

DEVELOPMENT COMMITTEE

Minutes of the meeting of the Development Committee held on Thursday, 27 October 2022 in the Council Chamber - Council Offices at 9.30 am

Committee Mrs P Grove-Jones (Chairman) Mr P Heinrich (Vice-Chairman)
Members Present:
Mr A Brown Mr P Fisher
Mrs A Fitch-Tillett Dr V Holliday
Mr R Kershaw Mr N Lloyd
Mr N Pearce Ms L Withington

Officers in Attendance: Assistant Director of Planning (ADP)
Development Manager (DM)
Principle Lawyer (PL)
Development Management Team Leader (DMTL)
Senior Environmental Protection Officer (SEPO)
Environmental Protection Team Leader (EPTL)
Democratic Services Officer – Regulatory

50 TO RECEIVE APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllr G Mancini-Boyle, Cllr M Taylor, Cllr A Varley and Cllr A Yiasimi.

51 SUBSTITUTES

None received.

52 MINUTES

Cllr V Holliday noted a discrepancy with Minute 44 for the Minutes of the Development Committee Meeting held Thursday, 29th September 2022, and stated that she had declared a pecuniary interest but that as her interest was considered to be non-technical, she was able to take part in debate and deliberation.

The PL advised that Cllr V Holliday had declared a non-pecuniary interest, and that a pecuniary interest would apply if Cllr V Holliday held shares exceeding the value of £25,000 or 100% total share of that body, in accordance with the relevant authority's Disclosable Pecuniary Interest's Regulation 2012.

The minutes of the meeting held Thursday 29th September 2022 were approved as a correct record.

53 ITEMS OF URGENT BUSINESS

None.

54 DECLARATIONS OF INTEREST

Cllr P Heinrich declared a non-pecuniary interest in Agenda Item 8, PF/21/26/50, and advised he had been contacted by the applicant and their agent on several occasions along with Cllr E Seward (Local Ward Member). Additionally, he had met

with Cllr E Seward and Officers to discuss progress with the application. He did not consider himself to be pre-disposed or pre-determined.

55 NORTH WALSHAM - PF/21/2650 - TECHNICAL DETAILS CONSENT FOLLOWING FROM PERMISSION IN PRINCIPLE (PP/20/0160) FOR THE DEMOLITION OF THE EXISTING BUILDINGS ON SITE AND THE ERECTION OF FOUR DWELLINGS WITH ASSOCIATED PARKING AND GARDENS, UNIT 1, MELBOURNE HOUSE, BACTON ROAD, NORTH WALSHAM, FOR MR DAVID TAYLOR

The DM introduced the Officers report and recommendation for refusal. He updated Members that the outstanding payment detailed on p. 23-24 of the report had been paid on 26th October, and this subsequently no longer formed part of the reason for refusal. The DM confirmed that Members had been provided with additional documentation including the applicant's legal advice, the authority's legal advice, the appeal decision for permission in principle and a written submission from the Local Member Cllr E Seward.

The DM noted that whilst aspects of the proposal would accord with many development plan policies, Officers held significant concerns regarding the proximity of the proposal to the existing poultry farm. Officers considered that the existing business would have an adverse impact on the ability of the residential unit occupiers to be provided with high quality residential amenity in regard to matters of odour, noise, dust, light and pests associated with the poultry farm, set out in s.7 of the report. Further, he stated that the proposal failed to accord with NNDC Core strategy policies EN4 and EN13.

The DM stated that, if the application were permitted, there would be significant conflict between land users and increased pressure placed on the existing business to mitigate or reduce its operation which was not considered to be viable. Officers contended that the applicant had failed to demonstrate that the proposal would not have an adverse impact on operations or viability of the adjacent business, contrary to Paragraph 187 of the NPPF. The DM advised that senior Environmental Protection Team Officers were in attendance, highlighting the level of Officer concern over the application.

Public Speakers

David Taylor (supporting)

- i. Local Member – Cllr P Heinrich commented that a partial site visit took place in 2021 to consider a prior application for the same site, which he was in attendance for. During this non-formal visit no issues of odour or noise were noted. However, it was noted that a nearby building had been converted without objection, which was only a few meters away from the application site.

