

Minutes of a meeting of the Regulatory and Appeals Committee held on Thursday 21 June 2018 at City Hall, Bradford

Commenced 11.05 am
Concluded 1.20 pm

Present – Councillors

CONSERVATIVE	LABOUR	LIBERAL DEMOCRAT
Cooke Ellis	Amran S Hussain Warburton Watson	Griffiths

Apologies: Councillors Brown and Wainwright

Observer: Councillor Pennington (Minute 13)

Councillor Warburton in the Chair

9. DISCLOSURES OF INTEREST

In the interests of transparency, Councillors Amran, Ellis, Griffiths, Shabir Hussain, Watson and Warburton disclosed that they had been Members of the Committee when the application concerning Land to the North of Royd Ings Avenue, Keighley (Minute 13) had been considered previously. They undertook to approach the issue with an open mind and to consider all the relevant material planning issues before making a decision.

In the interests of transparency, Councillor Amran also disclosed that he was acquainted with an interested party associated with the application concerning Land to the North of Royd Ings Avenue, Keighley (Minute 13) but had not discussed the matter with the individual concerned.

In the interests of transparency, Councillor Ellis disclosed that he was a member of the Yorkshire Regional Flood and Coastal Committee and the Airedale Drainage Commissioners.

In the interests of transparency, Councillor Warburton disclosed that he had been a Member of the Committee when previous applications associated with Land to the South of 631 to 655 Leeds Road, Thackley (Minute 12) had been considered. He undertook to approach the issue with an open mind and to consider all the relevant material planning issues before making a decision.

In the interests of transparency, Councillors Griffiths disclosed that he had, in his capacity as a Ward Councillor, objected to the principle of development in respect of the original application associated with Land to the South of 631 to 655 Leeds Road, Thackley (Minute 12) which had been approved on appeal. The present application dealt with detail of the scheme, was a separate matter and he would approach the issue with an open mind and consider all the relevant material planning issues before making a decision.

ACTION: *Assistant Director - Planning, Transportation and Highways*

10. **INSPECTION OF REPORTS AND BACKGROUND PAPERS**

There were no appeals submitted by the public to review decisions to restrict documents.

NO ACTION

11. **MEMBERSHIP OF SUB-COMMITTEES**

Resolved –

That Councillor Whitaker replace Councillor Shaw as a Member of the Area Planning Panel (Bradford).

ACTION: *Interim City Solicitor*

12. **LAND TO THE SOUTH OF 631 TO 655 LEEDS ROAD, THACKLEY**

The Assistant Director - Planning, Transportation and Highways submitted a report (**Document “D”**) in relation to a Reserved Matters Application in respect of the development of 148 houses on land to the South of 631 to 655 Leeds Road, Thackley – 17/05902/MAR. A range of plans and photographs were displayed.

The report explained that a hybrid application (13/04148/MAF) had been approved in 2015, further to an appeal, for up to 220 houses; 60 in full and 160 in outline. This application was for a reduced number of houses from that granted in outline (148) and included details of layout, design, internal highway and landscaping. The applicant had also submitted a Deed of Variation in respect of the Heads of Terms of the related Section 106 Legal Obligation which proposed that the affordable housing provision be met in full but the contributions towards the other infrastructure obligations be reduced.

The Assistant Director reported on the substance of additional representations received further to the publication of his technical report and explained that:

- This application was for 12 fewer units than the original application.
- A Viability Appraisal had been submitted and had been assessed by an independent consultant; this identified a shortfall of approximately £300,000 from the original total available for infrastructure contributions.

He responded to questions from Members as follows:

- It was understood that the applicant had considered the implications of the introduction of the Community Infrastructure Levy (CIL) Scheme and had taken the decision to continue with the Reserved Matters application. This site was not located within a nil CIL zone.
- The developer would be required to put appropriate arrangements in place for the maintenance of the Public Open Space provision. Details of the landscaping and boundary treatments would have to be submitted to the Local Planning Authority for approval.
- With reference to a query about the 11% reduction in financial contributions towards infrastructure being excessive when there had only been a 5% reduction in the number of units; it was possible that the units that had been removed from the scheme were larger houses of higher value.
- When the original Section 106 legal obligation had been drawn up the judgement had been made that the primary focus should be affordable housing.

Resolved –

- (1) **That the application be approved for the reasons and subject to the conditions set out in the Assistant Director - Planning, Transportation and Highways' technical report.**
- (2) **That authority be delegated to the Assistant Director - Planning, Transportation and Highways (in consultation with the Interim City Solicitor) to enter into a Deed of Variation, in respect of the original Section 106 Legal Obligation attached to Planning Permission 13/04148/MAF, to retain the contribution in respect of affordable housing provision in full and amend the others, as set below:**

Affordable Housing - £1,659,000
Education - £628,000
Recreation/Open Space - £108,000
Public Transport Improvements - £38,000.

