and he asked whether he would be correct to assume that Paragraph 11 of the National Planning Policy Framework did not apply on that basis. In response, the Technical Planning Manager indicated that the housing numbers would count towards Tewkesbury Borough's figures as the site was not an allocation within the Joint Core Strategy and the tilted balance was in play. The Legal Adviser confirmed that the housing numbers would be for Tewkesbury Borough Council and it was not a strategic allocation or subject to a Memorandum of Agreement in terms of the housing numbers being attributed to another local authority.
- 16.26 Upon being put to the vote, it was
RESOLVED That the application be **REFUSED** in accordance with the Officer recommendation.
- 16.27 The meeting was adjourned at 11:55am for a comfort break.
- 16.28 The meeting reconvened at 12:10pm with the same membership present.

19/01227/OUT - Land off Rectory Close, Ashleworth

- 16.29 This was an outline application for up to 42 dwellings, including access and associated works (all matters reserved for future consideration).
- 16.30 The Planning Officer advised that the application site was located immediately adjacent to the recent housing development completed off Nup End/Lawn Road to the north west of Ashleworth. The site was currently accessed off an existing farm track located on the north western boundary where there was also a Public Right of Way. It was noted that the site was located within a Landscape Protection Zone. As originally submitted, the outline application proposed up to 42 dwellings, including 40% affordable housing, with access to be determined at the outline stage – access was now proposed to be dealt with at the reserved matter stage; however the County Highways Officer had confirmed the principle of the access shown on the submitted plans was acceptable. Whilst all matters were now reserved for future consideration, the application was supported with a Design and Access Statement and illustrative site layout which showed how the site could be developed. As set out in the report, Officers were satisfied this demonstrated that the proposed development could be accommodated on the site in an acceptable manner. In terms of the principle of this development, the proposal did not comply with the Council's housing policies due to its location; however, in accordance with Paragraph 11 of the National Planning Policy Framework, due to the Council's current land supply position, these were currently deemed to be out of date and the weight that could be afforded to them was reduced. In this situation, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework taken as a whole; this was known as the tilted balance. As set out in the report, the development would be highly reliant on the use of the private motor vehicle to access services and facilities and this was also a reason for refusal on the adjacent development; however, whilst it was noted that Ashleworth was not categorised as a service village, the appeal Inspector had

found it was a settlement of reasonable size with some primary and secondary service provision including a post office, village shop, village hall, primary school, public house, sports pitches, children's play area and a place of worship all generally within walking distance of the site. The Inspector had also noted the proximity of Tewkesbury Town and Gloucester City which had higher order facilities and employment opportunities. Given the findings of the Inspector, it was considered that it would be difficult to sustain a refusal reason on this basis. Members should also note that mitigation was proposed in the form of a financial contribution towards public transport provision, as per the adjacent development. It was acknowledged there would be a degree of harm to the landscape but this level was considered to be localised and limited. In this case, Officers were of the view that the harms identified would not outweigh the clear social benefits of providing much needed housing in the borough. The application was therefore recommended for delegated permission, subject to the completion of a Section 106 Agreement to secure the affordable housing, education and library contributions and contributions toward public transport and play facilities. The Planning Officer proceeded to show a video of the application site serving as a virtual site visit for the Committee.

- 16.31 The Chair invited the representative from Ashleworth Parish Council to address the Committee. The Parish Council representative explained that the objection submitted by the Parish Council some months ago indicated there were many grounds on which the application should be refused. He reminded Members that Ashleworth was not a service village and, although these houses may well be needed within Tewkesbury Borough, they were not needed in Ashleworth itself. The Officer report indicated that the primary reason to permit the development was the lack of a five year housing land supply and the Parish Council questioned why the rural community of Ashleworth should be forced to compensate for this with unwarranted urbanisation. The additional 41 dwellings would increase the population of Ashleworth by around 40% in just over four years which was clearly not sustainable. A heavy shower of rain brought threats of residential flooding to the village as the drainage system could not cope and a more sustained period of rain resulted in sewage bubbling out of the drains – he pointed out there was plenty of photographic evidence to support this and Page No. 133, Paragraph 7.36 of the Officer report showed how the proposed development would seriously exacerbate these issues. Furthermore, Page No. 134, Paragraph 7.39 stated that “...*the adjacent development was previously refused by the Council partly on the basis of the site's location and the reliance of the private motor vehicle to access day to day facilities*” and he questioned whether anyone could explain how Ashleworth was expected to entertain this proposal for an additional 41 dwellings. He went on to point out that access to the village was already a risky business as, approaching Ashleworth from Hartpury, there were approximately three places where vehicles had to stop if another vehicle was approaching from the opposite direction; if one was a large vehicle, it would have to reverse to a suitable passing place. The other main route into the village from the A417 was from the Cross Hands petrol station and on this route the lane turned uphill towards a series of blind bends enclosed by roadside features such as drystone walls and telegraph poles. Once again, vehicles coming from opposite directions and reaching these locations simultaneously would need to stop and reverse because walls and big poles did not move out of the way. Despite equivocal and ambiguous statements in the Officer report about the potential for expanding the local primary school, the Parish Council representative assured the Committee this would not be physically possible given that it occupied a very difficult corner plot. Page No. 137, Paragraph 7.57 of the Officer report did nothing to allay fears that one potential option would be to close the village school and move all primary pupils to a different and more distant location meaning a rural community would lose another vital piece of social infrastructure.

- 16.32 The Chair invited the applicant's agent to address the Committee. The applicant's agent explained that the developer was also constructing the residential development for 35 dwellings on the adjacent site which had been allowed on appeal in 2016 and the majority had already been sold or reserved. This site would be a logical and popular extension for people who had expressed an interest in living in Ashleworth. There had been no objections from the Council's Landscape Officer who stated that the development would be well-contained, the landscape could accommodate the development without material harm to the wider character and any impacts would be localised. Furthermore, no objections had been made by the Council's Ecology Officer and a full suite of ecological surveys – including bats, reptiles, great crested newts and badgers – had been carried out by a qualified ecologist. Ecological mitigation would be achieved through the creation of a Sustainable Drainage System (SuDS) feature and dark buffer corridors along the hedgerows to the south and west boundaries. Further details of the enhancement, habitat creation and long-term management would be included in an Ecological Management Plan secured by condition. The applicant's agent went on to advise that the proposal met the Council's affordable housing policy requirement of 40% and the applicant was agreeable to the mix requested by the Strategic Housing and Enabling Officer. There were no objections from the planning authority in terms of access, traffic generation, parking or sustainability and, whilst access had now been reserved for later determination, there were no objections to the proposed access arrangements. In terms of drainage and flooding, there were no objections from the Lead Local Flood Authority or Severn Trent Water. As requested by the Parish Council as part of the adjacent development, a 50% allowance had been applied for climate change with regard to the design of the drainage system as opposed to the 40% required by Environment Agency guidance, as such, the proposal would adequately deal with any increase in rainfall. The applicant had agreed to a range of financial contributions towards education, libraries and either an on-site Locally Equipped Area of Play (LEAP) or equivalent off-site financial contribution. The applicant was also agreeable to a financial contribution toward public transport, similar to that secured on the adjacent site, and travel plans would be provided to future occupiers. This would all be secured via Section 106 Agreement. The Council's Urban Design Officer considered the site to represent a logical extension to the existing phase of development to clearly defined and defensible boundaries. Finally, these proposals would help to meet the Council's future needs for open market and affordable housing; this was particularly relevant where the Council could not demonstrate a five year supply of deliverable housing and where there were no constraints to the development of this site with an experienced developer who knew the local area – guidance within the National Planning Policy Framework was that such applications should be favourably received. In view of this, the applicant's agent respectfully requested that Members endorse the Officer recommendation and grant planning permission.
- 16.33 A Member sought confirmation as to what would happen to the footpath that could be seen on the video when the houses were built and where the car which had been parked at the entrance would be expected to go. In response, the Planning Officer advised that the footpath would be retained and incorporated into the scheme. The car parking space referenced by the Member was to service the show home so another space would be allocated to the property in any event once it had been sold. Another Member noted that County Highways had raised no objections to the application subject to conditions but these did not include the access roads which were very narrow and likely to cause a problem if unaltered. The County Highways representative explained that the conditions sought predated the changes to the application and had been retained predominately in relation to the street pattern. The external traffic generated by the scheme would not have a detrimental impact on highway safety and, whilst he understood the Parish Council's concerns about the existing road, County Highways was satisfied

