

## **Minutes to Strategic Planning Committee 22 June 2021**

### **APPENDIX 1**

#### **Agenda Item 8 – Planning Updates**

##### **Application 15/12351/OUT: Land at Rawlings Farm, Cocklebury Lane, Chippenham**

##### **Response to the relevant questions of Mr Chris Caswell, Mr Steve Perry and Bremhill Parish Council/Ms Kim Stuckey**

- The Council's publication timescales are as set out in the Constitution. The 106 agreement is in accordance with the decision taken by Committee on 16 September 2020 including the 40% Affordable Housing. The completed 106 agreement will be made public in the usual way on the Council's website on the relevant planning pages.
- The 106 agreement is ready for completion so far as the Council is concerned and any landownership issues encountered by the Applicant are for the Applicant to resolve. This item is an update and to seek to extend time for completion of the 106 agreement. It is not an opportunity to revisit the decision already taken by Committee on 16 September 2020. The site is a strategic and complex site and some 106 agreements require longer to complete than the usual 6 months.

##### **Response to the Statement of Councillor Dr Nick Murry**

- The Committee's resolution of 16 September 2020 states that 'Or in the event that the applicant declines to enter the agreement and/or it becomes clear that they will not do so then to refuse permission for the following reason: The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Air Quality Management; Highways; Education and is therefore contrary to Policies CP3 CP43 & CP55 of the Wiltshire Core Strategy Adopted January 2015 and Paras 11, 12 & 54 of the National Planning Policy Framework July 2019'. The Applicant has not declined to enter into a 106 nor has it become clear they will not do so. On 21 June their solicitor emailed the Council to confirm they have gone through the draft 106 agreement and they have indicated they are happy with the final draft (save for a few typos /un-used definitions which will need correction/alteration). The applicant's solicitors have been engaging with landowners regarding an issue concerning an indemnity and the applicant's solicitor has implied this is now resolved and expects to be in a position to sign the 106 in the next couple of weeks.
- There is nothing in law or within the Planning officers report or the SPC minutes for the 16 September 2020 meeting that would give a rational and legal basis for adopting an interpretation which imposed a time limited condition on the applicant for entering into a section 106. Such an interpretation is also inconsistent with the basis for refusal contained within the resolution itself;

namely if the applicant “*declines to enter into the agreement and/or it becomes clear that they will not do so*”. The basis for a refusal was not limited by time but by evidence of an unwillingness to meeting the identified planning conditions to make the permission sound or an unwillingness to enter into a s106 agreement at all.

- If a refusal was based solely on the time limitation for entering into a s106 agreement then the Council would be at risk of being successfully challenged in that decision. Provided the applicant is working co-operatively with an aim to meet the planning obligations identified which is clearly the case here, there is no legal basis for a refusal either by delegated decision or by remittance back to the Committee.
- The purpose of the requirement to limit the officer’s delegation for approval or refusal to six months arose because in the officers report it was confirmed that delivery of the site was *critical to meet the identified housing requirement set out in CP1, CP2 and CP10 of the WCS* (section 9.1 of the Officer’s report) and that during the members discussions in Committee, there were queries on the speed of implementation of any permission and the Committee may have wished to have some form of oversight of the 106 process to ensure matters were being dealt with in a timely manner by both Officers and the Applicant.
- Putting a time limited delegation into the resolution would mean that either permission could be granted within that time if the 106 was completed or if there was evidence that the applicant was unwilling to agree the planning requirements within that time for a refusal. However, if the six month time period came up and there was evidence the applicant was working co-operatively towards meeting the requirements then a report would simply need be taken back to the committee by officers giving an explanation for the delays and either seeking an extension to the delegation or if the s106 was signed seeking the formal grant of permission in accordance with the original resolution. As previously explained, this is an update in order to seek to extend the time for completion of the 106 agreement and is not an opportunity to revisit a valid decision already taken by Committee. This is a strategic and very complex site and some 106 agreements require longer to complete than the standard 6 months and in particular where various restrictions arising from the global pandemic have caused delays to all parties dealing with the 106 agreement.
- The original decision of a duly constituted committee is valid and unchallenged and remains extant. The 3 month delay in the signing the s106 agreement does not by itself give any legal basis for reconsideration of the 16 September 2020 decision. The case law tends to be concerned with long delays (for example 5 years) between decision in principal to grant and final grant – Hertfordshire CC and North Herts DC v SoS Communities and Local Govt 2011 (EWH 1572). For a reconsideration of the decision there would have to be a material change in circumstance which could justify any such re-consideration but that has not occurred in this case.