

Minutes of the meeting of the **PLANNING COMMITTEE** held at the Council Offices, Whitfield on Thursday, 14 September 2023 at 6.00 pm.

Present:

Chairman: Councillor M J Nee

Councillors: D G Cronk
J S Back
E A Biggs
R M Knight
J P Loffman
S M S Mamjan
M P Porter
C A Vinson
H M Williams

Officers: Team Leader (Development Management) - Strategic Sites
Principal Planner
Principal Planning Solicitor
Property/Planning Lawyer
Democratic Services Officer

The following persons were also present and spoke in connection with the applications indicated:

<u>Application No</u>	<u>For</u>	<u>Against</u>
DOV/21/00075	Mr Clive Tidmarsh	Ms Sharon King

45 APOLOGIES

It was noted that apologies for absence had been received from Councillors D G Beaney and N S Kenton.

46 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, Councillors M P Porter and C A Vinson had been appointed as substitute members for Councillors D G Beaney and N S Kenton respectively.

47 DECLARATIONS OF INTEREST

There were no declarations of interest.

48 MINUTES

The minutes of the meeting held on 10 August 2023 were approved as a correct record and signed by the Chairman.

49 APPLICATION NO DOV/19/01328 - UNIT 6, THE OLD TILMANSTONE COLLIERY, PIKE ROAD, EYTHORNE

The Committee was shown an aerial view, a plan and photographs of the application site which was a premises located within an industrial estate. The Principal Planner advised that retrospective planning permission was sought for a change of use to B2 which was compatible with the site allocation. Permission was also sought for the installation of various equipment/apparatus consistent with the site's use as a concrete batching plant.

Members were advised that the use had started in November 2021, and a temporary silo on site would be removed and three permanent ones installed should permission be granted. The majority of objections received related to HGV movements. There were currently no restrictions on vehicle movements within and around the site. The application, if approved, would improve the situation as conditions were proposed which would control the route of HGVs using the site and the number of vehicle movements within the site. The former would be secured by way of a legal agreement and the latter achieved via a logbook. The routeing agreement would require vehicles to enter and leave the site via Barville Road and the A256.

Kent County Council (KCC) Highways had been consulted and there had been significant correspondence between the Council, KCC Highways and the applicant. The Principal Planner pointed out that other businesses on the industrial estate also generated HGV movements and a number of vehicles were therefore already using routes to and from the site. He added that condition 8 would be removed as the applicant had advised that it was no longer possible to disable reversing alarms on lorries. On this point, he clarified that the condition had not been requested by the Council's Environmental Protection team and that there had been no noise complaints about the site in the two years that the use had been in operation. Given the site's distance from the nearest residential property and its location on an industrial estate, the change of use was considered acceptable and approval was recommended.

Councillor D G Cronk queried how the movement of HGVs would be monitored and what signage would be provided. The Principal Planner advised that the applicant would be required to keep a logbook of vehicles visiting the site. The routeing agreement would require signage to be installed inside and outside the site; CCTV at the site entrance; directives to drivers visiting the site for the first time; and breaches to be penalised with a warning for a first offence and a temporary or potentially permanent ban for second or third offences. Too many vehicles being present on the site would be a breach of planning conditions and therefore potentially subject to further investigation by Planning Enforcement.

Councillors J S Back and C A Vinson cited the use and vehicle movements as being consistent with an industrial estate and supported the proposal. In response to Councillor J P Loffman who asked whether HGVs would be present on site outside normal working hours, the Principal Planner advised that the applicant had resisted any restrictions on working hours as the company occasionally had to do emergency work which required night working. In any case, Environmental Protection had not requested any restriction on working hours. The Chairman added that if HGV drivers took the wrong route on a regular basis, local residents would undoubtedly bring it to the Council's attention so compliance would effectively be monitored that way.

RESOLVED: (a) That, subject to the completion of a Section 106 Agreement in relation to a Traffic Routeing Agreement, Application DOV/19/01328 be APPROVED subject to the following conditions:

- (i) Approved plans;
- (ii) Permitted development rights removal/approved use;
- (iii) Number of HGV movements;
- (iv) Traffic Management Plan – complementing the Traffic Routeing Agreement provided for in the Section 106 Agreement;
- (v) Retention of parking provision;
- (vi) Construction Management Plan;
- (vii) Record of HGV movements;
- (viii) Desktop contamination investigations;
- (ix) Contamination remediation if required by condition 9;
- (x) Verification contamination report if required by condition 10;
- (xi) Contamination investigations required if contamination found at any time;
- (xii) External lighting.