that the vehicles generated would not warrant any mitigation. A Member indicated that he shared the concerns regarding the access roads and would be uncomfortable without seeing this on the ground. He also noted that Severn Trent Water had raised no objection to the proposal subject to conditions and, in light of the Parish Council's concerns regarding sewerage, asked for clarification as to what those conditions were. The Planning Officer explained that the proposal was to connect to the existing drainage system via the recently constructed adjacent development. Severn Trent Water had looked at the drainage and was satisfied there was sufficient capacity so the condition would be to secure the detailed design which would show how the individual plots would connect. With regard to the points raised about highways, the Technical Planning Manager reminded Members that the site proposed to use the same access roads as the appeal site which had already been considered by the Inspector so the question was whether the number of vehicular movements to and from the new development in combination would be severe. The specialist consultee had expressed the view that the impact would not be unacceptable in the context of the National Planning Policy Framework test. Whilst this application should be considered on its own merits, Members should also be mindful of previous decisions.

- 16.34 A Member noted that the Parish Council had identified that the cumulative impact of development within Ashleworth was significant and she questioned whether Officers had explored whether this would have a disproportionate impact on the village. In response, the Planning Officer advised that the baseline of 208 dwellings in Ashleworth was based on the 2011 census. The adjacent development was for 35 dwellings which was a 17% increase; if this application was permitted, the additional 42 houses would increase this to 37%. In terms of the social impact, there was no evidence to show how services and facilities within the village would be affected by the development – the additional population generated could assist in maintaining those facilities. As such, the Officer view was that the increase was acceptable in this case. The Planning Officer went on to clarify that Ashleworth was not a service village, although the Inspector had noted it did have several services and would also have access to other facilities in the larger settlements of Tewkesbury and Gloucester. The Member indicated that she took a contrary view to Officers as she felt the cumulative impact would be disproportionate and referenced an appeal decision in respect of a site in Alderton where the appeal Inspector had dismissed the appeal on such reasons where the increase was less than 30% despite the lack of a five year housing land supply, and nothing had changed in that respect.
- 16.35 The Chair indicated that the Officer recommendation was for authority be delegated to the Technical Planning Manager to permit the application, subject to appropriate planning conditions and the completion of a Section 106 Agreement, and he sought a motion from the floor. It was proposed that the application be refused on the basis that Ashleworth was not a service village and there were no policies in the existing Tewkesbury Borough Local Plan to 2011 which allowed for the type of development proposed, therefore, the application conflicted with Policies SP2 and SD10 of the Joint Core Strategy and Policy RES3 of the emerging Tewkesbury Borough Plan. A Member indicated that he was amazed Ashleworth had not been identified as a service village given the amount of services and facilities available, both within the village and the surrounding areas, particularly compared to others such as Alderton. In terms of the proposal, he was of the view that the Council was likely to lose an appeal, should Members be minded to refuse the application, and would potentially lose any control over the development. The Chair suggested it may be beneficial to defer the application in order to allow the Planning Committee to visit the site and encouraged views from Members. A Member indicated that she would be uncomfortable permitting the application as it stood and would welcome a site visit, although it was unclear when this would be able to go ahead given the restrictions in relation to COVID-19;

a deferral may also give the Parish Council time to put forward any relevant evidence to demonstrate the disproportionate effect of the cumulative impact of development within the village. It was subsequently proposed and seconded that the application be deferred for a Planning Committee Site Visit. The Technical Planning Manager recognised that physical site visits had been a difficult issue since lockdown but times were changing and, if Members genuinely felt that it was necessary to visit the site before they could make an informed decision on the application, he was sure that a risk assessment could be undertaken in association with colleagues in Environmental Health to enable a site visit to take place, hopefully in time for the application to be brought back to the next Committee.

16.36 Upon being put to the vote, it was

RESOLVED That the application be **DEFERRED** for a Planning Committee Site Visit in order to assess the impact of the proposal.

16/00904/OUT - Land at Chestnut Tree Farm, Twigworth

16.37 This was an outline planning application for up to 100 dwellings together with associated public open space and equipped children's play space, landscaping, access and associated infrastructure with all matters reserved except for access.

16.38 The Technical Planning Manager explained that the site lay behind the existing linear development facing onto the A38 at Twigworth. The site was bound by Sandhurst Lane to the east and the land to the Grade II* listed Wallsworth Hall/Nature in Art to the west, with agricultural fields to the north. The site was outside of the settlement boundary as defined in the now made Down Hatherley, Norton and Twigworth Neighbourhood Development Plan, although it was adjacent to that settlement boundary at the site's southern and eastern extent. The Orchard Park caravan site lay to the south of the A38 and to the east and south of the caravan park was the Twigworth element of the Joint Core Strategy strategic allocation A1 where development had already been permitted. This application was in outline, although access was to be considered at this stage, and an illustrative masterplan had been submitted to show how the development could look. A single point of vehicular access was proposed from Sandhurst Lane leading to the development with a play area to the east and swales proposed as part of the drainage solution. Landscaping was proposed around the site boundaries with the landscape buffer along the boundary with the lane to Wallsworth being of particular note so as to address the concerns of Historic England regarding the setting of the Hall. Members were advised that Twigworth, Norton, Down Hatherley and Sandhurst Parish Councils all objected to the application, mainly in respect of conflict with the Neighbourhood Development Plan and concerns regarding highways and drainage. The County Highways Officer had originally raised concerns; however, following the submission of further information, those concerns had been addressed. Similarly, following further work, Highways England was satisfied that once the upgrade to Longford roundabout - required by the Innsworth and Twigworth planning permissions - had been completed, there would be an acceptable impact on the A40. As Members would appreciate, flood risk and drainage had been carefully considered given the location of the site and both the Lead Local Flood Authority and the Council's Flood Risk Management Engineer required further information to be satisfied that the drainage strategy could be achieved. On the basis of that further information, both consultees had indicated that they had no objection to the application and Severn Trent Water was similarly satisfied that it had no concerns regarding foul drainage, subject to conditions. Given that the Council could not currently demonstrate a five year supply of deliverable housing sites, the presumption was that planning permission should be granted in line with the National Planning Policy Framework unless there were areas or assets of particular importance which

