

At an EXTRAORDINARY meeting of the PLANNING AND HIGHWAYS COMMITTEE held in the COUNCIL CHAMBER of the CIVIC CENTRE on MONDAY 9th MARCH, 2020 at 5.30 p.m.

Present:-

Councillor Jackson in the Chair.

Councillors Bewick, Butler, M. Dixon, Foster, E. Gibson, Greener, Haswell, Hodson, Lauchlan, McKeith, Mullen, Potts, P. Smith, Speding, Turner and D. Wilson.

Declarations of Interest

There were no declarations of interest.

Apologies for Absence

Apologies for absence were submitted on behalf of Councillors Johnston, Scaplehorn and Stewart.

Planning Application Reference 19/01750/LR4 Reserved Matter (Reg 4), Reserved Matters Application Pursuant to 16/02056/HY4 for the erection of 82 Homes. Amended Description – Land at Lowry Road 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 planning obligations and conditions.

(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 the application under consideration was a Reserved Matters submission following on from the Hybrid approval on land and buildings to the west of Whitburn Road and north of Dykelands Road, Sunderland (ref. 16/02056/HY4).

Members had considered the Hybrid submission at the 28 June 2017 Planning & Highways Committee and following the completion of the required Section 106 Agreement planning approval was subsequently granted on the

31 October 2017. Condition 3 of that approval required applications for reserved matters to be made before the expiration of three years from the 31 October 2017. This application had been submitted within this required timescale and as such, was a valid submission.

The Reserved Matters submission covered the approved in outline housing portion of the wider site that lay to the west of Lowry Road. Members were advised that the matters that fell to be determined by the submission were Access, Appearance, Landscaping, Layout and Scale. The proposal sought to agree those details relative to the construction of 82 homes and associated development, including a linear park and open space. The initial submission had sought permission for 85 homes but had been amended following the various consultation responses.

The representative of the Executive Director of City Development briefed the Committee on the objections received, observations from statutory consultees and each of the 5 reserved matters under consideration.

In conclusion Members were advised that the proposed development was acceptable in respect of Access, Appearance, Landscaping, Layout and Scale and were in accordance with the Hybrid 16/02056/HY4 permission and in broad compliance with the Design Code approved via the discharge of Condition 8 of the Hybrid approval. The amended scheme had appropriately considered relevant policy and surrounding residents and land uses. There were not considered to be any adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme. Accordingly Members were recommended to grant consent in accordance with Regulation 4 of the General Regulations and subject to the conditions detailed in the report together with the two additional conditions contained in the late sheet.

The Chairman then invited questions from Members.

Councillor M. Dixon referred to the recent members' site visit and asked the Planning Officer to update the Committee in respect of the trees on the site. Members were informed that it was considered that any development application proposal must look to retain trees but also deliver a linear park framed by residential development on either side. Given the need to adopt a balanced approach, the Reserved Matters submission's Arboricultural Impact Assessment (AIA) highlighted that ultimately the required layout of development would necessitate the removal of a number of individual trees within the section of the western linear group, some within the southern group and the removal of the two eastern groupings.

The AIA also highlighted that much of the tree cover was classified as Category C i.e. trees of low quality. This view was shared by the Council's Arboriculturalist who had drawn attention to the maintenance implications of the retained western woodland. In this regard there were two solutions, 1) to place the trees within extended garden areas and therefore, within the ownership of individual property owners; or, 2) to manage the retained

woodland as a separate linear feature, as proposed in the initially submitted scheme.

The Council's Arboriculturalist had concurred with the approach adopted by the AIA, which was to include the retained woodland area within the private garden areas as the most realistic way forward given the proposed layout. It was therefore considered appropriate to impose a condition (condition 4) that required a robust retention strategy and landscaping proposals for the area. Once this condition had been discharged, the Council could then have regard to the fact that the trees would be governed by a covenant placed on each individual property, or alternatively, it could seek to impose a Tree Preservation Order on the retained trees to safeguard them in the future.

Councillor Dixon stated that a Community Parking Scheme was unusual for a development of this nature. He queried whether the inclusion of Princess Avenue was enough and suggested that the residents of Kings Avenue and Queens Avenue may have concerns. The Highways Engineer replied that there was a Section 106 agreement to provide a traffic management scheme agreed as part of the original application. The reason it had been included in the report was that the proposed options would need to be consulted on by the Council, as the Highway Authority. The proposals related to those streets closer to Lowry Road rather than those off Dykelands Road.

In response to a further enquiry from Councillor Dixon, the Planning Officer and Solicitor confirmed that there was no provision that would allow the Committee to insert a caveat into the reserved matters determination allowing it to impose conditions at a future point in time should a particular issue (eg sewage) be shown to be a problem.