***ACTION: Assistant Director - Planning, Transportation and Highways
 Interim City Solicitor***

13. LAND TO THE NORTH OF ROYD INGS AVENUE, KEIGHLEY

Previous references: Minutes 51 and 71 (2017/18)

The Assistant Director - Planning, Transportation and Highways presented a report in relation to a full planning application for the extension of Keighley Industrial Park through the formation of eight structures housing nine commercial units (B8 and B2 uses), with associated car parking, highways connection, drainage and landscaping, on land to the north of Royd Ings Avenue, Keighley – 17/05255/MAF (**Document “E”**). A range of plans and photographs were displayed.

Members were reminded that this application had been considered at the meeting

of the Committee held on 28 March 2018 when they had resolved that they were minded to grant planning permission and that the application be referred to the Secretary of State.

The report asked Members to consider the contents of a letter from the Environment Agency (EA), dated 4 May 2018 (Appendix 1 to Document “E”), which included new information which was considered to be relevant to the determination of this planning application. This had been forthcoming further to the Local Planning Authority contacting the EA to consult it in relation to the conditions that it considered should be imposed following the decision of the Committee on 28 March. The EA had undertaken a Technical Assessment of the proposed development and had taken the view that it wished to make further representations on this matter and the issues raised were now set out in full in his report.

The report also included a set of draft planning conditions, produced by the Assistant Director further to the meeting held on 28 March 2018, and the comments made by the applicant in respect of these.

The Assistant Director reported that, further to a meeting with the applicant the previous week, a revised set of conditions had now been drafted and these were tabled for Members’ consideration (**Document “F”**). It was stressed that this document did not include any conditions in respect of the requirements of the Environment Agency.

In response to a query from a Member of the Committee about whether the Committee’s focus at this meeting was the new information in respect of flooding and flood risk and it not being the Members’ role to unpick all the other matters considered at the previous meetings; the City Solicitor clarified that it had long been established by case law that a Planning Committee resolution did not take effect until the Decision Notice was issued, so any issue could be revisited if necessary. In this case the Committee needed to consider, in all the circumstances, whether the partial objection on behalf of the EA submitted at the 28 March meeting still stood or if, in light of the new information, the matter needed to be looked at again.

The Assistant Director confirmed that there had been no further representations from the public or any other consultees. In response to a Member’s question he also explained that it was hard to determine exactly where the water (in the April 2018 photographs) had originated ie whether from run-off from the road, up through the ground or overtopping of the watercourse. His view was that ground water levels in the area had increased due to the amount of rainfall.

Members made the following comments:

- The EA letter referred to Sequential and Exception Tests and said that the Committee had been presented with information on lower risk sites. He could not recall accepting such evidence from officers and did not agree with this statement.
- In respect of the reference to the Upper Aire Strategy Model this dated from 10 years ago.
- Phase 1 of the Leeds Flood Alleviation Scheme was almost complete.

- There was also a Bradford Catchment Flood Alleviation Scheme and twelve sites between Stocksbridge and Apperley Bridge were being explored in respect of proposals for flood storage and natural flood management.
- A report in respect of the Upper Aire Catchment and flood storage was due later this year and it was considered strange that no reference had been made to it. This site had not been mentioned (in an initial report) so any flood storage on it would be a 'windfall' financed by private finance.
- The Core Strategy (Sub Area Policy AD1:Airedale) stated that it should be recognised... 'that development could lead to opportunities for improving green infrastructure and flood storage provision, particularly in relation to the Upper Aire.'

The Assistant Director confirmed that, at this point in time, no flood alleviation scheme was under consideration for this site but the Core Strategy stated that floodplain should be retained as such. He also said that:

- Policy EN7 of the Core Strategy stated that the Council would 'safeguard potential to increase flood storage provision and improve flood defences within the Rivers Aire and Wharfe corridors'.
- The site had originally been allocated as an employment site and a planning application had been submitted in the early 2000s. However, further to the site flooding heavily, the application had been withdrawn. The EA had then undertaken more detailed mapping and identified the site as being in the flood plain. Further to this the categorisation of flood plain into Zones 1, 2 or 3 had been introduced. In the early stages of the development of the Replacement Unitary Development Plan (RUDP) the site had been allocated for employment use; but the EA had made representations and the designation was changed to Green Belt.

