

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE

Date of meeting: 30th June 2010
Report of: Head of Planning and Policy
Title: Report in Relation to Section 106 Agreement for Planning Application 08/2059/OUT for Outline Application for Renewal of Approval 06/0069/OUT for the Demolition of Existing Youth Centre and Erection of a Single Dwelling at Goostrey Youth Centre, Main Road, Goostrey.

1.0 Purpose of Report

- 1.1 To seek a resolution for the terms of the S106 Agreement relating to the demolition of the existing Goostrey Youth Centre and the erection of a single dwelling on the site which was the subject of planning application 08/2059/OUT considered by the former Congleton Borough Council.

2.0 Decision Required

- 2.1 Members need to decide whether the terms of the S106 Legal Agreement drafted by the former Congleton Borough Council should be progressed as a departure from Policy RC12 of the adopted Congleton Borough Local Plan First Review (2005).
- 2.2 The principle of the development was established by the resolution of the former Congleton Borough Council to approve the development and this report does not provide an opportunity to revisit that issue. A copy of the delegated officer report is included at Appendix 01 to this report. This report relates solely to details of the Section 106 Agreement (referred to hereinafter as S106).

3.0 Background and Report

- 3.1 Planning permission was granted in 2006 (ref; 06/0059/OUT) to demolish the existing youth centre and to erect a dwelling on the site. Policy RC12 of the adopted Congleton Borough Local First Review (LPFR) states that planning permission will not be granted for any proposed development, which would result in the loss of any community facility, which makes a positive contribution to the social or cultural life of a community, unless suitable alternative provision is made. To ensure that suitable alternative provision was made, the approval was subject to a condition requiring the applicant

(the Parish Council) to enter into a S106 legal agreement. The condition stated that the replacement youth centre had to be '*substantially complete and ready for occupation*' prior to the start of development on the existing youth centre site.

3.2 In the meantime, planning permission was granted for a replacement youth centre on a site elsewhere within the village and it is the Parish Council's intention to implement that permission (ref: 07/984/FUL) which is due to expire on 15th November 2010.

3.3 In order to secure the necessary funds to begin the replacement facility, the Parish need to help generate the revenue by commencing the new dwelling and selling the existing youth centre site. In doing so, the Parish Council would not be able to comply with the original condition relating to the legal agreement and as such they sought a variation to the terms by submitting a further application ref; 08/0547/MOD.

3.4 The effect of the revised agreement was to ensure that all the moneys generated from the sale of the existing site were ring fenced to the new replacement youth centre whilst enabling development to commence on the existing youth centre site. The only exception to this would have been a sum of money (the residual value of the land without planning permission), which would have been given to Goostrey Parish Council.

3.5 In 2008, the Parish Council submitted the application subject of this report (ref; 08/2059/OUT) to renew the previous 06/0059/OUT consent, as this was about to expire. The former Congleton Borough Council considered a report under Delegated Powers on 13th March 2009 (Appendix 01). The application was recommended for approval subject to the applicant completing and signing a Section 106 Agreement on the same terms specified above.

3.6 More specifically, the S106 Agreement required the Parish Council to use its 'best endeavours' to provide the replacement youth centre by agreeing to the following terms:

- a. Within seven days of legal completion of the sale by the Owner of the Application Site, the Owner shall deposit the Proceeds of sale in a separate bank account in its name and shall hold the proceeds of sale therein.
- b. The owner shall withdraw the proceeds of sale from the bank account and expend them only for the purposes of defraying the construction costs of the replacement youth centre.
- c. The owner shall use its best endeavours procure the construction and completion of the replacement youth centre and the bringing of it into community use within 2 years of legal completion of the sale of the application site.