(b) That powers be delegated to the Head of Planning and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

50 APPLICATION NO DOV/21/00075 - 74 AND LAND REAR OF ARCHERS COURT ROAD, WHITFIELD

Members viewed plans and photographs of the application site which was located within the settlement boundary of Whitfield and within an existing site allocated for housing within Core Strategy Policy CP11 and known as the Whitfield Urban Expansion (WUE). The Team Leader Development Management (TLDM) advised that outline planning permission was sought for the erection of up to 38 dwellings and the formation of an access road, with the existing dwelling at 74 Archers Court Road to be demolished. As an update to the report, he advised that a further 19 representations had been received, these being 18 objections and one neutral. These raised no new material considerations, but some questioned the access onto Archers Court Road and the scheme's conformity with the Local Plan.

The TLDM went on to explain that, whilst Policy CP11 did not restrict access onto Archers Court Road per se, it required developments to be carried out in accordance with the Whitfield Masterplan Supplementary Planning Document (SPD). The SPD did have a restriction on vehicles (other than buses and cyclists) using Archers Court Road as a direct access. The emerging Local Plan had a similar restriction, with only buses being allowed to use the road. KCC Highways had assessed the application and, in the absence of significant and demonstrable

harm to the highway network, had deemed it acceptable. Furthermore, the development would provide contributions towards the Whitfield and Duke of York's roundabout mitigation schemes and, as such, approval was recommended.

Councillor Back referred to the Whitfield SPD which stated that the site was a village extension within Phase 1 of the WUE and that access should accordingly be through Light Hill. The SPD precluded direct access onto Archers Court Road for vehicles, other than buses and cyclists. He questioned why residents living in Phase 2 of the WUE were required to travel via Richmond Park when future occupants of this scheme, most of which was situated in Phase 1, would not. Policy CP11 sought to ensure that delivery was managed and coordinated, with the SPD setting out a framework for how the expansion should be undertaken, including master planning, infrastructure, highways, etc, underpinned by the aim of protecting the existing settlement. In his view it was not acceptable to pick and choose when these policies were applied. KCC Highways had originally objected to the scheme but had subsequently withdrawn its objection when the applicant had agreed to contribute towards the upgrading of the Whitfield and Duke of York's roundabouts. He commented that the developer had refused an offer of access through Richmond Park due to the cost. He could not support the application due to the proposed access and proposed that it should be refused on the grounds that it was contrary to page 66 of the Whitfield Urban Expansion SPD and Policy CP11, and because the upgrading of Whitfield roundabout would not take place until 2026 at the earliest.

The TLDM acknowledged that the proposed scheme did not accord with the SPD in that the proposed access would be via Archers Court Road. However, Officers could not support a refusal because no harm would arise as a result of the additional vehicular movements generated by the scheme. The threshold for a refusal on highways grounds was that there would be a severe cumulative impact on the local highway network which would not be the case here. KCC Highways had acknowledged that the scheme would have an impact on junctions and Whitfield roundabout, albeit not so severe as to reach the threshold for refusal. He clarified that the contributions towards the roundabout mitigation scheme were to meet a requirement of the Local Plan to provide the necessary infrastructure for new developments. Moreover, they were not above and beyond anything that other schemes would be asked to provide.

In terms of KCC Highways' consultation, its two initial responses had raised concerns about the lack of transport evidence. The applicant had then provided two technical notes that furnished the requisite information. A third consultation response had withdrawn KCC Highways' objections to the scheme. Following an approach from Officers regarding the need to request contributions for the roundabout mitigation scheme, KCC Highways had agreed to seek these, as it would with other developments affecting the roundabouts.

Councillor Vinson stated that, whilst the scale of the proposed development was modest and the proposed mitigation reasonable - and if situated elsewhere he would probably support it - the point of contention was that the Council had a longstanding policy governing its delivery of 5,000 dwellings which the Committee was being asked to overlook. Not only did the law require decisions to be made in accordance with the Development Plan, in this instance there was an SPD that set out how schemes in Whitfield should come forward. Given that the Development Plan had been the subject of considerable scrutiny and examination, in his view it was the proposal's failure to comply with this and the SPD that were paramount to the Committee's considerations rather than the issue of harm.

Councillor Biggs accepted that there were a number of challenges in relation to the expansion of Whitfield, not least the effect of development on Whitfield roundabout. Officers had put in a lot of work behind the scenes to address highways issues which would take time to progress. Numerous discussions had taken place with statutory consultees such as KCC Highways and National Highways and Officers were obliged to follow their advice. In his view it was disingenuous to question the payment of contributions towards upgrading the Whitfield and Duke of York's roundabouts as they were entirely legitimate.

The TLDM stressed that, whilst there was a technical breach of the SPD, the harm caused by that breach needed to be identified, and evidenced if the application were to be refused. It was the opinion of Officers that local junctions would not be unacceptably impacted by the development as it was a smaller and more bespoke scheme. Whilst Officers were struggling to identify the harm, the benefits of the scheme were clear in that it would provide affordable housing and financial contributions towards the wider infrastructure of the district.

Councillor Loffman rued the fact that the Committee was bound by KCC Highways' advice. Its definition of severe was questionable and the transport models it used were not based on reality. The impact of this development would undoubtedly be felt by local residents. However, in the light of KCC Highways' advice, and mindful that an appeal could be upheld with costs awarded against the Council, he considered that refusing the application was not an option. Councillor Cronk suggested that it would have been helpful to have had KCC Highways present at the meeting to aid Members in their decision making and to answer questions about the mitigation scheme.

Councillor R M Knight advised that over the years he had been involved in plans to expand Whitfield, including challenging some of the proposals put forward by the Council, with a view to protecting the village. He accepted that it was a relatively small development, but approving the application would set a precedent and encourage similar developments to come forward which cumulatively would have a severe impact on the roundabout. The policies were there to protect the community and access for this development should be provided via Richmond Park. In respect of the latter, he understood that an opportunity to do so had been turned down.

The Principal Planning Solicitor reminded the Committee that the law required decisions to be made in accordance with the Development Plan unless material considerations indicated otherwise. The SPD was only one element of the Development Plan and Members should consider the relevant provisions of the Development Plan as a whole when assessing the application. Addressing comments made by some Members, he disagreed with the suggestion that the development was a speculative one and, aside from the access being a point of conflict with the SPD, it was considered by Officers to comply with the Development Plan. He reminded Members that advice received from statutory consultees was a material consideration of significant weight. In this regard, the National Planning Policy Framework (NPPF) had a test of severe cumulative impact and KCC Highways had advised that this would not be the case. Although there was a conflict with the SPD, the harm resulting from that conflict had to be identified if the Council was to defend a refusal at appeal successfully. He advised that refusing the application would not be unlawful, but the consideration for the Committee was whether a refusal would be reasonable given that the evidence was not there to justify it.

Councillor Vinson argued that the SPD was well evidenced. Councillor Loffman agreed, raising concerns that approving the application could set a precedent and undermine the Council's policies. The Principal Planning Solicitor advised that it was an established principle that precedent could be a material consideration, particularly where planning permission was being granted contrary to policy. Whilst the application was contrary to an element of the policy, he understood from discussions with Officers that there were, in practice, very few developments that could come forward proposing to use Archers Court Road for access. In other words, approving the application was unlikely to result in a proliferation of other applications that it would then be difficult to refuse.

The TLDM explained that the SPD was a high-level document that looked at the broader framework for delivering 5,000 homes under the WUE. Its purpose was to avoid creating impacts and causing harm to the highway network. The application under consideration was solely for the delivery of 38 dwellings. Two highways authorities had found the proposed scheme acceptable, based on specific evidence submitted with the application that was more forensic than the evidence provided for the SPD which, while comprehensive, was looking at the wider allocation. He stressed that the application's evidence was substantially greater than that attached to the SPD, looking at vehicle movements that would be generated by this development. He advised that the next application on the agenda was for reserved matters for a development with fewer units that also proposed access onto Archers Court Road, thus raising similar concerns to this application. The outline application had been refused but then allowed at appeal, with the planning inspector concluding that there would be a negligible impact on the Archers Court Road/Sandwich Road junction and Whitfield roundabout. It was a matter of fact that KCC Highway's predictions in relation to that scheme had been upheld by the planning inspector.