The Local Member commented that the principle of development had already been established through the planning appeal decision for 1-4 dwellings. He considered that the legal opinions supplied as additional documentation to Members effectively cancelled one another out. Further, as the adjacent business was operating at best practice, he considered the impact of the operation on neighbouring properties to be minimal. The Local Member acknowledged Officers concerns but questioned why additional studies had not been requested, if Officers were dissatisfied with the reports produced by the applicant. Cllr P Heinrich considered the complaints received to be dated

and noted that they could not be directly attributed to the poultry farm. He contended that the increased volume of complaints during Covid lockdown was linked with numbers of people staying at home who would be more aware and particularly sensitive to their local environment. Additionally, he was unaware that any action had been taken with respect of the submitted complaints. Whilst he respected the opinion of Officers, he affirmed that he required hard evidence to support their position. The Local Member noted the positive aspects of the proposal which accorded with NNDC core strategy policies EN2, EN4, EN8, H01, EN2, EN4, EN9 and that the proposal was not affected by Nutrient Neutrality guidance. He expressed his support for the provision of bungalows within the district, and of sustainable building practices. Cllr P Heinrich stated that he had not yet to come to a determination on the application, but that he did consider merit in deferral of the determination pending a site visit and detailed evidence provided by the Environmental Health Team.

- ii. The PL advised that she did not consider the two legal opinions to be incompatible, and noted that the Council's legal opinion did not undermine the location of the site, nor did it challenge the permission in principle. Rather, it was a broader consideration of the technical detail consent which also encompassed the health of the owner/occupier of the residential properties, and that residential amenity was a matter within wider technical detail consent which can be considered.
- iii. The ADP advised that if Members were minded to hold a site visit, for this to be considered before any further debate took place which may otherwise prejudice consideration of the application at a later stage.
- iv. Cllr A Fitch-Tillett reflected on her 10 years' experience in the poultry business and considered that the only time where there would be occasional complaints would be when the shed was being cleaned, and that most of the time odour was a benign issue.
- v. Cllr N Lloyd stated that he had attended the informal site visit in 2021, and had voted in support of the previous application which had been refused by the Development Committee. During the visit he was not witness to any noise or odour implications. Cllr N Lloyd considered that the legal opinions supplied effectively cancelled one another out, and commented that their circulation had added to confusion. He commented that he was very familiar with the site, which he had served as Ward Member for 8 years till 2019 when a boundary change occurred, and that he supported the representations made by the Local Members. Cllr N Lloyd noted that the application for Melbourne House, also a residential property, had been approved which was located only a few meters away. Further, he questioned the Officers report for not detailing the sewage works in North Walsham which also generated odour issues. Cllr N Lloyd welcomed the applicant for trying to work proactively with Officers, and expressed his support for the adjacent poultry business, which he would not wish to see negatively affected through the granting of planning permission. Cllr N Lloyd stated that he wished to hear from Environmental Health Team before coming to a determination, but that he would be agreeable to reducing the number of units if this was preferable.
- vi. Cllr R Kershaw advised he had also attended the informal site visit and agreed that there had been no adverse odours at this time. He commended

the proposal for its use of solar panels and air source heat pump and that the applicant had tried to address concerns. Cllr R Kershaw expressed his surprise over the length of the Officers report and lack of empirical evidence supplied by the Environmental Health team. He contended that that applicant was aware of the site location and the associated risks should the properties fail to sell.

- vii. Cllr V Holliday commented that she wished to hear from the Environmental Protection Team about their studies, and asked if mitigation strategies could be implemented including acoustic glazing or mechanical ventilation.
- viii. Cllr N Pearce affirmed that the legal advice provided demonstrated that this was a complex matter. He expressed concern that as the business was operating at best possible practice, there was little to be gained through residents complaining. He noted that Bird Flu had not been considered within the report, and noted the impact this was having on the district.
- ix. Cllr A Brown thanked Officers for their report and clarified that permission in principle was not a pre determination that permission should be granted, rather it was only one aspect of the process and unless the technical detail consent was agreed, then the Council was not bound by the permission in principle. He reflected that there was much to commend in the application, being the right type of property mix, having no impact on the neighbouring heritage asset, and in compliance with many core strategy policies. Cllr A Brown stated that the issue was whether the application complied with polices EN4, EN14 and paragraph 135 of the NPPF, and if the development would provide acceptable residential amenity which would not negatively affect health. He acknowledged that the adjacent business was a large poultry unit with housing 150,000 birds at any one time, and contended this resulted in a large discharge of ammonia gas which could not be mitigated against by a 9ft wall. He considered that the existing business would pose a significant health risk to the residents of the proposal if permission were granted and cited the Clean Air Act 2019 which highlighted that ammonia was a concern, noting that science was developing in this field. Cllr A Brown considered that the central issues of odour, noise, dust, lighting and pests were critical and that no 'worst case scenario' had been provided by the applicant to aid Members in understanding the fullness of the risk and impact. He welcomed representation by the Environmental Health team before making his decision.
- x. The SEPO highlighted that the presence of two senior Environmental Protection Officers was indicative of the magnitude of concern over the potential impact of the development. She advised that the adjacent poultry farm was subject to an environmental permit, and that as this was considered a substantial unit with over 40,000 birds, it was for the Environment Agency (EA) to regulate and undertake visits. The poultry farm by nature produced high levels of pollution which could cause detrimental impacts on nearby residents and eco systems. She advised that she had attended the site and conducted her own assessments on 16th, 17th and 18th May 2022 when 136,000 birds were on site, and had spoken with site operators to better understand the operation including when it was at its noisiest. The SEPO commented that significant conflict would arise in the granting of the proposal which was considered it could, and likely would, result in a Statutory Nuisance being applied on the existing business. A Statutory Nuisance could be defined as something unreasonable which causes material

interference with the use and enjoyment of a person's property, including issues relating to odour, noise, pest and dust. She noted that the adjacent business would have a particularly adverse effect on those with pre-existing medical conditions.

The SEPO considered that the author of the noise and odour assessment, provided by the applicant, had vastly underestimated the acoustic and odour environment of the location. She surmised that they would likely have attended the site on days 1 or 33 of the 49 day cycle when the site is at its quietest and not during the catching or cleaning process. Further, the report outlined the time of operation for the poultry farm as being 7am-8pm Monday to Sunday, however the SEPO advised following her engagement with the business that they actually operate from midnight till 8/9pm Monday to Sunday. Irrespective, she considered that both reports were unrepresentative of a worst case scenario, and that mitigation had only been considered based on the narrow time period when the site was much quieter. She contended that the applicant's reports failed to cover all operations on site and the effect they would have on the health of residents.

The SEPO advised that it was difficult to provide advice to the applicant, as usually mitigation could only be achieved through distance, which was not possible in this instance. The proposed land had effectively provided a buffer strip for several years, and in granting the proposal she considered that the number of complaints would only increase. Whilst there were other localised odour emitters including the traditional practice common in the district of 'muck spreading' this was undertaken for specific purposes in accordance with DEFRA guidelines, and was for a limited time period. She advised that the 49 day cycle would have a more significant impact.

As the EA were the Principle Authority for the poultry farm, which was operating at best practice, the Council was limited in what it could do upon receipt of a complaint. She noted that complaints could be directed to the EA, the Environmental Protection Team or the business directly, and therefore it was challenging to quantify the exact number of complaints. In the event that an abatement notice was served on the business this would require permission from the Secretary of State.

The SEPO noted that the regional Environmental Officer for the EA, Steve Grice, was in support of the Environmental Protection Teams concerns but that when EA responded to the consultation they considered the affect the proposal would have on the existing business and not the affect the existing business would have on the proposed development.

- xi. The EPTL supported the concerns and advice provided by SEPO, and agreed that without the worst case scenario assessment it was challenging to determine the full extent of the impact the adjacent business would have on the proposed dwellings.
- xii. Cllr R Kershaw acknowledged the representations made by the Environmental Protection Team, and the seriousness of their comments. He reflected on the lack of data provided, and asked why further tests had not been commissioned.
- xiii. Cllr A Brown noted the letter from the EA dated 7/12/21 on the planning portal, and asked if mitigation could be provided through the new

development by way of a financial contribution to the operator of the poultry farm, and how this may work in practice.

- xiv. The PL advised financial contributions could be obtained through the S106 agreement process, but noted that funding typically was applied to mitigate the effect of the development to an area. She noted advice from the Environmental Protection Team, which considered in this instance that there was little which could be done to mitigate the impact of the development and the issue remained the proximity of the proposed dwellings to the poultry shed.
- xv. The DM commented that the poultry unit was operating at best practice and should money be paid to them through an S106 agreement, this would not resolve issues, rather it would simply raise expectations. He advised that the applicant has been requested to provide updated information and reports by Officers, but that these had not been received. The DM advised that it was the responsibility of the applicant to provide evidence which would support their proposal, and that the applicant had failed to demonstrate that the unit would not have an adverse impact to residents. He reminded Members that Officers considered there to be significant risk to residents who would be subject to severe amenity concerns, and that whilst market forces may result in diminished demand and lower rent, it is often this type of accommodation which is occupied by vulnerable individuals. The DM advised that the Authority had a responsibility to ensure it allowed acceptable form of development.
- xvi. Cllr P Heinrich considered that the applicant had provided detailed scientific evidence over a sustained period of time and that the Environmental Protection Team had failed to provide empirical evidence to the contrary. Without such evidence he proposed deferral of item until a site visit could be conducted.
- xvii. The DM advised that it was not usual practice to request a statutory consultee, in this instance, the Environmental Protection Team, to provide their own data, and that this responsibility fell to the applicant. He commented that concerns had been raised with the applicant to provide further data, but that this had not been acted upon. He was unclear as to Members reason for deferral and did not consider that a site visit would provide value to decision making, as it could be guaranteed that noise or odour would be an issue on a site visit day.
- xviii. The ADP reminded Members that the purpose of the planning system was to put the right development in the right place and that it was not about buyers being aware of concerns of the local environment. Legal opinion had been supplied to Members which was largely compliant, but significantly departed with respect of considerations to matters relating health implications, which the Council were lawfully and rightfully allowed to consider. As detailed on p.36 of the Officers report, 'failure to demonstrate' to a reasonable balance of proof, was cited as a reason for refusal which accorded with the Council's planning policies. He acknowledged the representation made by the Environmental Health Team and their consideration that significant harm, which could result in the serving of an abatement notice, may arise by consequence of the proposed development, something which must be given significant consideration and remained unanswered.

- xix. The SEPO reiterated that having attended the site and spoken to the operator she considered the author of the applicants report to have woefully underestimated the full extent of material considerations of noise, odour, dust, lighting, and pests. She noted that the Environmental Protection Team were in regular receipt of complaints regarding other poultry farms in the district, and that there were several incidents this year relating to fly infestations from properties further removed than the proposal would be to the adjacent poultry business. The SEPO implored Members to consider the health implications of future residents if the application was to be granted.
- xx. Cllr A Fitch-Tillett spoke in favour of the Officers recommendation on receipt of Officers representations, and stated whilst she had great sympathy for the applicant, she was concerned for public health and the affect the adjacent business would have on residents particularly those with pre-existing medical conditions.
- xxi. Cllr P Heinrich withdrew his proposal but noted that the EA letter stated that they had no concerns regarding the data supplied by the applicant.
- xxii. Cllr A Fitch-Tillett proposed acceptance of the Officers recommendation for refusal, Cllr N Pearce seconded.

IT WAS RESOLVED by 8 votes for, and 2 against.

That Planning Application PF/21/2650 be REFUSED for the following reasons:

1. The application has failed to demonstrate that future occupants of the proposed dwellings would be provided with high quality residential amenities having regard to matters such as odour, noise, dust, lighting and pests which are associated with the adjoining poultry farm. Furthermore, the proposed development would fail to provide external amenities in accordance with relevant guidance resulting in deficient levels of useable private amenity space. When considered together, the proposed development would result in compromised internal and external environments for use by occupiers of the proposed dwellings contrary to Policies EN 4 and EN 13 of the of the North Norfolk Local Development Framework Core Strategy (September 2008), Chapters 12 and 15 of the National Planning Policy Framework (2021) and Chapter 3 of the North Norfolk Design Guide Supplementary Planning Document (December 2008).

2. The application has failed to demonstrate that it could be integrated effectively with the existing adjoining poultry farm business, or that unreasonable restrictions would not be placed upon this existing business as a result of development permitted after it was established. Given the shortcomings of the submitted odour, noise, dust, lighting assessments and the lack of consideration given to pests, suitable mitigation has not been proposed by the applicant (or 'agent of change'). Therefore, the proposed development would be contrary to the requirements of Paragraph 187 of the National Planning Policy Framework (2021).

3. The Local Planning Authority considers that the proposed development falls within the Broads Sites, East Coast Sites, North

Coast Sites, North Valley Fens and The Wash Zones of Influence and affects European Designations as set out in the Norfolk Green Infrastructure and Recreational Impact Avoidance Mitigation Strategy. The application has failed to demonstrate that the proposed development would not result in adverse effects, either alone or in combination on the integrity of European Sites arising as a result of the development including in relation to recreational disturbance. In the absence of evidence to rule out likely significant effects and in the absence of suitable mitigation measures to address likely significant effects, the proposal is contrary to the requirements of Policies SS 4 and EN 9 of the North Norfolk Core Strategy (September 2008) and approval of the application would conflict with the legal requirements placed on the Local Planning Authority as competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended).

Meeting adjourned at 10.45 and returned at 10.57

56 BINHAM - PF/21/2926 - TWO STOREY SIDE/REAR EXTENSION TO DWELLING, 87 WARHAM ROAD, BINHAM, FOR MR & MRS WALES

The DMTL introduced the Officers report and recommendation for approval subject to conditions. He advised that this application had been deferred from the 20th January 2022 Development Committee Meeting to enable further discussion between Officers and the applicant relating to the material position of the extension in relation to the existing building. The proposal had subsequently been revised and included a reduction in the overall length of the extension, a small decrease in height and a redesign and reposition of the fenestration. It was now considered that the scale and massing revised of the proposal would enable the extension to be subservient to the host dwelling.

The DMTL advised that Officers considered the application acceptable on balance with the amendments made and conditions applied, and noted that there were no further objections from the Conservation and Design team, Parish Council or the Public.

- i. The Local Member – Cllr R Kershaw spoke positively of the constructive way in which Officers and the applicant had worked together. He acknowledged that the applicant was moving into the property to better enable them to run a new business which would employ 9 local people. He considered this change in business to be a good example of diversification and proposed acceptance of the Officer’s recommendation for approval subject to the outlined conditions.
- ii. Cllr N Lloyd echoed comments made by the Local Member and so seconded the officer’s recommendation.
- iii. Cllr V Holliday asked when timber cladding had been considered as acceptable vernacular, as the design guide stated that this material could be utilised in small quantities but on this application it was much larger. She did not consider that the extension sat comfortably with the existing flint building.
- iv. The Chairman commented that there were several instances where timber

cladding was used in the district on new dwellings, and noted that it often silvered and became more muted with time. It was considered that some new flint extensions onto existing flint buildings did not meld well together.

IT WAS RESOLVED by 9 votes for, and 1 against.

That Planning Application PF/21/2926 be APPROVED subject to the imposition of the following summarised conditions:

- 1. Time limit for implementation (3 years)**
- 2. In accordance with approved plans**
- 3. Brick, tile and boarding samples to be agreed prior to installation**

Any other conditions considered necessary, and final wording of conditions, to be delegated to the Assistant Director – Planning.

57 DEVELOPMENT MANAGEMENT PERFORMANCE UPDATE

- i. The DM introduced the Development Management Performance Report and advised that performance had been impacted though the introduction of a new planning back office system, but that there would be an uplift in later date reporting.
- ii. In response to questions from the Chairman, the DM agreed that there was a notable increase in workload for Officers as a result of increased homeworking during the Covid-19 pandemic, leading to individuals considering their living situations. He advised that the team were seeking to recruit new planning officers, but that it was a challenging market.
- iii. Cllr A Brown thanked officers for their hard work during challenging times, and expressed his expectation that there would be future performance improvements as Officers became more familiar with the back office system.
- iv. The PL introduced the S106 annexe report and noted a correction to the Scottow Enterprise agreement detailed, this had been approved by NNDC Officers and was now awaiting response from the land owner.
- v. The ADP advised that the Scottow Enterprise agreement would be brought back to Committee either by way of an update or as an item for consideration in the New Year, noting this matter had been ongoing for many years. He thanked Officers and the Legal team for their continued hard work.

58 APPEALS SECTION

- i. The DM introduced the appeals report and advised that two decisions had been reached by the Planning Inspectorate, Blakeney PF/21/3265 and Kelling PF/20/1056 both of which had been dismissed.
- ii. Cllr N Pearce enquired if all information had been submitted with regard to the Arcardy Appeals
- iii. The ADP advised that all information had been submitted and it was for the Planning Inspector to advise if they required any additional information.
- iv. The Chairman noted the length and volume of the appeals report, and

commented that there continued to be many outstanding planning appeals awaiting an outcome from the Planning Inspectorate.

- v. Cllr A Brown asked if the Council planned to make representations with the Planning Inspectorate regarding delays.
- vi. The DM voiced caution in complaining to the Planning Inspectorate and advised that the Council would need to consider its words carefully if it were minded to challenge the speed in which appeals were being considered. He advised that the Council had engaged with the Planning Inspectorate regarding the Kelling appeal, but that requesting haste from the Planning Inspectorate didn't guarantee a faster response.
- vii. The ADP advised that the Planning Inspectorate were under tremendous pressures and were struggling to recruit and retain staff. He reflected on his comments from previous meetings in which he considered the system as ailing and in need for change.

59 EXCLUSION OF PRESS AND PUBLIC

None.

The meeting ended at 11.20 am.

Chairman