- 3.7 Whilst the above terms were agreed with the Parish Council, it was never signed and completed by the former Congleton Borough Council and was therefore transferred to Cheshire East Borough Council. However, the previously agreed terms have not come to fruition as Cheshire East Borough Council's legal services consider that to duplicate the previous s106 agreement in relation to this new application would be unacceptable as they consider that this would not ensure the completion of a new youth centre.
- 3.8 The main concern is that if the S106 Agreement is completed in the same terms as the previous agreement completed by Congleton Borough Council, there is the prospect of the existing youth centre being demolished, a new house being built on its site and the sale proceeds being insufficient to provide the replacement youth centre. Cheshire East could then be criticised by members of the public for allowing the demolition of the old centre without securing a replacement for it in accordance with policy RC12.
- 3.9 To avoid this situation and to word the agreement more tightly, the Borough Solicitor has recommended that the heads of terms proposed to the parish council's solicitor are:
- a. that occupation of the dwelling to be erected on the site of the current youth centre shall be prohibited until a replacement youth centre has been erected on the new site and is ready for use
 - b. to construct the replacement youth centre on the new site in accordance with planning permission 07/0984/FUL
- 3.10 Compliance with the above would require the Parish Council to complete the lease of the new site from the Cheshire East Borough Council at the same time as the s106 agreement and to synchronise development of both sites (perhaps by using the same developer or constructor) and to ensure through valuations and contract that the sale proceeds are fixed and sufficient to ensure the new youth centre can be built and any shortfall identified early so that fund raising is carried out or grant funding is applied for in order to address it.
- 3.11 The Parish Council do not believe that this would be feasible and have therefore confirmed that they would not be willing to enter into a S106 Agreement under the proposed terms set out above.
- 3.13 As such, discussions with the Parish Council have been inconclusive. Therefore the current position is that the existing youth centre building is not fit for purpose, is not in use and there is no likely prospect of the new youth centre building being built as the Parish Council cannot generate sufficient funds without selling the existing site. The Parish Council has indicated that they intend to deliver a new facility, however, without an agreement between both parties, the village could be without such facility for the foreseeable future, which would result in the loss of a community facility.

- 3.13 The new facility has already been permitted by virtue of planning ref: 07/0984/OUT and it is considered that the provision of this new centre would significantly enhance the community provision in the village. The Parish Council has indicated that they still wish to proceed with this scheme but the failure to agree terms of the S106 agreement is preventing them from doing so. The current youth centre building is no longer fit for purpose and is not currently in use.
- 3.12 It must be noted that the applicants (the Parish Council) are themselves a Local Authority that represents and serves the local resident population of Goostrey. You would expect therefore that they have the genuine interests of the village in mind and are not seeking personal gain by selling off the existing youth centre site. In the interests of providing a resolution and enabling the new youth centre facility to be provided, the key issue is whether Members would be willing to agree to a lesser standard of commitment in terms of the S106 by agreeing to the terms set out by the former Congleton Borough Council?
- 3.13 The risk with this approach is that if the s106 agreement is completed in the same terms as the previous agreement completed by Congleton Borough Council, there is the prospect of the existing youth centre being demolished, a new house built on its site and the sale proceeds being deposited in a bank account but being insufficient to provide a replacement youth centre. Cheshire East could then be quite rightly criticised by members of the public for allowing the demolition of the old centre without securing a replacement for it, in accordance with policy.
- 3.14 If Members do not wish to progress the terms agreed by the previous Congleton Borough Council, and risk the chance of the new youth centre not being provided, then the only available option would be to refuse the application as a departure from Policy RC12. The Parish Council argue that this would prevent the new replacement facility from being provided and as the existing youth centre building is not being used, the village would lose this valuable community provision.

4.0 Conclusions

- 4.1 The principle of a new dwelling on the site had already been established by virtue of approval 06/0069/OUT and a resolution was made under Delegated Powers by the former Congleton Borough Council to renew the permission subject to the completion of a S106 Legal Agreement under the same terms as the previous S106 Agreement (as modified by application 08/0547/MOD). The effect of this agreement would be to ensure that all the moneys generated from the sale of the existing site are ring fenced to the new replacement youth centre and by requiring the Parish Council to use their 'best endeavours' to provide the new replacement facility approved by virtue of planning ref: 07/984/FUL.