In response to a question he confirmed that 'functional floodplain' was intended to provide some protection to prevent other places flooding.

A representative of the EA was in attendance at the meeting and made the following comments in response to Members questions/comments:

- The references to wider flood alleviation works were intended to dispel the suggestion that they should allow for new development. These works were undertaken to reduce risk for existing development and make the community more resistant to climate change not to unlock land for growth. This site was not considered to be flood storage it was functional flood plain; this was accepted. The applicant had acknowledged that overtopping of the river would occur in all scenarios.
- It was routine for the Agency to place the onus on developers to provide compensatory storage. There was a presumption of on site provision on a like for like basis. In this instance it was not possible to provide compensatory storage because the whole site was within the functional flood plain. There was no proposal to provide any storage outside the site.
- It was not appropriate for the public purse to mitigate for a developer.
- The site was flood plain; storage would be lost as a result of this development. The Flood Risk Assessment (FRA) did not assess risk elsewhere so the consequences of this development on other areas were not understood.
- The measures suggested (by the applicant) would simply minimise the impact,

there would not be a net improvement and there were significant concerns in respect of the efficacy of the voids. In the longer term litter and debris would hinder flow across the site.

- The purpose of the wider flood alleviation works was to protect the existing community and to provide protection from the impact of climate change not to mitigate for the impact of this development. It could not be said that this development would not increase flood risk elsewhere; it was considered that there had been no attempt to make an assessment. There would be an impact.
- The EA was present at this meeting in the role of statutory consultee to ensure that the Committee had all the information needed to make an informed decision. The Agency also had a role in relation to the issue of Environmental Permits. No application had been received at this point and any such application in the future would be considered on its merits. On the basis of the information available at this stage he considered that it was unlikely that one would be issued. There was an appeal process via Defra.
- In response to a challenge to the statement that it was unlikely that a permit would be issued, he said that the consideration of permits was a distinct process and the Agency would remain open minded but a view would be offered at the preliminary stage. There were certain 'showstoppers' and clear parallels between that and the planning process.
- Consultants working on the Leeds Flood Alleviation Scheme would have been required to consider climate change mitigation, looking at the current risk and how risk may change over time.
- In respect of the points about the effectiveness of the design and the lack of technical detail and whether this information could be provided and assessed; the substantive position was that there was a clear policy imperative against this kind of development in the flood plain; it was therefore considered to be both unnecessary and a waste of time and effort to undertake further assessment.
- If the application proceeded against advice a full and detailed analysis would be expected in respect of the impact of flood risk elsewhere and this would inform the detailed design but there was no reasonable expectation that this could lead to there being no impact elsewhere.
- It was considered that no conditions could make this scheme acceptable; they would simply serve to minimise not avoid the risk. If the principle was established by the grant of planning permission then it would only be possible to make the best of a bad job.
- If it included off site compensatory storage on a like for like basis it might be possible to demonstrate acceptability.
- The EA view was that the issues in this case were so fundamental to the acceptability of the development that no decision could be made without detail being available.
- There were long and detailed policies on flood risk; it was a clear material planning consideration. There were clear parallels and overlaps in the planning/permit processes and each was determined on their own merits. Flood risk should be part of the Committee's consideration of the application.
- Page 6 of the EA response set out the number of times this land had flooded. Even if there had been no such historical data the EA position would be the same.
- Climate change could increase flow by 30 to 50 % over the next 100 years.

The applicant's agent addressed the Committee as follows:

- He, as the agent, and the applicant's chartered surveyor firmly believed that the Committee had reached the correct decision (on 28 March 2018) after taking account of all the material considerations.
- No new information had been provided by the Environment Agency.
- Subject to the agreement of conditions the approval still stood.
- The photographs from April 2018 taken by the Local Planning Authority and referred to by the EA were not on the Council's website.
- The applicant had sought extensive legal advice but officers had still brought the matter back to the Committee.
- Agreement had now been reached in respect of the conditions so the application could be referred to the Secretary of State.
- The EA had been consulted on a number of occasions since the submission of the application.
- Refusal had been recommended at the initial Committee meeting in December 2017 and Members had agreed to defer the matter for additional information to be presented. Further consultation had then taken place with the EA and the application had been brought back to the Committee in March 2018 when it had been approved, subject to conditions.
- A draft list of conditions had been drawn up in April.
- He understood that the EA had refused to recommend conditions.
- There was no new information, all the issues in the latest report from the Assistant Director - Planning, Transportation and Highways had been responded to previously.

