

**PLANNING COMMITTEE
25 JULY 2016**

ADDITIONAL INFORMATION

Correspondence received and matters arising following preparation of the Agenda

Item 4. Ref: 15/0436/01. Pages 5-34

Land adjoining the West of England School, Topsham Road, Exeter

A report was taken to the Devon County Council's Development Management Committee on 20 July to seek authorisation on the formal Highway response to this application. Members did not accept the Officer's technical recommendation of conditional approval (attached as an Appendix to the Committee report) and resolved that they were unable to reach a view. Consequently, following the receipt of legal advice, Members are advised that the Highway Officer's recommendation carries no weight and the Highway assessment for this application must rely on the criteria of the NPPF which requires safe and secure access to be achieved and should only be refused if the cumulative impacts of the development are severe.

One letter received requesting financial contribution towards Countess Wear Village Hall – This request would be considered as part of the allocation of CIL monies received rather than through a Section 106 Agreement.

Item 5. Ref: 15/0878/01. Pages 35-54

Playing Field off Wear Barton Road, Exeter

Two additional letters of objection have been received which reiterate the concerns raised in the original report.

Addendum to Committee report following recent legal advice received.

Recent legal advice has further clarified how this planning application should be determined following confirmation that the Council's policies for the delivery of housing are deemed out of date as a result of the Council not having a 5 year housing supply as concluded by the Exeter Road Inspector. The legal view is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise and this will depend on assessing whether the proposal is in accordance with the Development Plan (as a whole) and if it is not, on the weight afforded to the relevant Development Plan policies under consideration both in themselves and relative to the other material considerations.

Notwithstanding NPPF paragraph 49 in respect of out of date planning policies (which it is accepted is applicable here because of the 5 year shortfall), recent case law has maintained that the starting point for considering planning applications is still the Development Plan as recognised in paragraph 11 of the NPPF, which states that planning permission must be determined in accordance with the Development Plan unless material consideration indicate otherwise. This maintains that the local planning authority must still continue to weigh up all the relevant Development Plan policies irrespective of whether they are now deemed out of date. The fact that a policy is out of date does not mean it is dis-applied and nor does it mean that the policy must carry only limited weight. Weight is a matter for planning judgment depending on the facts of

the case. For this application the most relevant policies are L3 'Development on Open Space' and L5 'Loss of a Playing Field' and it is against these policies which the application is primarily assessed. Core Strategy CP10 supports those policies but it is accepted that if policies L3 and L5 were satisfied, CP10 would also be satisfied. The text of both the saved Local Plan policies are reproduced within the Committee report. Given that the proposal results in the loss of approximately two thirds of the site to residential development it does conflict with Policy L3 d) and would reduce the site's recreational and amenity value in the area. The site currently provides an area of actively used recreational open space, which contributes to the areas spacious and green character particularly when viewed from alongside an existing public footpath and parts of the Wear Barton Road frontage. It is not considered that equivalent replacement provision for all of these attributes is being made within the area. The application is also in conflict with Policy L5 as the development of the site would harm recreational opportunity, with the loss of the existing open land potentially preventing future playing pitch creation, if required in the area. As a consequence there is also non-compliance with CP10 which seeks to protect recreational facilities. The proposal is therefore not in accordance with the Development Plan.

The Committee report states the importance of NPPF paragraph 49 which renders the Council's policies in respect of housing delivery out of date and consequently the weight attached to relevant policies requires reassessment. Recent legal judgements have clarified that it is still for the decision maker (ie the local planning authority) to make the planning assessment as to how much weight each policy is given. However what the Courts have made clear is that the lack of a 5 year housing supply may influence how much weight these out of date development policies are given. This is dependent on the specific scheme and will include for example the extent of the Council's 5 year supply shortfall, what the Council is doing to address this issue and the particular purpose of the restrictive policy, in this instance Core Strategy Policy CP10, Local Plan Policy L3 and Policy L5. The Council currently has an approximately 2.5 year supply of housing and the intention to address this matter will rely on cooperation with neighbouring authorities, although this is unlikely to occur in the short term. Given these circumstances it is considered that the restrictive policies would be afforded less weight given the limited progress made in respect of the housing shortfall. However, the protection of open space and recreational provision remains a strong theme of the NPPF and the Development Plan policies themselves are generally consistent with the approach in the NPPF and would ordinarily carry due weight in line with paragraph 215 of the NPPF. In the circumstances, it is considered that the Development Plan policies should still carry moderate weight.

Legal advice has clarified the role of NPPF paragraph 14 in respect of the out of date policies for this application. The advice concludes that the correct interpretation of this paragraph needs to have regard to the concluding sentence of this paragraph which requires the decision taker (ie the local planning authority) to grant planning permission unless '*specific policies in this Framework indicate development should be restricted*'. Footnote 9 gives examples of such policies but these are examples rather than a complete list. Assessment of the application should therefore refer to any relevant restrictive policy in the NPPF in this instance paragraph 74, which states that existing open space should not be built on unless certain criteria are met. This is a specific policy of the NPPF which indicates that development should be restricted. Consequently an assessment is needed regarding the appropriateness of the scheme, both for on-site pitch provision and in respect of the replacement pitches proposed by the applicant, to satisfy the most relevant second element of paragraph 74 which states that '*the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location*'. The applicant has sought to demonstrate that appropriate pitch replacement will occur in terms of quantity and quality, as outlined in the Committee report. Legal advice has clarified that the question of '*suitable location*' needs to have regard to the approach in terms of the Open Space SPD, which looks at pitch provision as a City-wide resource as well as considering the localised role of these particular pitches as stated within Committee report. The existing pitches do fulfil a local function for the adult and youth teams of the Countess Wear Dynamos and whilst matches and training could potentially take place elsewhere in the City this would be less convenient and less accessible than the continued use by the existing teams of the current facility. Whilst qualitatively better facilities are being provided elsewhere (and one pitch is being retained at the site) there is a net loss of recreational open space in quantity and the replacement facilities are not as conveniently located for local users. Consequently, on balance, it is concluded that the replacement does not represent equivalent or better provision so as to satisfy paragraph 74 of the NPPF and therefore it

cannot be relied on to justify planning permission. This is not, therefore, a case where the presumption in favour of sustainable development would operate to point to a grant of planning permission.

Legal advice has also clarified the scope of the Consultation Direction and the potential for the application being 'called in' by the Secretary of State. The requirement to refer the application to the Secretary of State relies on a set of criteria which are defined within planning legislation which only applies if; the site is owned by a local authority; is used by the College as a playing field and has been used by the College at any time in the last five years. The Wear Barton site does not fulfil any of these criteria and consequently the Council would not have been required to consult the Secretary of State prior to granting planning permission. However, this is no longer directly relevant because there is now an appeal and the matter will be considered by the Secretary of State (or his Inspector).

In conclusion, following recent legal advice it is considered that the final decision on this application is finely balanced. The assessment of the application shows the impact of development of the site in terms of loss of recreational facilities and in amenity terms on the character of the area against the requirements of Local Plan Policy L3. Clearly the development of two thirds of the site will undoubtedly have an impact on the currently spacious and green open area as seen from Wear Barton Road and in particular when viewed from alongside the public footpath to the south of the site. In addition, the scheme would be in conflict with Policy L5 which seeks to maintain the recreational opportunity in the area. The loss of the majority of the site to residential development will certainly restrict the ability of the site to provide additional playing pitches, if a shortfall was identified in the area. The full extent of this loss of opportunity will not be known until the conclusion reached in the Playing Pitch Strategy is published, which is anticipated to be in September. However this has to be balanced against the significant number of housing being proposed in a sustainable location, the provision of 35% affordable housing, the creation of an onsite playing pitch/changing facilities and funding of the new 3G pitch at Exwick, as outlined in the Committee report. The balancing of these competing priorities should be carried out having regard to the Development Plan and other material considerations. The presumption in favour of sustainable development does not operate in this case to tilt the balance because of the conflict with paragraph 74 of the NPPF, which is a specific policy restricting development involving the loss of open space. Consequently the decision is finely balanced and whilst the positive benefits being offered by the applicant are acknowledged and should carry weight, the protection of the open space is an important consideration as is recognised by the NPPF. Accordingly refusal of the application is still recommended, but it is considered that the conclusions of the Playing Pitch Strategy which will create a better understanding of the demand and supply for playing pitches in the area will be an important consideration in respect of the weight to be given to the conflicts with Policies L3 and L5 and CP10.

A revised refusal reason includes refer to Local Plan Policy L3 which was omitted from the published Committee reason. The refusal reason now reads as follows:

The proposal is contrary to the National Planning Policy Framework 2012 (paragraph 74), Exeter City Council Core Strategy 2012 CP10, Exeter Local Plan First Review 1995-2011 Policy L3 and L5 and Sport England's Playing Field Policy because the development will:-

- i) result in the loss of the openness of the site detrimental to the amenity value of the area and
- ii) it would result in the loss of a playing pitch site identified for retention and provides the opportunity for future recreational need and these losses are not being replaced by provision of equivalent value.

Item 6. Ref: 16/0076/03. Pages 55-62
Land between 39-41 Toronto Road, Exeter

The applicant has submitted revised drawings (Friday 22 July) which he considers will address one or the reasons for refusal i.e. minimal space standards not being met.

The plans will be reviewed and a verbal update given at Committee.

Item 7. Ref: 16/0662/03. Pages 63-76
Land at 23-26 Mary Arches Street, and Bartholomew Street West, Quintana Gate, Exeter

An additional condition is to be added regarding compliance with BREEAM:

The buildings hereby approved shall achieve a BREEAM 'excellent' standard as a minimum, and shall achieve 'zero carbon' if commenced on or after 1st January 2019. Prior to commencement of such a building the developer shall submit to the Local Planning Authority a BREEAM design stage assessment report, the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard the developer must provide details of what changes will be made to the development to achieve the minimum standard, and thereafter implement those changes. A post completion BREEAM report shall be submitted to the Local Planning Authority within 3 months of the substantial completion of any such building hereby approved. The required BREEAM assessments shall be prepared, and any proposed design changes approved prior to commencement of the development, by a licensed BREEAM assessor.

Reason: To ensure that the proposal complies with Policy CP15 of Council's Adopted Core Strategy and in the interests of delivering sustainable development.

A point of clarification regarding the number of units. There are 127 units consisting of:

6 cluster flats (2 bedrooms each).

115 studio bedrooms (report previously stated 114).

The 127 units could house between 127 and 134 students.

Item 8. Ref: 16/0559/03. Pages 77-90
Land to South of Exeter Road (Aldi), Exeter Road, Topsham

No further update.

Item 9. Ref: 16/0656/03. Pages 91-96
39 Beacon Heath, Exeter

No further update.

Item 10. Ref: 16/0739/03. Pages 97-100
17 Stoke Valley Road, Exeter

No further update.