

At a meeting of the PLANNING AND HIGHWAYS COMMITTEE held in the COUNCIL CHAMBER of the CIVIC CENTRE on WEDNESDAY, 12th FEBRUARY, 2020 at 5.30 p.m.

Present:-

Councillor Jackson in the Chair.

Councillors Bewick, Butler, Foster, E. Gibson, Greener, Haswell, Lauchlan, F. Miller, Mullen, Potts, P. Smith, Stewart, P. Walker and D. Wilson.

Declarations of Interest

Item 5 - Planning Application Reference 19/01890/VA4, Land North of Seaburn Camp, Seaburn, Sunderland

Councillor Jackson declared an interest in the above application advising that she would step down from the Chair and leave the Chamber during consideration of the matter.

Apologies for Absence

Apologies for absence were submitted on behalf of Councillors M. Dixon, Hodson, Johnston, McKeith, Scaplehorn, Speding and Tye.

Minutes of the last meeting of the Committee held on 15th January, 2020.

1. RESOLVED that the minutes of the last meeting of the Committee held on 15th January, 2020 be confirmed and signed as a correct record.

Report of the meeting of the Development Control (South) Sub Committee held on 6th January, 2020

The report of the meeting of the Development Control (South) Sub Committee held on 6th January, 2020 (copy circulated) was submitted.

(For copy report – see original minutes)

2. RESOLVED that the report be received and noted.

Change in the Order of Business

The Chairman advised that she would be taking item 6 on the agenda (Ref from Cabinet – Supplementary Planning Documents) at this juncture to allow the presenting Officers to leave the meeting thereafter.

Reference from Cabinet – 11 February 2020 - Supplementary Planning Documents

The Assistant Director of Law and Governance submitted a report (copy circulated) requesting the views of the Committee on a report considered by Cabinet on 11 February 2020, which sought approval of the draft South Sunderland Growth Area (SSGA) and draft Planning Obligations SPDs and the draft Scoping Reports for SPDs in relation to Biodiversity and HMOs for public consultation; and which also sought approval of the interim Development Management Planning Guidance for use until the replacement SPDs were prepared.

(for copy report – see original minutes)

Ms Louise Sloan, Strategic Plans and Housing Manager presented the report highlighting the key points arising and advising that Cabinet had agreed to approve the recommendations at its meeting the previous afternoon.

There being no questions or comments and with members indicating that they were happy to support the Cabinet decision, it was :-

3. RESOLVED that the decision of Cabinet to approve the draft South Sunderland Growth Area (SSGA) and draft Planning Obligations SPDs and the draft Scoping Reports for SPDs in relation to Biodiversity and HMOs for public consultation; together with its approval of the interim Development Management Planning Guidance for use until the replacement SPDs were prepared, be supported.

Councillor Jackson having retired from the meeting, Councillor D. Wilson took the Chair for the following item of business.

Planning Application Reference 19/01890/VA4 Variation of Condition (Reg 4), Variation of condition 2 (plans) and 14 (drainage strategy) of planning permission 18/00609/FU4 to vary drainage strategy. Land North of Seaburn Camp, Seaburn, Sunderland

The Executive Director of City Development submitted a report (copy circulated) in respect of the above matters together with a tabled late sheet which provided details of additional representations.

(for copy report – see original minutes)

The representative of the Executive Director of City Development presented the report advising the Committee of the key issues to consider in determining the applications and of the circulated late sheet.

By way of background, members were advised that planning application 18/00609/FU4 was presented to the Planning and Highways Committee on 29th January 2019 and subsequently approved, following the completion of a legal agreement under Section 106 of the Town and Country Planning Act, on 29 April 2019. The permission had been implemented and remained extant. All pre-commencement conditions relating to the permission had been discharged.

The application under consideration (reference 19/01890/VA4) sought permission to vary or remove condition 2: Approved plans and condition 14: Connection to sewerage network. This application had previously been presented for members consideration at the meeting of the Planning and Highways Committee on 15 January 2020. At that meeting, Members deferred consideration of the application, and requested that the applicant undertook a survey of the sewer system which would serve the development, to assess capacity within the system.