The applicant's chartered surveyor said that:

- He had 25 years unrivalled experience in this field and could not stress enough the positive value and impact of this development on the generation to come.
- The scheme represented £50 to £60 million of private sector investment.
- It would provide a significant amount of new floor space that companies on doorstep were waiting for.
- The development would generate hundreds of jobs and £1.25 million in business rate revenue.
- Keighley had never seen this scale of investment.
- The challenges were recognised and he was confident that they could be overcome.
- It was believed that everyone recognised the value of the scheme to this area.
- Keighley needed this scheme and Member's support.

A Councillor from an adjoining ward spoke in support of the proposal. He stated that:

- More industrial buildings were needed to meet demand and to deliver the Council's Economic Strategy.
- Officers were ignoring the democratic process.
- There was almost universal agreement on the scheme.
- The investment and jobs were much needed.

- The necessary road infrastructure was already in place.

Members commented as follows:

- Construction took place in water and flood zones all over the world.
- This scheme would bring £40 to £50 million of investment into Keighley. This was the developer's money and they were taking a massive risk.
- It was not considered that there were any problems with the scheme.
- This could set an example for future development.
- As a Member of the Committee he did his best to apply policy correctly.
- He considered that in his judgement the balance had now shifted significantly.
- There were two major elements relevant to the Committee's decision; the Green Belt and flood plain. Very special circumstances were needed, one of which had been that there was nowhere else to develop such a scheme in this area, the second relating to the allocation as Green Belt being only relatively recent and applicant demonstrating that it could be developed without increased risk of flooding. He was not now convinced by these points.
- There was clear policy not to build in flood plains and good reason was needed to overrule this, primarily because it could make the situation worse for other people. It was not accepted that it had been demonstrated that this would not happen in this case; the EA had been clear about the quantum of damage to the flood plain and he did not feel able to overrule this.
- The loss of the ox bow lake was regrettable.
- Only one element of the argument could not be mitigated and this was an unspecified risk to an unspecified location.
- It was accepted that risk existed. There was a clear and specific benefit to the people Members represented which had to be set against the difficulty in determining risk to other people they represented in Cottingley and Shipley.
- It was important that Members had a mind to the clear economic benefits; there was a need for more jobs and business opportunities.
- He had taken on board what the EA and officers had said. It was considered that the applicant had got to convince the Authority that what was being done would not cause unacceptable risk of flooding. The conditions were clear and if it couldn't be demonstrated it couldn't proceed. Discussion should take place with the applicant about on-site flood management and funding in respect of silting up.
- Subject to these considerations Members should confirm what the previous Committee had decided and the matter should be referred to the Secretary of State.
- Condition 19 provided some comfort in this respect, as did the progress report in relation to upstream storage provision.
- Silsden Reservoir would also be likely to be available for flood storage.
- There was a desperate need for inward investment and jobs.
- Approval was supported.
- The application should go forward subject to the conditions discussed and including conditions specified by the EA before being submitted to the Secretary of State. A timescale of 14 days should be given for these to be

provided; and they should be reasonable conditions.

- There should be a clear plan agreed by the Local Planning Authority in respect of how the risks associated with debris and silting up would be managed; how this would be done and how it would be financed.

The Assistant Director said that the maintenance regime would be drafted on a similar basis to those implemented for residential schemes and a clause could be included in the Section 106 Legal Obligation.

Resolved –

- (1) That, having given due consideration to the information submitted by the Environment Agency, the Committee re-affirms its decision taken at the meeting held on 28 March 2018, subject to the amendment of Resolution (1)(iii) to read:

(iii) Works of flood alleviation are taking place within the Aire Valley Catchment Area as part of the Leeds Flood Alleviation Scheme,

and that approval should be subject to the Conditions set out in Document “F” (dated 14/6/18 and tabled at the meeting) and any appropriate and reasonable Planning Conditions sent to the Local Planning Authority by the Environment Agency (to be submitted within 14 days of the date of this meeting).

- (2) That approval of the application be subject also to the completion of a legal planning obligation in respect of:

The submission of a maintenance scheme to the Local Planning Authority, for approval in writing, to prevent voids and/or screens silting up or being affected by debris during the lifetime of the development. Such scheme to specify how the maintenance regime will be funded, the frequency of maintenance and any actions to take place after a flooding event,

the obligation to contain such other ancillary provisions as the Assistant Director - Planning, Transportation and Highways (after consultation with the Interim City Solicitor) considers appropriate.

ACTION: *Assistant Director - Planning, Transportation and Highways
Interim City Solicitor*

Chair

Note: These minutes are subject to approval as a correct record at the next meeting of the Regulatory and Appeals Committee.

THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER