

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Planning Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Tuesday, 23 January 2024 commencing
at 9:30 am**

Present:

Chair
Vice Chair

Councillor P E Smith
Councillor S Hands

and Councillors:

M Dimond-Brown, M A Gore, D J Harwood, M L Jordan, G C Madle, J R Mason, G M Porter,
R J E Vines, P N Workman and I Yates

also present:

Councillor M G Sztymiak

PL.53 ANNOUNCEMENTS

- 53.1 The evacuation procedure, as noted on the Agenda, was advised to those present.
53.2 The Chair gave a brief outline of the procedure for Planning Committee meetings, including public speaking.

PL.54 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

- 54.1 Apologies for absence were received from Councillor R J G Smith. There were no substitutes for the meeting.

PL.55 DECLARATIONS OF INTEREST

- 55.1 The Committee's attention was drawn to the Tewkesbury Borough Code of Conduct which was adopted by the Council on 24 January 2023 and took effect on 1 February 2023.
55.2 There were no declarations of interest made on this occasion.

PL.56 MINUTES

- 56.1 The Minutes of the meeting held on 19 December 2023, copies of which had been circulated, were approved as a correct record and signed by the Chair.

PL.57 DEVELOPMENT CONTROL - APPLICATIONS TO THE BOROUGH COUNCIL

- 57.1 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.

22/00610/OUT - Part Parcel 2352, Mythe Road, Tewkesbury

- 57.2 This was an outline application for residential development (up to 165 dwellings), associated works including infrastructure, open space, landscaping and pumping station; construction of a new vehicular access from Mythe Road and demolition of existing structures.
- 57.3 The Senior Planning Officer advised that this application was subject to a non-determination appeal which was due to be heard by way of Inquiry in April. The Council must therefore advise the Secretary of State of its views on the proposals which would be submitted to the Planning Inspectorate to inform the appeal. The application was in outline and sought planning permission for residential development of up to 165 dwellings, public open space, vehicular and pedestrian access from Mythe Road (A38), a pumping station and associated infrastructure. All other matters relating to access, appearance, landscaping, layout and scale were reserved for subsequent approval. The application site was located at The Mythe, approximately 1.2km north of Tewkesbury Town Centre via the A38, and would be located approximately 1km to the north-west of the defined settlement boundary of Tewkesbury as the crow flies, as defined in the proposals map to the Tewkesbury Borough Plan. The site extended to 11.75 ha of predominantly agricultural land, interspersed with some woodland subject to a Tree Preservation Order. The site sat on an elevated spur of land which lay between the river valleys of the Avon and Severn and Officers considered the site itself to be a 'valued landscape'. The site was also partially located within the setting of a number of designated heritage assets – most notably Grade II listed The Mythe and its associated Coach House; Grade II listed Uplands; and Tewkesbury Conservation Area to the south. The principle components of the development were: provision of up to 165 dwellings, of which, 40% would be affordable dwellings; removal of the existing farm track access to Mythe Business Park to create a new vehicular and pedestrian access to the south; retention of existing woodland; new woodland planting, particularly around the northern, eastern and southern boundaries; creation of a communal green area to the north of the retained woodland which would also contain a Locally Equipped Area of Play; Sustainable Drainage System (SuDS) and a pumping station; and, widening of the footway to provide a combined walking and cycling route along the A38. In terms of the principle of development, the application site was not allocated for housing development and was located outside of the settlement boundary of Tewkesbury. The application therefore conflicted with Policy SP2 and SD10 of the Joint Core Strategy and Policy RES3 of the Tewkesbury Borough Plan and the conflict with those adopted development plan policies was the starting point for decision making. As set out in the Committee Report, the Conservation Officer identified that the proposal would give rise to a high degree of less than substantial harm to the setting of The Mythe and Uplands; the Coach House to The Mythe would experience a moderate degree of less than substantial harm to its setting. The views into and out of Tewkesbury Town Conservation Area and the approach to the town would also experience a moderate degree of less than substantial harm. Whilst the site was not designated in the development plan, a Specialist Landscape Consultant had assessed the proposal and considered there were special characteristics in that it was on a spur of the Rivers Avon and Severn with aesthetic value to Tewkesbury and was considered valued landscape, therefore, the proposal would cause substantial harm to the landscape character. It was also noted that the planning obligations had not been signed. As set out in the Committee report, Officers did not consider that the public benefits of the proposal outweighed these identified harms to designated heritage assets. This was considered a clear reason to refuse the application in accordance with Paragraph 11(d)(i) and footnote 7 of the National Planning Policy Framework; therefore, whilst the Council could not currently demonstrate a five year supply of deliverable housing sites, the tilted balance in Paragraph 11 of the National Planning Policy Framework was not

engaged. As set out in the Additional Representation Sheet, attached at Appendix 1, Severn Trent Water was also objecting to the application as the applicant had failed to demonstrate that the proposed development could provide adequate foul drainage and therefore had failed to ensure that any risk of flooding and pollution from the development was appropriately mitigated. Although there would be benefits of the proposal through the provision of housing, economic benefits and the provision of a new pedestrian cycle route along the A38, overall, Officers considered that the proposal would not accord with the development plan when considered as a whole and, and having regard to all material considerations including the National Planning Policy Framework, there were clear reasons for refusing the proposed development. Members were therefore requested to consider a recommendation of minded to refuse.

- 57.4 The Chair invited a local Ward Councillor for the area to address the Committee. The local Ward Councillor indicated that he wished to support the Officer recommendation of minded to refuse. The location had a history of failed attempts to gain planning permission and merely reducing the number of dwellings from 250 to 165 could not overcome the main objections. At 1.2km from Tewkesbury, the development would be incongruous with open countryside and the existing settlement and Active Travel England concluded that it did not offer a credible sustainable transport alternative to the private motor car being some 20 minutes walking distance from any meaningful services, not having a regular or frequent bus service and not providing a safe and attractive route for cyclists. It was set on top of a valued landscape and the Council's Landscape Adviser had concluded that, despite mitigation measures, the application would result in a significant and harmful change to the landscape and character of the area far beyond the boundary of the site. The Council's Conservation Officer believed there would also be a high degree of harm to heritage assets such as The Mythe, Uplands and the Coach House as well as Mythe Farm, Mythe End and Tewkesbury Town Conservation Area. There would be loss of sand and gravel, a named safeguarded mineral resource, which the applicant had blatantly disregarded and there was an objection from Severn Trent Water that the application had failed to demonstrate how the development could provide adequate foul drainage and ensure that flooding and pollution would be prevented from entering the River Avon. Overall, whilst the Council was unable to demonstrate a five year housing land supply, he believed it was still necessary to protect the borough from the damage caused by speculative applications and that this application should be refused on the basis that the harm outweighed the benefits.
- 57.5 The Chair indicated that the Officer recommendation was minded to refuse and he sought a motion from the floor. A Member drew attention to Page No. 57, Paragraph 10.19 of the report, which stated that the Officers were seeking to clarify the categorisation of the agricultural land that would be lost and he asked if there was any update in relation to that. The Senior Planning Officer advised that Officers had received information from the applicant about a month ago but there had been no further enhancement to that; it was known that the land was Grade 3 but it was unclear whether it was category a) or b) – he imagined it was a lower category based on a visual assessment but was unable to confirm that. Should Members be minded to refuse the application in accordance with the Officer recommendation, it would be identified as a harm at the forthcoming appeal and clarification would be sought at that point.
- 57.6 It was proposed and seconded that the Council be minded to refuse the application in accordance with the Officer recommendation. The proposer of the motion indicated that, as advised by the Senior Planning Officer, there were many conflicts with planning policy and he thanked Officers for their comprehensive report. An application for residential development on the site had first been refused by the Planning Committee in July 2017 for similar reasons to those put forward today and there was very little difference aside from a reduction in the number of dwellings.

The site was not allocated for housing in the Joint Core Strategy and did not meet any policy exceptions so the proposal was purely speculative. This was an attractive area of The Mythe, as could be seen when viewed from Bredon Road, and the footpath along the River Avon was used by locals and tourists alike. The harm that would be caused by the development was duly recognised in the Committee report and included harm to several listed buildings. Due to the separation from Tewkesbury Town, all journeys would need to be made by car making it unsustainable - even the nearest school was too far for many. It was unusual for Severn Trent Water to object to a planning application as they had done here on the basis of flooding and drainage and he reiterated that there was no foul drainage on this site with existing properties using septic tanks. In his view, this was speculative and unsustainable development and building in this location would be a travesty. The Development Management Team Manager (Northwest) confirmed that Severn Trent Water had objected to the application and would be a Rule 6 party at the appeal so, as set out in the Additional Representations Sheet, this would be an additional refusal reason Officers would be minded to offer in addition to those set out in the Committee report.

- 57.7 A Member expressed the view that he was minded to support the motion; however, he sought clarification as to how the tilted balance applied in this instance and whether the Council would be able to defend an appeal given its inability to demonstrate a five year housing land supply. In response, the Senior Planning Officer clarified that a non-determination appeal had been submitted so the Council was required to submit a statement of case outlining its views in terms of whether it agreed with the development. The Officer recommendation was minded to refuse for the reasons set out in the Committee report. In terms of the tilted balance, if the Inspector agreed there was clear reason to refuse the application on the basis of harm to the designated heritage assets, the tilted balance would not apply and the proposal would be assessed in a normal planning balance scenario, as such, this was a key issue for the appeal. Setting that aside, Officers considered there were other obvious harms arising from the proposal in terms of landscape impact and the objection from Severn Trent Water. It was noted that there would be significant and substantial public benefit from the development in terms of provision of housing even without the tilted balance being engaged due to the shortage of housing in Tewkesbury Borough and the Inspector would afford that weight accordingly.
- 57.8 A Member indicated that she was happy to support the minded to refuse motion; however, she felt the issue of isolation as defined in the National Planning Policy Framework also needed to be considered. She was concerned that this proposal would potentially result in a community being totally isolated given there was no bus provision and not even a village shop on site so all services would need to be accessed by car. This conflicted with Paragraph 84 of the National Planning Policy Framework as none of the circumstances which allowed development of isolated homes in the countryside applied in this case. In response, the Senior Planning Officer confirmed that Officers had considered isolation and sustainability relative to Tewkesbury Borough and its Service Villages etc. and the Officer view was that the site was in proximity to the services of Tewkesbury Town albeit there would be a reliance on cars to some extent for future residents. Ultimately, it was a matter of planning judgement but Officer opinion was that Tewkesbury was the principal setting in the borough and, at 1.2km from its services, the development would not be isolated. Active Travel England had raised some concerns on this matter and, whilst it was not a reason for refusal put forward by Officers, it would be considered at the inquiry as part of the Council's evidence. The Member expressed the view that Service Villages had shops, schools and village halls whereas this development would have none. In her view social isolation was a major issue and she felt it should be included as a refusal reason. Another Member indicated that he also supported the motion but wished to put on record his disappointment in relation to the case put forward by Officers around sustainability. He felt this was very clearly

an isolated location where highway safety was far from satisfactory and the potential creation of a community which was ultimately dependent on the car was, to his mind, astonishing. He did not understand why County Highways and Highways England had raised no objection to the proposal and would like to know the rationale behind that. The County Highways representative sympathised with the comments made by Active Travel England as there were several pinch points, especially alongside Mythe Cottage. County Highways formulated an opinion based on industry standard practice that walking distances of up to 2km were considered reasonable for future occupiers to access day to day services. The development did not start until some way in from Mythe Road itself so the furthest dwelling to the north of the site may be on the cusp, or in excess of 2km. The site was 1.4km to the nearest bus stop which exceeded the 400m ideal but was within what was considered reasonable. The Local Education Authority deemed there to be sufficient places in the local schools and had not requested any additional places and there was an all-weather walking surface route to nearby schools, with the closest primary school being 1.8km away, so no home-to-school contributions were being sought. County Highways had raised the issue of connectivity at an early stage of the application and the applicant's Transport Consultant had produced an indicative scheme of works along the A38 which involved widening of the footway to provide a 3m wide combined walking and cycling route. A Member recognised the importance of sustainability, however, she reminded Members that, based on previous experience of appeals, it was better to have a smaller number of strong, defensible refusal reasons and pointed out that the Council had been called unreasonable for submitting numerous refusal reasons in relation to other applications. Another Member echoed these sentiments and, whilst she felt the active travel plan was flawed, she considered that the refusal reasons included within the Committee report were strong and valid, particularly alongside the objection from Severn Trent Water. A Member understood this advice but was uncomfortable with 2km being set as a satisfactory walking distance, particularly without an adequate footpath. A Member sought clarification as to whether it was 2km as the crow flies and was informed it was actual walking distance. Another Member expressed the view that Members should be trained on industry standards if those were the rules the Committee must abide by and the Chair undertook to ensure this was incorporated into training or a briefing note.

57.9 Upon being put to the vote, it was

RESOLVED That the Council be **MINDED TO REFUSE** the application in accordance with the Officer recommendation.

PL.58 CURRENT APPEALS AND APPEAL DECISIONS UPDATE

58.1 Attention was drawn to the current appeals and appeal decisions update, circulated at Pages No. 63-64. Members were asked to consider the current planning and enforcement appeals received and the Department for Levelling Up, Housing and Communities appeal decisions issued.

58.2 It was

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

The meeting closed at 10:15 am

Appendix 1

ADDITIONAL REPRESENTATIONS SHEET

Date: 23 January 2024

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.