provided a clear reason for refusal, or there were any adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits when assessed against the National Planning Policy Framework as a whole. As set out in the Officer report, there were no clear reasons for refusal related to areas or assets of particular importance. There were also very obvious and real social and economic benefits arising from the delivery of new housing and those benefits should be afforded substantial weight as set out in the report. The development would also provide open space which could be enjoyed by the wider population, although that was a prerequisite of any sustainable scheme and was given less weight. Whilst harm arose from conflict with the housing policies of the development plan, including the Neighbourhood Development Plan, these policies were given reduced weight as the Council was unable to demonstrate a five year housing land supply. There was also harm as a result of encroachment into the landscape and the impact on the form and settlement pattern on the west side of the A38 and the loss of grade 2 and 3a agricultural land. Reasons for refusal were recommended in relation to the absence of obligations in respect of affordable housing and social infrastructure; however, the applicant had indicated that they would agree to such obligations so in the event of an appeal those matters could be addressed. Overall, whilst the benefits of the scheme would be substantial, Officers considered that the identified harms – particularly the conflict with the Neighbourhood Development Plan - would result in unacceptable impacts which significantly and demonstrably outweighed those benefits and, for that reason, the Officer recommendation was to refuse the application. The Technical Planning Manager proceeded to show a video of the application site serving as a virtual site visit for the Committee.

- 16.39 The Chair indicated that a member of the public had registered to speak in objection to the proposal but was unable to join the remote meeting, as such, in accordance with the addendum to the Scheme for Public Participation at Planning Committee, the statement would be read out by an Officer. The statement set out that the objector considered the overall impact of this development would be profoundly negative and would add to the challenges faced by the village. It went against the real world experiences of the village that he had personally witnessed, having worked and lived in the area for over 30 years, and was contrary to the stated desire of the Parish and its community who wanted to see modest development over time. The village had suffered from flooding for many years and ponds and wells close to the proposed site confirmed a naturally high water level, even under normal conditions. Just this year, Nature in Art had to close to the public due to floods making its drive impassable; gardens of houses on the A38 close to the site had flood water in them; and Sandhurst Lane had flooded. The reality was that actual flooding was a genuine and ongoing experience disrupting residents' lives. Building 100 houses on the site proposed would only exacerbate the problem and pose a significant and increased threat to existing dwellings which included precious listed properties. The existing drainage was already inadequate and regularly struggled to cope, as did the culverts and brooks – adding this number of houses could only make matters worse. In addition, the impact of climate change had to be taken into account; considering the flooding history in the area, this development would not help residents to protect themselves from climate change threats and was likely to make the village more vulnerable rather than more resilient. The junction of Sandhurst Lane and Tewkesbury Road was already a dangerous spot and was frequently used by very large tractors and farm lorries as well as cars and horses. Regular hold-ups on the A38 often attracted traffic to the lane as a shortcut making an already tortuous route more dangerous still. A development of this size using the lane as its main point of access could only add to these problems and further congestion and accidents were an inevitability, made worse by the increased number of cyclists on the road and the lack of pavements, so the safety of local people would be put at risk. Finally, the significant size of the proposal could only have a negative impact on the rural character of Twigworth

which was valued by residents. The site was precious greenfield land, not allocated for housing development, and, given that the larger development was already underway to the south east, the importance of maintaining this greenfield land and its biodiversity was especially crucial. The objector therefore urged the Committee to reject the proposal as an intrusive and inappropriate development.

16.40 The Chair invited a local Ward Member for the area to address the Committee. The local Ward Member expressed the view that the application rode roughshod over local policies, local knowledge and the evidence that backed that up to provide accurate, robust and appropriately relevant planning decisions. His concerns included a single point of access off Sandhurst Lane which was an accident-prone, small lane with passing places regularly used by farm vehicles and which flooded on a regular basis. The phrase 'blot on the landscape' could be used here as the proposed development would be a harmful encroachment into the countryside that failed to comply with Policy SD4 of the Joint Core Strategy and Policy H2 of the Down Hatherley, Norton and Twigworth Neighbourhood Development Plan and would also result in the loss of best and most versatile agricultural land. The Neighbourhood Development Plan laid out plans for the area, complete with gradual growth and the nature of future development, and a site of this size would undermine that. This was supported by the Council's Urban Design Officer who considered that the scale of the development would have a negative impact on the rural character of the Twigworth settlement. Furthermore, the proposal was contrary to the landscape protection aims and objectives of Policy SD6 of the Joint Core Strategy. All of the local Parish Councils objected to the proposal, along with residents, there were no policies in the Tewkesbury Borough Local Plan which allowed for the type of development proposed and additional housing need for Twigworth had not been established through the development plan. Therefore, the proposal also conflicted with Policy SP2 and SD10 of the Joint Core Strategy. The site fell outside the defined settlement boundaries proposed within the emerging Tewkesbury Borough Plan and Policy RES3 stated that, outside of the defined residential boundaries, the principle of new residential development would be considered acceptable where it was very small scale in rural settlements in accordance with Policy RES4. The accompanying reasoned justification advised that, within the rural areas, i.e. those parts of the borough located outside of a defined settlement boundary, a restrictive approach was required to new residential development consistent with advice at Paragraph 79 of the National Planning Policy Framework and Policy SD10 of the Joint Core Strategy so to not undermine the spatial strategy and its distribution of development. Taking into account the Secretary of State's comments in the Oakridge, Highnam appeal decision, even without the five year housing land supply or the Neighbourhood Development Plan allocating sites, the decision represented an expression of how the community wished to shape its local environment. With this in mind, the planning evidence all pointed towards supporting the Council's local plans and refusing the application in line with the Officer recommendation.

16.41 The Chair indicated that the Officer recommendation was to refuse the application and he sought a motion from the floor. It was proposed and seconded that the application be refused in accordance with the Officer recommendation. A Member drew attention to Page No. 154 of the Officer report and the comments made by the Parish Councils in relation to the Sandhurst Lane/A38 junction, and Page No. 156, Paragraphs 4.6 and 4.9 which referenced the proposed pumped solution for discharge to the ditch course to the north of the site and the need for access to maintain the drainage. He recalled that Officers had previously stated that the Environment Agency was not happy with electric pumping to Cox's Brook as the electricity could go off, as it had done during the 2007 floods. Landowners between the site and the brook would not allow a pipe to go through in any case so there remained an issue in relation to flooding and drainage which was generally

the case in Sandhurst. He also raised concern that Norton Primary School was already at capacity so he was unsure how it would accommodate more children from the new buildings if the development was allowed to go ahead. With regard to the Section 106 contributions required by the County Council, a Member questioned why a library contribution was required and he indicated that he would like to know before the next Committee meeting how many libraries there were in the county which were staffed and paid for by the County Council.

16.42 Upon being taken to the vote, it was

RESOLVED That the application be **REFUSED** in accordance with the Officer recommendation.

PL.17 CURRENT APPEALS AND APPEAL DECISIONS UPDATE

17.1 Attention was drawn to the current appeals and appeal decisions update, circulated at Pages No. 187-190. Members were asked to consider the current planning and enforcement appeals received and the Ministry of Housing, Communities and Local Government appeal decisions issued.