Councillor Knight pointed out that the site which was the subject of the next agenda item had no alternative but to use Archers Court Road for access. That was not the case with this site whose location meant that an alternative access was potentially available through Richmond Park. Councillor Porter commented that he used Archers Court Road on a regular basis and often found it congested with traffic which not only caused delays and frustration for drivers but also added to levels of air pollution caused by stationary vehicles. In contrast, he had never experienced delays at the Richmond Park roundabout. The Chairman declared that he, like some other Members, was sceptical of KCC Highways' acceptance of schemes and urged Members to look online and pay close attention to proposed developments in their ward. It was a balanced decision, but he believed that a refusal was difficult to justify.

RESOLVED: (a) That, notwithstanding the Officer's recommendation, Application No DOV/21/00075 be REFUSED on the grounds that the proposed vehicular access onto Archers Court Road, having regard to the timetable for delivering Whitfield roundabout works, would be contrary to Policy CP11 of the Core Strategy, page 66 of the Whitfield Masterplan Supplementary Planning Document 2011 and point (i) of SAP of the emerging Local Plan.

(b) That powers be delegated to the Head of Planning and Development to finalise the wording of the grounds of refusal, in consultation with the Chairman of the Planning Committee and ward Members.

APPLICATION NO DOV/22/00737 - LAND REAR OF ARCHERS COURT ROAD, WHITFIELD

The Committee was shown a drawing and plans of the application site which was a triangular parcel of land lying between the rear of properties on Archers Court Road and the A2, and within the urban settlement boundary of Dover. The TLDM advised that the application was for reserved matters pursuant to outline permission which had been granted at appeal. Responding to some queries, he clarified that the application had been submitted within one day of the expiry of the outline planning permission.

Members were advised that the closest dwelling to the proposed development was a bungalow which was 27 metres distant from the boundary of the site. He advised that trees of between 3.5 and 4.5 metres (heavy standard size) would be planted in the public areas and streets of the development, and trees of between 2.5 and 3 metres (standard size) would be planted in individual gardens. There was an existing acoustic fence within the highway boundary, the maintenance of which fell to National Highways. A 4.5-metre acoustic fence would be installed by the developer and its maintenance would be a charge on the properties.

In response to Councillor Back, he advised that conditions imposed on the outline application would ensure that no development could commence until details of the public right of way and proposals for its diversion had been submitted and approved by the Local Planning Authority. In response to Councillor Williams, he advised that it would normally be expected that condition 5, which dealt with biodiversity mitigation, would include restrictions on tree cutting during nesting season. That said, it could be raised informally with the applicant. He agreed that the condition on electric vehicle charging facilities should be removed as such provision came under Building Regulations. In respect of Councillor Williams's suggestion that the applicant could provide each household with a free composter or voucher equivalent, he advised that this was not a policy requirement, but informal discussions could be held with the applicant.

RESOLVED: (a) That Application No DOV/22/00737 be APPROVED subject to the following conditions:

- (i) Approved plans and details;
- (ii) Samples of materials;
- (iii) Fenestration within reveals;
- (iv) Removal of permitted development rights;
- (v) Biodiversity mitigation strategy prior to clearance works;
- (vi) Lighting design strategy for biodiversity;
- (vii) Provision of hedgehog gaps within fencing;
- (viii) Proposed biodiversity enhancement measures secured;

- (ix) Provision of integrated bat and bird features to dwellings;
- (x) Arboricultural method statement and tree protection measures;
- (xi) Works to trees to accord with approved details;
- (xii) Soft landscaping provided and maintained in accordance with details;
- (xiii) Hard surfacing provided and maintained in accordance with details;
- (xiv) Formal and informal public open space and play area provided and maintained in accordance with landscape maintenance and management plan;
- (xv) Acoustic fencing provided and maintained in accordance with details;
- (xvi) Permeable paving.

(b) That powers be delegated to the Head of Planning and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

52 APPEALS AND INFORMAL HEARINGS

The Committee noted that there was no information to receive regarding appeals.

53 ACTION TAKEN IN ACCORDANCE WITH THE ORDINARY DECISIONS (COUNCIL BUSINESS) URGENCY PROCEDURE

The Committee noted that no action had been taken.

The meeting ended at 7.40 pm.