Members were informed that when considering the application, the Local Planning Authority (LPA) was strictly limited in its considerations. There was no opportunity to reconsider the principle of the development, nor was there any opportunity to reconsider the technical issues associated with the development. The only consideration relevant to the determination of the application was if it was acceptable to allow the variation and/or removal of conditions, to facilitate the proposed connection point to the sewerage network.

The Committee was informed that when considering development that required connection to the sewerage network the Local Planning Authority carried out consultation with Northumbrian Water Limited (NWL), the statutory undertaker for the sewerage network in Sunderland. This was because as statutory undertaker, NWL controlled connections to the sewer network. This was done through a separate application, which fell outside of the control of the planning system. These applications were made by developers to NWL once planning permission had been secured.

Consultation with NWL had been undertaken regarding the applicant's proposal to connect to the sewerage system at manhole 4802. NWL had responded to confirmed that manhole number 4802 was an appropriate connection point for the foul flows from the development.

Members were advised that when considering the application they were essentially being asked if they agreed to the variation of condition 2, which listed the approved plans and documents associated with the development and if they agreed to the removal of condition 14, which identified a particular manhole as the point of connection to the combined sewer network.

Members were being asked to make these decisions in respect of conditions 2 and 14 because when NWL originally identified a connection point for the development it made an error by identifying the incorrect connection point. This was because one of NWL's plans had been incorrectly coloured / annotated.

Northumbrian Water incorrectly asked the Local Planning Authority to impose a planning condition on planning approval 18/00609/FU4 requiring the development to connect to the sewage network at the point that they had identified.

The application under consideration was required to address this error.

Members were not being asked to agree to the Miller Homes development being allowed to connect to the sewage network, because this decision had already been made by NWL, the appropriate body to make that decision. The permission that Miller Homes held to connect to the sewer network would remain regardless of the outcome of the application under consideration.

Members were therefore being asked to agree to remove reference to the incorrect connection point from the planning permission in order to correct the error made by NWL.

Members were informed that 43 objections to the proposed development had been received, including one objection from Seaham Town Council.

The majority of the objections received were of a template format and were generally on grounds that there was insufficient capacity in the sewerage system to accommodate additional flows from new development and that manhole 4802 was not an appropriate point of connection for the approved housing development. There was concern that capacity issues within the system would lead to sewage being discharged into the sea causing environmental damage. The objections received requested that an independent survey of the sewerage system was undertaken.

Members were then taken through advice prepared by the Council's Legal Services Team (as detailed in pages 20 to 30 of the agenda papers) in relation to:-

- i) Varying a planning condition
- ii) The use of planning conditions;
- iii) Consideration of relevant caselaw; and
- iv) Decision making

In summarising, the representative of the Executive Director of City Development advised that NWL, as the Statutory Undertaker, had confirmed that the developer's proposal to vary conditions 2 and 14 of planning permission 18/00609/FU4, to allow connection from the development to

manhole 4802 was acceptable. In addition to this, the Lead Local Flood Authority (LLFA) had also confirmed it had no objection to the proposed variation.

Given that man hole 4802 was specifically referred to in the Flood Risk Assessment submitted in support of the application, and also given that the Flood Risk Assessment would be included in the list of approved plans and documents set out in condition 2, it was considered that the re-imposition of condition 14 would duplicate the requirements of condition 2. This would render condition 14 unnecessary and as such should Members be minded to approve the application to vary or remove conditions, condition 14 should not be included on the decision notice.

In conclusion the representative of the Executive Director of City Development recommended that the application was approved subject to the conditions detailed in the report.

The Chairman then invited questions from Members.

Councillor Mullen stated that he was not satisfied. When the Committee had requested an independent survey at its last meeting, he had assumed that that was what it would get. The representative of the Executive Director of Development replied that in respect of the application there was no requirement to undertake a survey as the decision to connect to the system had already been made. She agreed with Councillor Mullen that Miller Homes had agreed in principle to fund a survey however even if it was undertaken it would have to sit outside the planning process. It was considered that there were no material planning reasons to sufficiently justify delaying the determination of the application.

Councillor Haswell stated that given the concerns regarding the capacity of the sewerage system raised at the last meeting, what recourse would the Council have if the advice of the statutory undertaker was called into question? The Solicitor replied that it wasn't for the Council to question the responses provided by the statutory consultees. In effect its hands were tied as the Council had to take what it was being told at face value.