17.2 It was

RESOLVED That the current appeals and appeal decisions update be **NOTED**.

The meeting closed at 1:11 pm

Appendix 1**ADDITIONAL REPRESENTATIONS SHEET**

Date: 21 July 2020

The following is a list of the additional representations received since the Planning Committee Agenda was published and includes background papers received up to and including the Monday before the meeting.

A general indication of the content is given but it may be necessary to elaborate at the meeting.

Item No	
5b	<p>20/00453/FUL</p> <p>The Pavilion, Cold Pool Lane, Badgeworth</p> <p>The site notice expired on 9 July 2020 and no public representations were received.</p>
5d	<p>19/01098/FUL</p> <p>Land To The East Of Horsbere Drive, Longford</p> <p>A letter has recently been received from the agent on behalf of the applicant, Gloucester City Homes, which outlines their concerns with a number of items in the Committee report. This was also sent direct to the Planning Committee. The letter is attached in full.</p> <p><u>Landscape</u></p> <p>As set out in the Committee report, comments from both the Council's Landscape Officer and Tree Officer have been sought in respect to the acceptability of the proposed landscaping of the site. The Council's Tree Officer has confirmed that more tree planting should be incorporated within the scheme to soften the impact of the development to the existing houses at Whitefield Crescent and to give a visually more attractive appearance from Longford Land and Clocktower Road. Further, tree planting would also encourage wildlife to the small open spaces around the site and would give welcome shade to parked cars and add interest. A schedule detailing sizes and numbers/densities of all proposed trees/plants and specification for operations associated with plant establishment and maintenance that are compliant with best practice will be required, as would planting pit details to ensure the survival of any trees in car parking areas. Should permission be granted, these details could be secured by condition.</p> <p><u>Impact upon Residential Amenity</u></p> <p>As previously detailed in the Committee report, concerns have been raised by local residents over potential odour issues from the proposed bin stores upon neighbouring amenity. Following further consultation, the Council's Environmental Health Officer has confirmed that, provided there is adequate bin provision and that all bins are the self-closing type and are collected/emptied regularly, there is unlikely to be an odour concern associated with the proposed bin stores. With regard to the bin provision, in accordance with the guidance set out in the Council's Waste and Recycling Guidance for Developers, both the proposed bin stores would need to be slightly larger to accommodate the number of bins required to be stored. Given there would be scope within the site to accommodate the additional bin space required, Officers consider the development could provide adequate bin provision, subject to satisfactory amendments.</p>

5f	<p>16/00904/OUT</p> <p>Land to The Rear of Chestnut Tree Farm, Tewkesbury Road, Twigworth, Publicity and Representations</p> <p>An additional letter of objection has been received and is attached in full.</p>
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Item 5d 19/01098/FUL - Land to The East of Horsbere Drive, Longford

17 July 2020

To all Planning Committee Members, Tewkesbury Borough Council

[issued by email only]

Dear Councillor

**Horsbere Drive, Longford
Full Planning Application for the construction of 2No. apartment blocks
comprising 33 dwellings and associated parking and landscaping.**

On behalf of Gloucester City Homes (GCH) I am writing to you with regard to application ref. 19/01098/FUL to address a number of matters missing from the officer report, and with regard to specific areas there is sadly clear potential for members to be misdirected by the report as drafted. I hope you will therefore find this letter helpful in order to allow for a more balanced and reasoned debate next Tuesday.

Background

GCH has been successful over the last few years in developing 205 new affordable homes across the County. However, the need to provide more affordable homes remains acute: at the time of writing there are 128 households registered as waiting for a 1-bed property and 90 households waiting for a 2-bed property in Longford alone.

Your Housing Officer and Homes England have approved this proposal and have allocated £1.89million of grant with GCH ring-fencing a further £3.4million of investment within their Business Plan.

What is completely absent from the committee report is that this application started life as a 2No. 4 storey apartments blocks containing 36 apartments. This proposal received a generally positive response from planning officers at the pre-application stage (initiated in August 2019) and, on the basis of being able to move forward with a positive recommendation, the council entered into a Planning Performance Agreement (PPA) on 21 November 2019 to get the application to committee in February 2020– for which GCH paid a further £8,000 on top of the planning fee.

The application was then allocated to a different planning officer to the officer who completed the pre-application discussions. Despite several amendments to the proposals in accordance with and beyond the pre-application advice, the new and current planning officer has in our view 'moved the goal posts' by raising of new concerns over design and scale. These matters were not mentioned as fundamental issues during our pre-application discussions, and did not form part of the PPA process which should have led to an original committee date of February 2020.

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REGISTERED NO: ENGLAND 06114677

It is our understanding that the council would not have entered into a PPA if the timescales were not achievable and/or if there were fundamental issues with the application. We have pointed this out to officers but have not received a satisfactory response to explain this matter.

The committee report

More worryingly relative to the veracity of the committee report is the fact that the architectural design concerns in front of you are **not** held by the council's own expert on design – the Urban Design Officer (UDO). The report before you is highly selective on which parts of the UDO's comments to report. It has picked out only part of the UDO's comments on the original 4 storey proposal, and has completely failed to report the UDO's comments on the amended 3 storey proposal. I have attached both sets of comments at Appendices A and B, and I have highlighted the relevant parts. You will see that the council's own expert on design has no objection to the layout and design of the proposal.

Furthermore, the committee report seeks to give you the impression that the context of the application site is mainly two storeys or lower, and where there are three storey buildings these are described as being in less prominent locations. I would urge you to visit the site and wider housing estate to the north west in advance of the meeting for yourselves. You will see that there are numerous three storey buildings on the wider housing estate, including those shown in the presentation photographs of the site, with many in 'gateway' locations or where there is a need to emphasise corners. Indeed, as the application site is a prominent 'gateway' location (with two principal corners) compared to those within the estate (with a wide road and open car park in front of it), all design guidance points to the fact that this should be emphasised with a taller building to mark the destination and sustainable location.

The National Design Guide is clear at paragraph 69 that taller buildings can play a positive urban design role in the built form, acting as landmarks, emphasising important places. This is precisely the case here – it is a highly sustainable location with shops opposite and a bus stop just outside the site, coupled with the wide road and expanse of parking opposite it is crying out for a greater level of enclosure to make a positive contribution to views and the skyline.

There are also a number of completely new matters in the committee report which have not been discussed with us at all despite the existence of a PPA. For example, the matters of landscaping, odour, and car parking are all issues not previously mentioned to us despite the application being submitted back in November 2019.

I expect landscaping and odour are both matters capable of being dealt with through suitably worded planning conditions. However, in respect of car parking, the comments in the officer report are again disingenuous at best. Just so that you are clear, our transport consultant agreed the car parking methodology with Gloucestershire County Council (GCC) during pre-application discussions, which was subsequently agreed through the planning application process. The former Head of Highways at GCC praised the work of our transport consultant in determining a suitable methodology for car parking provision. GCC agreed that the ward that the application site is in is not representative of site's location, and therefore GCC agreed that a different ward would be more appropriate. This has not been reported to you as this was not discussed with us prior to the report being written.

The car parking provision is based on expected car ownership levels, in full accordance with paragraph 105 of the NPPF. The car parking standards in the NDP do not appear to be based on local car ownership data and therefore are in direct conflict with guidance contained within the NPPF. Furthermore, the NDP standards are only to be applied 'where possible', not without question. It should be noted that GCC actually advised at the pre-application stage that the car parking numbers were an over-provision and requested that numbers were reduced, which we did not agree to.

The adjacent ward of Kingsholm has been utilised, which is more representative of the suburban nature of Longford. This indicates that 57%, 38% and 5% of one bed dwellings have no car, one car and two cars respectively. In the case of two bed dwellings 36%, 56% and 8% have no car, one car and two cars respectively. Taking into consideration the level of car ownership within the Kingsholm ward, it is possible to calculate a weighted average for a development of 33 affordable flats on a pro-rata basis.

The Census review suggests that 13 flats will not own a car, 17 will own one car and three will own two cars. Based on the Census review a total of 23 car parking spaces will be required to serve the application site. In addition, visitor car parking is provided at a rate of 0.33 spaces per dwelling, this equates to 10 spaces. Based on the Census data a total of 23 spaces are required with an additional 10 visitor spaces provided for a total of 33 dwellings across the application site.

A sensitivity test has also been undertaken using the Census data for all of Gloucestershire. This indicates that 54%, 40%, 5% and 1% of one bed shared ownership; rented and living rent free flats have no car, one car, two cars and three cars respectively. In the case of two bed dwellings 40%, 47%, 12% and 1% of two bed shared ownership; rented and living rent free flats have no car, one car, two cars and three cars respectively. Based on a development of 33 affordable flats in Gloucestershire this review suggests that 14 flats would not have a car, 15 flats would own one car and four flats would own two cars. Based on the Census review a total of 23 spaces would be required, with a total of 33 spaces provided across the application site, visitor spaces would be provided at a rate of 0.33 spaces per dwelling. The validation based on the whole of Gloucestershire provides a similar breakdown and overall number of spaces required based on the ward Census data.

Although in our view, as previously agreed with the GCC, it is considered that the Kingsholm ward is more representative of the suburban nature of Longford, a sensitivity test has been carried out for the Innsworth and Down Hatherley Ward, given the concerns raised by the committee report. The Census data for the Innsworth and Down Hatherley ward indicates that 57%, 36% and 7% of one bed shared ownership; rented and living rent free flats have no car, one car and two cars respectively. In the case of two bed dwellings 46%, 44% and 20% of two bed shared ownership; rented and living rent free flats have no car, one car and two cars respectively. Based on a development of 33 affordable flats in the Innsworth and Down Hatherley ward this review suggests that nine flats would not have a car, 19 flats would own a car and five flats would own two cars. Based on the Census review, a total of 29 spaces would be required, with a total of 33 spaces provided across the application site, visitor spaces would be provided at a rate of 0.12 spaces per dwelling. The sensitivity test based on the Innsworth and Down Hatherley Ward would require a larger number of spaces to serve the application site with a lower number of visitor spaces.

The larger number of spaces to serve the application site can be provided within the development proposals with a visitor parking provision of 0.12 space per dwelling. Although this is not considered representative of the application site in Longford, it demonstrates that the application site does have sufficient provision including visitor spaces, based on the more rural ward in which it is located.

Finally, in relation to S106 contributions, we respectfully requested on 19 June 2020 that officers report the matter of S106 contributions as 'unresolved' pending:

1. a full response to my letter dated January 2020 (Appendix C),
2. a full response to a legal opinion submitted more recently (Appendix D) and
3. completion of the viability analysis (which was unresolved until earlier this week).

Instead, officers have reported this matter as already resolved. Furthermore, officers have reported at paragraph 8.8 that, "*the applicant is unwilling to enter into a legal agreement to secure a contribution towards education and library provision.*" I can confirm that the applicant has never specified as such, rather we have robustly set out our position as information became available and we have been waiting for 5 months for a suitable response that dealt with all the points we have made in order to fully consider our final response.

Unfortunately we still haven't received a response that deals with all our concerns, so to report the application in the way that officers have is untrue, unfair and unjust.

Members should also be aware that the stance of officers on this matter in a wider sense (i.e. seeking S106 contributions for matters that are meant to be covered by a CIL rate for open market housing based on a known requirement for affordable housing) appears to be at odds with the stance of other councils in Gloucestershire, is resulting in applicants having to spend thousands of pounds on viability assessments, has been holding up hundreds of homes from being delivered by well over 6 months now (for example, just the clients of SF Planning currently have hundreds of open market and affordable homes 'stuck' in the system because of this matter), will impact on the deliverability of development at all scales, is having significant impact on the economy at what couldn't be a worse time, and must be damaging the council's ability to demonstrate a 5 year supply of housing.

It has always been our understanding that grant shouldn't be used for S106 funding (i.e. public money being recirculated for a public service). The whole point of the CIL exemption was to stop this happening, and to allow registered providers to benefit from state relief to support "*disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions.*" (this is part of the EU State Aid rules).

Officers have unfortunately failed to report any of this to you, and have instead suggested that the applicant should use money that it would have otherwise used to keep social rents low to fund education places that will not be generated by this scheme. This is because the homes here will only go to individuals who are already residents of Gloucestershire on the housing waiting list meaning that any children who occupy the homes will already be in the Gloucestershire school system – they will not be generating additional 'population' for new place requirements at this site as a matter of fact.

All of these points have been made to officers already, so it is even more surprising that you are advised that this is a matter which weighs against the proposal. Our opinion remains that S106 contributions towards education are not lawful for the reasons set out at appendices C and D. In which case, this is a neutral factor as it means that grant money will not be taken away from the ability to keep social rents lower to help disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions

Even if members decide that education contributions are required then a lack of an agreement on this matter should still be considered as a neutral factor relative to the tilted balance given that it will be taking grant money away from the ability to keep social rents lower to help disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions.

I am sorry to be so blunt and direct on this matter but the applicant does feel that this has been very unfairly handled and not appropriately reported.

Conclusion

Please accept my apologies that I have felt the need to write to you at such length, but I trust that you will understand why. The committee report presents a series of benefits and alleged harms to you. I would be very grateful if you would take some time to consider that you have not been presented with all of the facts with regard to all of the alleged harms:

1. In respect of design, I would urge you to consider that your own expert on design raises no objection to the architectural design. This rather indicates that this isn't a matter that weighs heavily against the application, rather there is clearly a difference of opinion between officers such that this matter alone could not significantly and demonstrably outweigh the benefits.
2. In respect of car parking, the council's expert consultee on this matter raises no objection, and you have not been presented with all the facts. This matter is not capable of being a harm given the sustainable location and level of car ownership by tenants of affordable housing.
3. In respect of S106, in view of the above, this matter is not a harm, it is a neutral matter regardless of whether or not you resolve that education contributions are needed (given that they would have to be paid for from the Homes England grant money).

I therefore urge you to consider:

1. the significant weight to be given to the provision of affordable housing,
 2. the moderate weight given to the economic benefits (as set out in the report but could easily be given a high level of weight) and also,
 3. the great weight that paragraph 68 of the NPPF advises you to attach to the benefits of using suitable sites within existing settlements for homes
- alongside the fact that all the alleged 'harms' have serious questions to be answered such that they are unlikely to significantly and demonstrably outweigh the benefits.

We therefore urge you to support this application to enable GCH to make a significant investment in our community and deliver much needed affordable homes.

Yours faithfully,

Mark Godson
SF Planning Limited

cc Victoria Stone – case officer

Appendix A

Consultee Comments for Planning Application 19/01098/FUL

Application Summary

Application Number: 19/01098/FUL

Address: Land To The East Of Horsbere Drive Longford GL2 9BY

Proposal: Construction of 2No. apartment blocks comprising 36 dwellings and associated parking and landscaping.

Case Officer: Victoria Stone

Consultee Details



On Behalf Of: Urban Design Officer

Comments

DC officer: Victoria Stone

Contact: Alice Goodall

Telephone 2033

09.12.2019

URBAN DESIGN OFFICER CONSULTATION RESPONSE

APPLICATION NO: 19/01098/FUL

LOCATION: Land Off Horsebere Drive, Longford, Gloucester

PROPOSAL: Construction of 2No. apartment blocks comprising 36 dwellings and associated parking and landscaping.

COMMENTS

Site Description

The site is located within the recent residential development at Longford. This land was allocated

in the previously approved application as part of the local centre to provide services and facilities for the new residents.

Proposals

Two blocks of 3/4 storey affordable housing with associated car parking.

Comments

Its loss as retail, employment or community use would be disappointing and would have a negative effect on the overall quality of the new place that has been created at Longford. Successful communities require a range of local services and the loss of this site would reduce the opportunities for this area to operate as a sustainable mixed use community. Long term this area will see significant residential growth and without the facilities to serve them we risk creating very unsustainable developments where people have to drive to access facilities.

I do not object to an element of residential use on this site to assist viability. For example a mixed use scheme that has smaller retail units on the ground floor with flats above or an element of retail/community use on part of the site and flats on another part of the site. Offices could also be another option on this site that would add to the vitality of this development.

The NPPF requires planning decisions to optimise the potential of a site to accommodate and sustain an appropriate mix of development and support local facilities (para 127. e)

Aside from the principle objection of losing the opportunity for a mix of uses on this new community. I have the following detailed comments on the appearance of the scheme.

The bin and bike store by block b are incongruous in the street scene, these would be better if they could be integrated into the building or behind the building line.

I have no object to the appearance of the blocks generally, but they would benefit from deep set windows and an overhand on the gables as this would give depth and shadow to the elevations.

We can condition the approval of materials but it may be beneficial to agree them before, in which case samples will be necessary. Large concrete tiles with a thick profile will not be acceptable.

Policies and Best Practice Guidance

NPPF (2018)

Chapter 8 - Promoting healthy and safe communities

Planning decisions should aim to achieve healthy, inclusive and safe places. Promote social interaction, through mixed use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods and active street frontages.

Chapter 9 Promoting sustainable transport

102. e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places.

Chapter 11 Making effective use of land

122. Planning decisions should support development that makes efficient use of land, taking into account: the identified need for different types of housing. The desirability of maintaining an areas prevailing character and setting, or of promoting regeneration and change and the importance of securing well-designed, attractive and healthy places.

Chapter 12 Achieving well-designed places

The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Joint Core Strategy (JCS)

Policy SD4 This policy requires new development to respond positively to and respect the character of the site and its surroundings, enhancing local distinctness and addressing the urban structure and grain of the locality

Recommendation

Aside from the loss of an area designate for retail, commercial or community uses, I do not object to the layout or appearance of the scheme aside from the minor comments above.

Appendix B

Consultee Comments for Planning Application 19/01098/FUL

Application Summary

Application Number: 19/01098/FUL

Address: Land To The East Of Horsbere Drive Longford GL2 9BY

Proposal: Construction of 2No. apartment blocks comprising 33 dwellings and associated parking and landscaping.

Case Officer: [REDACTED]

Consultee Details

Name: [REDACTED]

Address: tbc, Tewkesbury GL20 5TT

Email: Not Available

On Behalf Of: Urban Design Officer

Comments

Urban Design comments on amended plans.

The amended plans have addressed some of my previous concerns. I have no objection to the architectural appearance, subject to approval of exact materials. I would reiterate my previous comments regarding the principles of only residential use on this site.

Its loss as retail, employment or community use would be disappointing and would have a negative effect on the overall quality of the new place that has been created at Longford. Successful communities require a range of local services and the loss of this site would reduce the opportunities for this area to operate as a sustainable mixed use community. Long term this area will see significant residential growth and without the facilities to serve them we risk creating very unsustainable developments where people have to drive to access facilities.

I do not object to an element of residential use on this site to assist viability. For example a mixed use scheme that has smaller retail units on the ground floor with flats above or an element of retail/community use on part of the site and flats on another part of the site. Offices could also be another option on this site that would add to the vitality of this development.

The NPPF requires planning decisions to optimise the potential of a site to accommodate and sustain an appropriate mix of development and support local facilities (para 127. e)

The national urban design, states that well designed places have a mix of uses including local services and facilities to support daily life.

Appendix C



24 January 2020

Victoria Stone
Tewkesbury Borough Council
Council Offices
Gloucester Road
Tewkesbury
Glos

Dear Victoria

Education Contributions as it relates to S106 and CIL

I am responding to the email the you sent me on 21 January 2020 as it relates to application ref. 19/01098/FUL at Horsbere Drive, Longford (see Appendix A).

For the record, I do not want this response to hold up our client's application at Horsbere Drive. Without prejudice to the content of our 'in principle' concerns, Gloucester City Homes (GCH) has engaged a viability consultant for application ref. 19/01098/FUL and GCH wants the application to move forward on this basis. However, there are more fundamental issues with the response from Gloucestershire County Council (GCC) at Appendix A that I cannot let pass. It is probably something that Paul Hardiman needs to address so I have issued a copy of this letter to Paul.

In relation to the application at Horsere Drive therefore, whichever route brings about the quickest solution should be used to determine the application:

1. A conclusion on the matters that this letter queries in favour of no contributions.
2. Viability analysis (to follow next week).

In the first instance the comments at Appendix A do not actually address the fact that the calculations for education contributions (and the document that these calculations are found within) pre-dates CIL. The calculations do not therefore take into account the impact of the JCS wide 'pot' which will provide for education. They are therefore an out of date and unreliable mechanism to assess impact.

Indeed, if correct, some of the comments from GCC at Appendix A must surely undermine the entire basis on which CIL was adopted and found legally compliant (and viable) by the CIL Examiner:

"GCC is not aware of how CIL rates have been calculated and to what extent allowances have been made for affordable housing"

"there is no clear arrangement in place to determine how such CIL monies are to be allocated"

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REGISTERED NO: ENGLAND 06114677

The CIL rates were set on what would and wouldn't be viable across the whole JCS area. This has enabled CIL rates to be lower in Gloucester in the knowledge that CIL receipts from Tewkesbury and Cheltenham would allow a pot to be formed for infrastructure across all three council areas. The CIL rates were also set in the knowledge that affordable housing is exempt, allowing the CIL receipts from the private sector housing to 'subsidise' the known affordable housing need in terms of its impact on infrastructure.

In relation to the above, paragraph 33 of the Examiner's Report for the CIL Examination states:

"With respect to section 106 infrastructure costs, it is assumed for the majority of generic sites that infrastructure requirements are likely to be met off site through CIL. Therefore, section 106/278 infrastructure costs would be significantly scaled back and in many cases would not apply"

And paragraph 11 confirms:

*"The key categories of infrastructure to which the Councils propose to direct CIL revenue are transport, **education**, community and culture, flood risk management, healthcare, and green infrastructure."*

It is simply inexcusable for GCC Education to now be seeking *ad hoc* significant education contributions (at full pre-CIL rates) from individual development sites through S106 in the light of the comments of the CIL Examiner, and in the light of the lack of inclusion of CIL receipts in their calculations. It is even more unacceptable for GCC to specify that:

1. GCC isn't aware of how CIL rates have been calculated – surely they were involved in the Examination in order for the Examiner to conclude legal compliance appropriately in her Final Report?
2. There is no clear arrangement in place to determine how much CIL monies are to be allocated - surely they are allocated in accordance with the Evidence Base for the CIL Examination?

Indeed, the Planning Practice Guidance states at paragraph 014 [Reference ID: 25-014-20190901]:

"What is the role of the county council?"

County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy and should work closely with them in setting priorities for how the levy will be spent in 2-tier areas.

Collaborative working between county councils and charging authorities is especially important in relation to the preparation of infrastructure funding statements (see Schedule 2 introduced by the 2019 Regulations) bearing in mind the potential impact on the use of highway agreements by the county council and the timely delivery of schools."

It goes on to state at Paragraph 170 [Reference ID: 25-170-20190901]:

"Authorities should set out in an infrastructure funding statement which infrastructure they intend to fund and detail the different sources of funding."

Whilst noting the above, I am aware that GCC's response at Appendix A about GCC's lack of involvement in the formulation of the CIL rate simply is not true. This is because the Examination website¹ includes an Infrastructure Delivery Plan which includes the very figures GCC is now seeking through S106 to justify the CIL rate (see the second link to the 'Strategic Infrastructure Delivery Plan' below the 'Infrastructure' heading under 'Evidence Base' at footnote 1 to this letter). GCC also took part in the Examination as evidenced by their Matter 10 Statement at Appendix B to this letter. Furthermore, the ARUP JCS Infrastructure Delivery Plan from 2014 also confirms, "Education forecasts for the purpose of this IDP have been supplied by Gloucester County Council." This makes it clear that education contributions formed a very clear part of the CIL rate formulation, but that GCC wanted some reassurances over governance and distribution. The response at Appendix A confirms that these reassurances do not exist despite the fact that they were known back in March 2016.

The GCC response at Appendix A is also revealing in this respect as it also states, "*CIL is currently set at a level which cannot meet the full infrastructure spending gap.*" How do they know this if they don't even know (as they claim at Appendix A, but the evidence on the JCS website suggests otherwise) how the CIL rates have been calculated or how much they will be receiving from CIL receipts (despite all of the requirements as set out above)?

I therefore continue to object to the manner in which GCC (and Tewkesbury Borough Council (TBC) as the charging authority) are apparently (according to GCC's email set out at Appendix A) failing to deal with the above.

This requires urgent clarification as it is affecting a number of applications that we have in at the moment in TBC's area and in Gloucester City. Indeed, from the content of Appendix A this appears to be a dispute between GCC and the charging authority which should have been resolved between the councils; it should not have 'spilled out' such that both the private sector and in this case a Registered Provider of affordable housing (using public grant funding from Homes England) are having to not only unfairly pay viability and other consultants to resolve the dispute, but this is causing potential delay and therefore further unnecessary expense.

I look forward to urgent clarification.

Yours sincerely

Mark Godson **MRTPI**

cc Paul Hardiman, Community Infrastructure Levy Manager

¹ <https://www.jointcorestrategy.org/examination>

NOTE Appendices to this letter have been removed for brevity – please contact Mark Godson at SF Planning if you would like a copy of them – mark@sfplanning.co.uk

Appendix D

IN THE MATTER OF PLANNING APPLICATION REF 19/01098/FUL FOR
PERMISSION TO DEVELOP LAND OFF HORSBERE DRIVE, LONFORD, GL2 9BY

OPINION

1. Tewkesbury Borough Council ("TBC") is seized of planning application 19/01071/FUL submitted by those instructing me. I am instructed to give my opinion on financial contributions requested by Gloucestershire County Council ("GCC") in respect of education and library infrastructure (see its email consultation response dated 8 January 2020) and justified on the basis of their Local Development Guide which is in the process of being 'refreshed' ("LDG") and the Pupil Product Ratios ("PPR") applied by GCC.
2. GCC's email also stated:

"please note that on the potential granting of the application the decision will be made between the LPA and [GCC] as to whether the contributions will be secured via S106 or via CIL."
3. Officers at TBC have considered the GCC "request" and have indicated that they are satisfied that, on the basis of the scheme including a policy-compliant 40% affordable housing, the CIL payment due on the remaining 60% would mean that it would not be viable to require further s106 payments. That would leave TBC (no doubt having sought the views of GCC) to decide how to apply the CIL payment between competing infrastructure projects.
4. However, TBC officers have also indicated that if the development were to be brought forward as a 100% affordable housing scheme, which would be totally CIL exempt, it would be viable to require some s106 contributions to education through a s106 obligation.

5. In fact, the scheme has, from a very early stage, been promoted as a 100% affordable housing project. The 'mix' of apartment sizes was agreed with TBC's Housing Enabling Officer and Homes England has agreed to provide a grant on that basis.
6. My advice is sought on whether GCC's request for contributions based on the PRR set out in the LDG lawful?
7. CIL reg 122(2) sets out the well-known tests which must be satisfied to make a planning obligation lawful:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development."
8. As I set out in my Opinion dated 26 May 2020 which those instructing me have submitted to GCC as part of their consultation response (and which TBC has been provided with a copy), the proposed LDG is unlawful. Those instructing me and others have also submitted consultation responses casting doubt on the planning merits and evidence behind the LDG. Indeed, TBC, which was also a consultee, may well also have done so – it is known that some LPA have done so even if TBC has not.
9. GCC is under a legal duty to consider carefully all consultation responses with an open mind and the product of consultation must be conscientiously taken into account in finalising any proposals (see *R v North and East Devon HA Ex p. Coughlan* [2001] Q.B. 213). Given the weight and content of the objections submitted in the consultation process which have yet to be considered by GCC, the content of the LDG ought to be approached with extreme caution by TBC at this stage. TBC will doubtless be familiar with the analogous situation concerning the weight to be given to emerging development plan documents in determining planning applications set out at ¶48 of the NPPF. In my opinion it ought

- to apply the same principles to the LDG when it comes to determine this planning application.
10. GCC's approach to calculating pupil generation by residential development and the costs of education infrastructure per pupil are both in dispute. GCC has been given detailed evidential rebuttal of its approach on both matters. There are thus considerable and significant "unresolved objections" (see NPPF ¶48).
 11. There is also the matter of 'double dipping' to consider given that the development will attract a CIL payment to TBC of £207.46 per square metre on the 'market housing' elements of the development. TBC will be aware that when the CIL rate was set (and independently examined by an inspector), education contributions made up a significant element of the CIL sum. To seek a s106 contribution from development for impacts that are already being mitigated by CIL would be 'double dipping' and could not be justified in the context of the three tests set out in Reg 122(2) (see above).
 12. TBC will be aware that the NPPF and PPG expect policies regarding infrastructure contributions to be set out in local plans (see my opinion of 26 May 2020). I am aware that TBC has submitted (18 May 2020) the emerging Tewkesbury Borough Plan 2011-31 to the Secretary of State for independent examination and is currently consulting alongside Cheltenham and Gloucester City council on a revision to the JCS. This is the obvious place to bring forward any changes to TBC's existing policy or practice.
 13. In addition, while the 2019 amendments to the CIL Regulations removed Reg 123, they introduced a requirement (Reg 121A) for a infrastructure funding statement ("IFS") to be prepared by 31 December 2020.
 14. PPG advise:

"What should an infrastructure funding statement say about future spending priorities?"

The infrastructure funding statement should set out future spending priorities on infrastructure and affordable housing in line with up-to-date or emerging plan policies. This should provide clarity and transparency for communities and developers on the infrastructure and affordable housing that is expected to be delivered. Infrastructure funding statements should set out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by the levy or planning obligations. This will not dictate how funds must be spent but will set out the local authority's intentions.

This should be in the form of a written narrative that demonstrates how developer contributions will be used to deliver relevant strategic policies in the plan, including any infrastructure projects or types of infrastructure that will be delivered, when, and where.

Paragraph: 177 Reference ID: 25-177-20190901"

15. Again, the preparation of the IFS would appear to be a further appropriate place to make any changes to existing practice. No doubt TBC will seek to engage stakeholders, including GCC and developers, in the drawing up of its IFS.
16. I am not aware that TBC has yet published an IFS. Until it does, as PPG on Planning Obligations makes clear (see ID-23b ¶003 and 006), TBC cannot combine s106 contributions with CIL receipts to fund particular infrastructure. For the moment, CIL receipts are used to fund education and library infrastructure in the Borough of Tewkesbury.
17. GCC also apparently now takes the view that pupil generation should be considered from both market and affordable housing elements of the development and financial contributions sought in respect of both of them. This would, I am instructed, be a departure from the clearly established custom and practice adopted by TBC in respect of affordable housing. TBC, I am instructed, does not do so on the basis that affordable housing already attracts public subsidy, and so any contributions would simply amount to one 'pot' of public subsidy funding

another. Such a custom and practice can give rise to a legitimate expectation (see *Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755 per Laws LJ at [28]). In my opinion dated 26 May 2020 at ¶17+ I set out the law on when a legitimate expectation can be frustrated. In summary TBC would have to show a sufficient public interest and adduce evidence to explain and justify its new approach (see *Paponette & Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32). TBC would therefore be well advised to consider very carefully any change to its current established practice.

18. In addition, TBC will be aware that social housing attracts exemption or relief from CIL under Reg 49/49A of the CIL Regulations. This is a clear expression of government intent. It would be perverse, in my opinion, if the exemption/relief from CIL for obvious public policy reasons was to be frustrated by (re)imposing a similar liability under a s106 obligation.
19. So, in respect of the correct approach to the calculation of education contributions my opinion is:
 - a. It is for TBC to decide what any contribution should be. GCC is a consultee, not the decision-taker.
 - b. In doing so, TBC should understand that GCC's methodology and evidence base is disputed and the dispute is unresolved in respect of both the PPR (ie the number of pupils that will be generated by the development) and the 'cost per pupil' of mitigating infrastructure.
 - c. TBC has a well established custom and practice in not seeking s106 contributions (education and libraries) from affordable housing development which gives rise to a legitimate expectation that it will continue unless TBC shows a sufficient public interest and adduces evidence to explain and justify a new approach.

20. For the moment, nothing further occurs. If those instructing me would like to discuss this matter further, then they should not hesitate to contact me by email. I am happy for this Opinion to be disclosed to the Council should those instructing me wish to do so.

Hugh Richards
No 5 Chambers
Birmingham – London – Bristol – Leicester

19 June 2020

Tel: 0845 210 5555
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IN THE MATTER OF PLANNING APPLICATION
REF 19/01098/FUL FOR PERMISSION TO
DEVELOP LAND OFF HORSBERE DRIVE,
LONFORD, GL2 9BY

OPINION

Mark Godson MRTPI
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Email: mark@sfplanning.co.uk

Ref:

Hugh Richards
19 June 2020
Ref: 786045

Item 5f 16/00904/OUT - Land To The Rear Of Chestnut Tree Farm, Tewkesbury Road, Twigworth

Comments for Planning Application 16/00904/OUT

Application Summary

Application Number: 16/00904/OUT

Address: Land To The Rear Of Chestnut Tree Farm Tewkesbury Road Twigworth Gloucester Gloucestershire

Proposal: Outline proposal for up to 100 dwellings, together with associated public open space and equipped children's play space, landscaping, access and associated infrastructure. All matters reserved except for access.

Case Officer: Miss Lisa Dixon

Customer Details

[REDACTED]

Comment Details

Commenter Type: Members of the Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We continue to strongly object to this application and now that the Neighbourhood Development Plan for the area has been adopted this is even more of a significant objection on the following grounds.

The objectives of the Neighbourhood Development Plan is in keeping the needs, nature, character and rural identity of the parishes, this will not be the case if this is allowed to progress any further especially with the additional 725 houses that have already been allowed. Twigworth has lost a significant amount of Green belt and open space already without losing further.

Objective 2 - The open rural character to be maintained with views of the vale landscape, Norton Hill, Wallsworth Hall and May Hill to remain for all to enjoy. With a development of this nature these views will be lost forever. The views of the cathedral have already been taken away from the village without the loss of these further views which need to remain for all.

Objective 3 - No undue traffic impact and congestion - Adding to the traffic issues that Twigworth already encounter and adding a further 100 dwellings along with the 725 already allowed, not taking into consideration the 74 new dwellings planned for Yew Tree Farm this will add significant additional traffic to an already overloaded A38 and lanes in the area. These lanes are shared by farm machinery, bikers, cyclists and horse riders making for a more dangerous outlook for all and increased pressure on the A38.

The NDP states that the 3 parishes including Twigworth should have protected the rural and agricultural character and identity and this should remain. Twigworth has already lost a significant amount of prime agricultural land and also an ancient ridge and furrow field without losing another significant area of agricultural rich land on the doorstep.

This development will increase the flood risk within the area. With the field itself being on the River

Severn side of the A38 adding more pressure to the fields and the drainage will increase surface water flooding and if not river flooding . the whole area is a flood disaster waiting to happen and although the new properties will be protected who will ensure the protection of the existing properties.

We must protect the remaining openness of parts of Twigworth and the A38 corridor allowing the appreciation of our heritage and to build close to heritage building and listed buildings will be detrimental to the area. We must take on board the NDP in keeping a sense of undeveloped and rural character in the area and this will be an un-duly harmful encroachment into the countryside with Twigworth and Sandhurst losing their rural identities as is happening with Twigworth and Innsworth. Please do not allow any more development in Twigworth as this is causing undue stress and anxiety to the residents of Twigworth and we do not need any more stress anxiety and feeling like we are not being listened to. The area cannot cope with any more housing, the infrastructure cannot cope with any more housing and we already fear for our existing properties and how our houses will cope with added flood water and our lives will be come a congested rat run of vehicles losing any rural outlook we ever had in the area.