Councillor Mullen asked if the Planning Officer was saying that there was nothing the Council could do in respect of the 370,000 cubic tonnes of sewage being discharged into the sea? The Planning Officer replied that the issue of sewage was not a material consideration in respect of a reserved matters application and that concerns in respect of sewage discharge into the sea should be addressed to the appropriate regulatory body i.e. the Environment Agency.

Councillor Hodson stated that the surrounding area was a key development site however he was slightly disappointed by the proposed design of the houses in respect of this application and would have preferred to see more innovation. In response to a further query from Councillor Hodson, The Planning Officer provided the Committee with a description of the aspect and location of the 'Overberry' house type.

Councillor Haswell referred to the fact that 680,000 tonnes of sewage was being discharged and asked that consideration of the application was deferred. He referred to a case where an application in respect of Barrett Homes was approved with a condition that if it was subsequently found that the sewage system was inadequate then an additional condition would be added to the effect that the situation would be required to be rectified at the

developer's cost. The Planning Officer replied that the issue of sewerage was considered as part of the Hybrid approval, which had firmly established the principle of developing up to 279 homes together with a hotel on the site. Sewage was not considered to be material to the determination of a reserved matters application. Northumbrian Water had no objections to the application and had confirmed that it was operating within the terms of its permit.

In response to an enquiry from Councillor Dixon, the Planning Officer advised that a play park in respect of the development would be located in the south of the site (the trim trail) and another within Cut Throat Dene.

Councillor Foster stated that it was important that the Committee only looked at those issues that were material to the consideration of the reserved matters but yet again the meeting was being sidetracked. Whilst the concerns regarding sewage raised by residents were important, this was not the forum to address them and they should not be used to hijack the meeting. The Committee risked being dragged into something that was not within its remit.

In response to an enquiry from the Chair as to where people who had those concerns should turn, the meeting was informed that with regard to the discharge of sewage into the sea they should contact the Environment Agency and that concerns about the adequacy of the sewage network should be addressed to Ofwat.

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 Michael Hartnack
3. Mr Robert Latimer
4. Mrs Yvonne Gray
5. Cllr James Doyle
6. Mr Frank Hunter
7. Mr Malcolm Bond

Mr Pichal advised Councillor Foster that the issue of sewage would not go away and the more developments the Committee approved, the bigger an environmental disaster it would have on its hands. He stated that this development was only a few yards away from the recently approved Miller homes application. He criticised the Committee for having approved the application on a 'technicality' at its second meeting having first decided to defer for an independent survey which was not undertaken. This was despite the evidence presented that there was not the capacity in the sewage system. This application would allow Avant to connect over 60 additional properties to that system.

Mr Pichal also claimed that the application lacked an appropriate Environmental Impact Assessment relying instead on one provided in respect of Chapelgarth.

In conclusion he stated that the Committee was being misled by NWL and the Environment Agency and that this was the last chance for the Committee to ask for an independent survey into the capacity of the sewage system.

At this juncture the Solicitor reminded the Committee that the only material matters for their consideration were those matters reserved at the outline stage for further approval, ie Access, Appearance, Landscaping, Layout and Scale. If speakers addressed anything other than these matters it would in effect be a waste of effort.

Mr Hartnack then addressed the Committee. He referred to paragraphs 182 and 183 of the National Planning Policy Framework (NPPF). He stated that there was an underlying assumption that the relevant authorities would act with probity. He questioned what if that assumption was not correct? What if the Local Authority was aware that a Statutory Body was not acting correctly. He contended that if that was the case then the Council should no longer be bound by that assumption and he had received his own legal advice to confirm this. He questioned the legal advice being given to the Committee and whether its Solicitor knew the difference between rebuttable and irrebuttable presumptions.

Mr Hartnack then referred to the section entitled Sewage on page 3 of the agenda papers the first paragraph of which stated – ‘At the time of considering the Hybrid application it was required by Members that Council must not place itself in a position of questioning the sewerage undertaker’s strategy towards its own network or the capacity of its own infrastructure.’ He stated that this was not true and contended that there was nothing in the NPPF which provided that they must not.

With regard to the final paragraph he believed that the situation was now far worse than it was at the time of the approval of the hybrid application. He questioned, given the two major flood discharges since, whether the Hybrid approval remained valid. Members had taken that decision in 2017 based on the understanding that the Statutory Undertakers had carried out their roles correctly. Members now knew that this was not the case. In conclusion Mr Hartnack urged the Committee to please do the right thing, defer the application to allow an independent survey into the capacity of the sewage network to be undertaken and to delay all future development until its findings were known.

The solicitor reiterated that discussion in respect of the sewage network was immaterial. The issue of drainage had been determined in 2017. Questions and comments should relate only to the reserved matters of Access, Appearance, Landscaping, Layout and Scale.

Mr Latimer stated that he wanted to appeal to the Committee. Since the European Court decision of 2012 Sunderland had become known as the 'seaside resort where we put our sewage in the sea'. NWL had been found to be non-compliant with its discharge limits and the Court had given NWL until 2017 to rectify matters. The Committee had heard at recent meetings that NWL had spent £10m to upgrade the sewage system in 2015 yet following this had still managed to discharge 370,000 tonnes. The situation was now even worse. The newly published figures showed that NWL had discharged 680,000 tonnes of sewage into the North Sea during 2019.

Mr Latimer claimed that the Barrett Homes case had no relevance and should not be used as a precedent to over ride permit levels established by the Secretary of State. He no longer believed the assurances given by NWL. It had been proven that they had made an illegal connection in respect of a previous development and he did not believe that this had been a simple mistake.

The NPPF guidelines asked the Council to ensure that capacity existed in the system. Who would take responsibility? The Planner? The Solicitor? NWL had claimed there was sufficient capacity in the system perhaps this meant the river and the sea. In conclusion he stated that surely the Committee must be concerned about this and urged it to refuse the application and any future development until NWL had provided truthful answers to the questions asked of it.

Councillor Hodson raised a point of order stating that the issues raised by Mr Latimer and others were coming up time and time again resulting in the Committee going round and round in circles. He referred to Part 4 Section 1 paragraph 2(i) of the Council's Constitution in respect of the Council's Rules of Procedure. This allowed Council to receive reports from the executive and the Council's committees and receive questions and answers on any of those reports. He suggested that the Committee at its next meeting should consider the issues with a view to formulating a report for consideration by a future meeting of full Council.

Councillor M. Dixon asked if the Committee could impose a condition that would make any approval subject to the satisfactory conclusion of a comprehensive independent survey into the capacity of the sewage network. The Solicitor replied that the imposition of any condition needed to be necessary and reasonable however he believed that in this case such a condition would not meet those tests in law. To attach such a condition would give the developer grounds for an appeal which the Council would most likely lose and then incur significant costs.

The Chairman then invited Mrs Yvonne Gray to make her representations.

Mrs Gray stated that yes it was the sewage again and she felt insulted that the Solicitor had suggested that she would be wasting her breath in raising the issue. She contended that the subject of waste from a new development and where it would be going was relevant.

She advised that at its meeting in January Councillor Wilson and the Committee had recognised the obvious concerns of the local residents that sewage was a problem and had deferred consideration of the Miller Homes application pending the undertaking of an independent survey into the capacity of the network. Despite this the Committee agreed the application at its next meeting having been told that a survey was not necessary. She was dumbfounded that elected Members could be over ruled by Officers in this way.

She reiterated her concerns raised at previous meetings regarding the declining ecology of the seafront. She stated that she was in favour of development in the area but that it must be carried out through a long-term plan. The previous masterplan had now been replaced by a policy of land grabbing.

In conclusion she stated that she was a life long socialist and had voted for Councillor Butler at the last local elections. This however this was not about politics it was about doing the right thing. She stated that there was more that united us than divided us. She pleaded with the Committee to do the right thing and reject the application.

In response to a suggestion from Councillor Butler that the Committee should now proceed straight to the vote, the Chairman advised that she felt the Committee was duty bound to listen to all the speakers who had registered to vote. She then welcomed Councillor Doyle and invited him to make his representations.

Councillor James Doyle thanked the Chairman for the opportunity to address the Committee on behalf of residents who opposed the application. He stated that his previous appearances before the Committee had been in vain however he remained an optimist. He informed Members that it was blindingly obvious to him that there was something wrong with the application, namely the complete inadequacy of the sewage system and the effect it would have if approved. The Committee had heard the evidence on three occasions now and members had been sympathetic – thousands of tonnes of effluent being discharged to sea every day had struck a chord. He asked if the Solicitor would like to address the concept of rebuttable and irrebuttable issues in law.

He stated that Councillor Hodson's suggestion of a report to Council was the least that could be done, there was also the option to defer. If, however the application was approved tonight then that was it – a devastating legacy for future generations. He questioned how the Committee could stand idly by and wash its hands of such a dirty scandal. Councillor Doyle also expressed concerns regarding the loss of trees, access and parking. In conclusion he reiterated that there was strong objection from the local community to the scheme. He asked the Committee to give careful consideration to all the representations and recognise that there was a wrong to be righted.

Mr Hunter then addressed the Committee. He stated that with regard to the development of new homes people kept telling him that the damage had already been done. On 28th June 2017 the Committee had approved outline planning permission to demolish the Seaburn Centre and build up to 279 dwellings. Thereafter Carrilion had ceased trading and the housing scheme was scaled back to 82 homes. He stated that perhaps objectors should be grateful for this however the development was directly adjacent to Seafields. This was not acceptable as there was no settlement break. When the original Siglion application was approved, assurances had been given that the embankment would be preserved. This was a natural habitat for much wildlife and yet Avant had already marked the trees which it had selected for removal with blue paint. He concluded that the Committee had been bullied previously into making decisions and he had hoped that the spectacle would not be repeated. He urged the Committee to dismiss the application.

The Chairman then invited Mr Bond, the final objector, to address the Committee. Mr Bond contended that the quality of the paperwork before Members was 'fairly insulting'. He drew the Committee's attention to page 3, paragraph 3 of the report which stated:-

'Furthermore, at the time of approving the Hybrid application attention was also drawn to Northumbrian Water's on-going upgrade of its sewerage network as part of its overall management of its infrastructure and planning for future development. The report highlighted that infrastructure improvements at the time were being made to reduce the amount of surface water entering the existing network and that the upgrade project covered not only Seaburn but also Cleadon, Roker and St Peter's.'

He asked why the issue had been included if it was not relevant to the consideration of the reserved matters? He concluded that it had been included to confuse and to obscure and asked the Committee to reject the application.

At this juncture the Chairman introduced Mr Joe Ridgeon, Director, Hedley Planning Services Ltd and agent for the applicant who spoke in support of the application and then addressed questions and comments from Members.

Councillor M. Dixon referred to his earlier mention of a condition to ensure that the development was subject to the satisfactory outcome of an independent survey and asked Mr Ridgeon if this was something that he would be prepared to consider. Mr Ridgeon replied that Avant homes wanted to satisfy all the requirements in respect of drainage and that a great deal of work had been undertaken by its engineering consultants in this regard. In answering Councillor Dixon's question, he advised that earlier in the meeting reference had been made to paragraph 183 of the NPPF. He informed members that the second half of that paragraph stated that 'Where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.' Accordingly it was not for Avant Homes to question NWL if

the statutory undertaker believed that there was adequate capacity within the sewage network.

Councillor Hodson stated that as part of the development it was intended that a piece of public art was to be included on Lowry Road and asked Mr Ridgeon what this would entail and how would it be commissioned. Mr Ridgeon replied that consideration was in the very early stages. Current thoughts revolved around the provision of decorative features within the boundary wall possibly with a coastal motif. Councillor Hodson added that the commissioning of such pieces of work often became a bone of contention if there was not an open bidding process. Mr Ridgeon confirmed that he would be happy to discuss the process outside of the meeting.

Councillor M. Dixon referred to Councillor Hodson's suggestion that the issue of the capacity of the sewage network was debated by Council and asked how this could be taken forward. Councillor Hodson suggested that an options report was drafted for consideration by the Committee at its next meeting to be held on 17th March.

Councillor Speding sounded a note of caution stating that the Council had only recently adopted its Core Strategy and questioned moves to introduce non planning issues into the context of the planning process.

Councillor Butler stated that he believed that the Committee should follow the advice of the experts but at the same time felt that the concerns of the residents were valid. The Chairman added that no member lacked sympathy for the resident's concerns.

There being no further questions or comments, Councillor M. Dixon moved that the Committee impose an additional condition that would make any approval subject to the satisfactory conclusion of a comprehensive independent survey into the capacity of the sewage network. The motion was seconded by Councillor Greener.

Upon being put to the vote the motion was defeated with 8 members voting in favour and 9 members voting against.

Then Chairman then moved and was seconded by Councillor P. Smith that the Officer recommendation as detailed in the report and the late sheet were put to the Committee.

Upon being put to the vote with 9 members voting in favour of the recommendation and 8 members voting against, it was:-

1. RESOLVED that In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the reserved matters application be granted consent in accordance with Regulation 4 of the 1992 General Regulations, subject to the conditions as set out in the report and the tabled late sheet and for the reasons as detailed therein.

In drawing the meeting to a close, the Chairman informed members that she would be willing at the next meeting to consider Councillor Hodson's ideas as to how the issue of the residents concerns regarding the capacity of the sewage system were to be taken forward. Unfortunately the agenda for the meeting on 17th March, 2020 had already been published however she would add the issue to the agenda as a matter of urgent business.

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

(Signed) J. JACKSON.
(Chairman)