Councillor Butler stated that it was important that the Committee was able to cut through all the legal and planning jargon, together with evidence presented that appeared to have no relevance and receive clarity of advice regarding the question it was actually being asked to consider.

The solicitor replied that currently there was an extant planning permission with a number of conditions attached, one of which should not have been there in the first place.

This had occurred because when NWL originally identified a connection point for the development it made an error by identifying the incorrect connection point. In effect the condition required Miller homes to connect to the system at a point that NWL water would not allow as it was not suitable for foul flows,

however if it did connect at the point subsequently identified by NWL it would technically be in breach of the planning condition.

In essence the Committee was being asked to remove reference to the incorrect connection point from the planning permission in order to correct the error made by NWL

Councillor Butler stated that such a simple mistake had managed to generate a lot of confusion.

There being no further questions, the Chairman then welcomed and introduced in turn, each of the following speakers who had registered to speak in objection to the application, informing them that they would each have 5 minutes to make their representations.

1. Mr Jeroen Pichal
2. Mr Robert Latimer
3. Mrs Yvonne Gray
4. Mr Michael Hartnack
5. Cllr James Doyle

Mr Pichal contended that the issue was not as straight forward as it was being portrayed. He believed that NWL were deliberately trying to mislead and should face some serious questions. He stated that there was not enough capacity in the system and that NWL knew this. He asked if the Committee was not concerned about the residents and the problems the sewage was causing. He called for an independent survey into the capacity of the drainage network as this would provide the Committee with peace of mind or otherwise. It would provide a mechanism through which the Committee would be able to hold NWL to account. As it currently stood, by allowing Miller Homes to connect at point 4802 the increased flows from the development would cause the sewer at manhole 6702 to back up causing spillage into manholes 5610 and 5609 even in dry weather.

Mr Latimer, as at the previous meeting, provided the Committee with a technical rebuttal of the proposal to connect to manhole 4802 and stated that he had not expected to appear again so soon. He contended that it was not a mistake by NWL and that the lack of capacity in the sewage system had been evident for a long time. In 2001 a public enquiry had told NWL that they had got their modelling wrong in this regard. 380,000 cubic metres of sewage were being discharged into the sea each year. He believed that the Council did have a duty to confirm the capacity available in the system before granting permission for further development. This was an opportunity to improve the seafront and to preserve the beauty of the coast.

Mrs Gray stated that she would not repeat what she had said at the previous meeting but advised that she was saddened at having to return before the Committee when she had thought that the provision of an independent survey had been agreed. She stated that she had spent 40 years as a teacher in Sunderland working closely with Members and Officers of the Council whom

she would defend to hilt having provided for Sunderland the best of primary schools. Seaburn had long been recognised as Sunderland's best resort and school children had been bused or walked down to the beach both for enjoyment and to learn about the ecology of the seashore. Today the ecology of the rockpools had been replaced by used condoms and sanitary products. She asked the Committee when had they last smelled the sea while on the beach? The pervading odour today was that of drains. She stated that Seaburn belonged to all. At the last meeting the Committee had made a decision which was made in good faith for the future of Sunderland. She had trusted the Council then as she had in the past. She had trusted the Committee to do the right thing. What was wrong in carrying out an independent survey if there was nothing to fear.

Councillor Bewick stated that at the last meeting NWL had acknowledged that there was the possibility of sewage backing up into the sea and he believed that the Committee had not heard anything that would allow it to move on. He could not see why an independent survey should not be carried out and that consideration of the application was deferred until such time as its results were known.

The Solicitor advised that the Executive Director of City Development had considered the issue of commissioning an independent survey however had deemed that within the context of the application it was not necessary as it was not material to the determination and the advice from the statutory consultees was that there was capacity within the existing system. The representative of the Executive Director of City Development added that Officers had a duty to provide Members with correct advice even if it was not popular and Planning Officers had to take at face value the advice it received from statutory consultees. She reminded the Committee that the decision to connect the development to the drainage system had already been made and Miller Homes had an absolute right to do so. The purpose of the variation was simply to correct a mistake.

Mr Hartnack then addressed the Committee. He stated that it was not just a simple mistake. In January 2019 at the original meeting when planning permission had been granted, resident objectors had raised their serious concerns about the inability of the sewage system to cope with existing let alone additional demand. These concerns had been rubbished by NWL and Planning Officers. Subsequently following the intervention of the local M.P. the residents had been proved to be correct. Mr Hartnack contended that had NWL been honest, competent and professional and had the Council provided due diligence and appropriate scrutiny rather than rubbishing objectors, then the decision might have been different. Mr Hartnack went on to question the validity of relying on the Barrett Homes v Welsh Water case and referred to four items of internal council correspondence with NWL dating back to 2013/14, which he had obtained, that confirmed there was not sufficient capacity within the drainage system. In conclusion he asked the Committee to reaffirm its decision from the previous meeting that consideration of the variation was deferred pending the undertaking of a comprehensive and fully independent survey into the capacity of the area's drainage system. He

further asked that all future development was put on hold until the results of the survey were known.

The representative of the Executive Director of City Development advised that the issue raised by Mr Hartnack regarding the correspondence was detailed on pages 27-28 of the agenda papers. These related to historic applications in which NWL had raised concerns about sewer capacity. NWL no longer had such concerns following the delivery of a flooding scheme in 2015 and works undertaken in connection of the former bus terminus site.

Councillor James Doyle then thanked the Chairman for the opportunity to address the Committee on behalf of residents who opposed the application. He thanked his fellow speakers and stated that in light of their eloquence and the detail they had provided he would keep his representation brief. He stated that the applicant had not abided with the expressed wishes of the Committee agreed at its last meeting and believed that the applicant must comply with that request. He stated that perhaps through arrogance or ignorance or a combination of the two, Miller Homes and NWL believed they could pull the wool over the eyes of the Committee however the Committee had shown previously, as in the case of the Washington Gasification Plant, that it could see beyond the bullying and bluster of an applicant. He believed Miller Homes and NWL were undertaking an exercise in premeditation as they knew that the results of a survey would reveal the inadequacy of the existing network. In conclusion he stated that the applicant and NWL no doubt felt that they could wriggle out of further scrutiny on a technicality and urged the Committee not to allow the scandal to continue unchecked.

The Chairman having thanked all the speakers for their representations asked if Members had any further questions.

As a point of clarification Councillor Stewart stated that as he understood it Miller homes could go ahead and connect to the drainage system regardless of what the Committee decided. The mistake was that there was a condition in the original application which shouldn't have been there and all the Committee was being asked to do was remove a condition which was not enforceable. He asked if this was the position. The Solicitor replied that in a nutshell that was the case.

Councillor Haswell asked if the Committee had the option to vary condition 2 to provide that connection to manhole 8402 was subject to the prior completion of a comprehensive independent survey into the capacity of the sewage network which indicated that the connection was appropriate and if not, that the connection was made at an appropriate alternative point where capacity had been identified.

The Solicitor advised that in his opinion if the Committee agreed to impose such a condition and if challenged, it would fail the tests of necessity and reasonableness. The representative of the Executive Director of City Development added that Miller Homes would undoubtedly successfully appeal

a Committee decision to refuse its application for a variation, with the Council thereby incurring substantial costs.

Councillor Haswell replied that in his judgement he believed his proposal was both reasonable and necessary.

The Solicitor and the representative of the Executive Director of City Development advised that if the Committee was minded to approve the proposal it would need to provide valid planning reasons for its decision that complied with relevant policies in the Council's Development Plan.

The Chair then asked Councillor Haswell if he wished to put his alternative proposal to the Committee. Accordingly it was moved by Councillor Haswell and duly seconded by Councillor Mullen, that condition 2 be varied to provide that connection to manhole 8402 was subject to the prior completion of a comprehensive independent survey into the capacity of the sewage network which indicated that the connection was appropriate and if not, that the connection was made at an appropriate alternative point where sufficient capacity had been identified.

Upon being put to the vote the motion was defeated with 5 members voting in favour and 8 members voting against.

The Chairman then referred to the recommendation detailed in the report that condition 2 was varied to include the updated Flood Risk Assessment and that condition 14 was removed and put the recommendation to the Committee.

Upon being put to the vote, with 7 members voting in favour, 5 members voting against and 1 abstention, it was:-

4. RESOLVED that the application be approved subject to the conditions as set out in the report and for the reasons as detailed therein.

The Chairman then thanked everyone for their attendance and closed the meeting.

(Signed) J. JACKSON,
D. WILSON.
(Chairmen)