Agenda Item No	
5a	<p>22/00610/OUT</p> <p>Part Parcel 2352, Mythe Road, Tewkesbury</p> <p>Update on Non-Determination Appeal</p> <p>The non-determination appeal has been validated, is to be heard by way of Inquiry, and is scheduled to open on 16 April 2024.</p> <p>Additional Representation from Residents on Surface Water Drainage</p> <p>Since the preparation of the Committee report, one additional representation has been received from a local resident.</p> <p>The objection raised concerns about existing flooding and the potential for increase in run off from the site, into drainage outlets on the A38 which it is advised cannot cope with existing waterflows. As such, concerns were raised that the proposed development will increase the risk of flooding in properties downhill from, in the vicinity of, the application site on the A38.</p> <p>Officers sent these comments to the Lead Local Flood Authority which advised that:</p> <p><i>'Bearing in mind I haven't seen the flooding in person but the information I have suggests only a relatively small portion of the northwest corner of the site is draining to the watercourse that crosses the A38 by Bradley Farm. It makes up (again based on the information I have) only about 4% of the total area draining to the point where the flooding is so anything that happens on the site will have a very minor impact on this existing issue.</i></p> <p><i>On top of that, the development should not have a negative impact on it at all and may well improve things (albeit only a small amount considering the above). The masterplan shows that a reasonable portion of that corner will remain public open space so will drain in the same way it does currently. The houses that will be built in this corner will drain to the attenuation basin in the northeast corner so will no longer contribute to the water collecting at the A38.</i></p> <p><i>As for the impact the development will have on the Avon, the SuDS being used will mean there will not be an increase in the rate of water leaving the site and entering the Avon. In fact, they will be limiting the discharge rate to that of a 1 in 2 year storm so for extreme events (i.e. up to a 1 in 100 year storm), the rate of surface water leaving the site will be lower than it currently is. The SuDS will also accommodate increases in rainfall predicted with climate change so there won't be an impact in the future.</i></p>

We don't have any objections to the surface water drainage strategy subject to conditions we've recommended in our response. We don't comment on the foul drainage so will not comment on STWs objections.'

Officers have considered the additional representation from the local resident, and having regard to the additional information and clarifications from the Lead Local Flood Authority remain of the view that the site is at a low risk of flooding and would not increase the risk of flooding to third parties.

Foul Drainage and Severn Trent

Further to the preparation of the Committee report, Officers have continued to liaise with Severn Trent regarding its objection to the planning application. Severn Trent has confirmed that it continues to object to the application. Following discussions, Severn Trent has advised that, as consultee, it considers that the following additional putative reason for refusal should be submitted to the Planning Inspectorate to inform the appeal:

The applicant has failed to demonstrate that the proposed development can provide adequate foul drainage and as such failed to ensure that any risk of flooding and pollution from the development proposals is appropriately mitigated and that the natural environment, including Severn Ham Site of Special Scientific Interest, is protected. As such the proposed development conflicts with Policies INF2 and SD9 of the Joint Core Strategy 2011-2031 (December 2017) and the National Planning Policy Framework.

Historic England Consultation Response

Further to the receipt of the Verified Visual Images an additional consultation response has been received from Historic England. This states:

'I have reviewed our previous advice and the only outstanding assessment that we were waiting for is the LVIA impacts on the setting of the Abbey, given that we agreed with the (Councils' Conservation Officer's) assessment of impact on the other Grade 2 buildings within setting of the application site. Given that no further significant impacts have been identified to the setting of the Abbey, we would not wish to make any further detailed comments. There would be some intervisibility from the Abbey tower, as identified in the LVIA, and although this would diminish the rural outlook and setting of the Abbey to the north, the degree of harm would be at the lower end of less than substantial.'*

Following receipt of this additional consultation response, no additional heritage concerns are identified on Grade 1 and 2* designated heritage assets and Officers consider that there should be no alterations to putative reason for refusal 2 as set out in the Committee report.

Proposed Access and Potential Impact on Trees subject to Tree Preservation Order 421

Officers have met on site with the applicant's highways engineers and arboricultural consultants. It has been agreed that the applicant will clearly identify all trees and hedgerows that would be lost in order to create the proposed vehicular access and associated visibility splays.

Following receipt of this information, Officers will need to consider the harm caused by the loss of individual specimens with the group of trees protected by the Tree Preservation Order and whether this gives rise to a putative reason for refusal, and the extent that this harm will cause a harmful impact on the character and appearance of the area.

Officers therefore seek delegated authority to add an additional putative reason for refusal, if considered necessary, due to the potential impact on trees protected by a Tree Preservation Order, and/or amend putative reason for refusal 3 to reflect the outcomes of these discussions.

Contested Planning Obligations

The applicant has advised that they do not consider that the evidence provided in the consultation response from the Council's Communities team shows that the contributions sought in Paragraph 9.147 of the Committee report would either be necessary or would be directly or fairly related to the development.

Officers have sought additional information from the Communities team on these requests and will continue to liaise with the applicant and, dependent on the outcome of these ongoing discussions, will either maintain or amend these planning obligation requests at the Inquiry.