- 4.2 Cheshire East Borough Council's legal services consider that to duplicate this previous S106 Agreement in relation to the new application 08/2059/OUT would be unacceptable as they consider that this would not ensure the completion of a new youth centre as there is the prospect of the existing youth centre being demolished, a new house built on its site and the sale proceeds being insufficient to provide a replacement youth centre. This would result in the loss of an existing youth centre and would be contrary to local plan policy RC12. This could leave the Council open to criticism from local residents for allowing the loss of a community facility that offers a positive contribution to social and cultural wellbeing of the Village of Goostrey.
- 4.3 The Parish Council has rejected the proposed changes to the terms of the S106 Agreement offered by Cheshire East Council's legal services and as such discussions have been inconclusive. In the interests of the residents of Goostrey and to assist the Parish Council with delivering a new replacement youth centre, Members need to decide whether they are prepared to accept a lesser standard of commitment by accepting the terms of the previous agreement entered into with the former Congleton Borough Council or whether they refuse to accept them as a departure from Local Plan Policy RC12.

APPENDIX 01

DEVELOPMENT	Renewal of existing approval - 06/0069/OUT for erection of single dwelling
LOCATION	Goostrey Youth Centre Main Road Goostrey Crewe
Earliest Determination Date Check Weekly list, Site Notice, Neighbour Notification, Advert Expiry Dates	23rd February 2009
<u>Expiry Date</u>	16th March 2009

Description of Site

The application site comprises a detached building that is currently used as Goostrey Youth Centre and is located on the southern side of Main Road in Goostrey. The building is built of brick, timber and corrugated metal with a felt roof, however it is in a poor state of repair. The site is located within the Settlement Zone Line of Goostrey as designated in the adopted Congleton Borough Local Plan First review (LPFR).

Site history

PEROUT	24/03/2006	06/0069/OUT T	Erection of one dwelling.
PERCON	15/10/2001	33505/3	DEMOLITION OF EXISTING REDUNDANT TIMBER YOUTH CLUB AND REPLACEMENT WITH A NEW BUILDING FOR USE BY THE YOUTH ORGANISATIONS OF THE VILLAGE

Policies

Relevant National Planning Legislation:

- PPS1 - Delivering Sustainable Development
- PPS3 - Housing
- PPS9 - Biodiversity & Geological Conservation

Relevant Policies of adopted Congleton Borough Local Plan First Review:

- PS5 - Villages Inset in the Green Belt
- GR1 - General Requirements for New Development
- GR2 - Design
- GR6 - Amenity and Health
- GR9 - Accessibility, Servicing and Parking Provision
- H1&2 - Provision of New Housing Development
- H5 - Housing Development in Villages
- NR1 - Trees & Woodland
- NR2 - Wildlife & Nature Habitats
- SPG2 - Provision of Private Amenity Space in New Residential Developments

Consultations & Representations

Consultees:-

Environmental Health Section	05/02/2009	No objection subject to conditions restricting hours of construction, piling, and delivery by construction vehicles. Conditions relating to contaminated land are recommended.
Congleton Area Highways Office		No objection
Parish Or Town Council		N/A
Planning Policy Section		No comments received.
Senior Landscape and Tree Officer	24/02/2009	The Senior Landscape and Tree Officer has no objection in principle to the proposed development subject to the retention and protection of the trees and the existing boundary hedges.

Representations:-

None received.

Observations

Outline planning permission is sought for the demolition of the existing Goostrey youth centre and the erection of a single detached dwelling on the site. All matters are reserved for subsequent approval. The principle of a dwelling on the site was established by virtue of approval ref; 06/0069/OUT, however, this is due to expire shortly and therefore the applicant (Goostrey Parish Council) wishes to establish a new permission. Whilst there does not appear to have been any material change in policy terms, there are key issues that need to be revisited. These are considered to be; the principle of the development; loss of a community facility; residential amenity; ecological implications and trees.

Principle of the Development

The application site is located within the settlement zone line of Goostrey, which is a small settlement inset within the Open Countryside. Policy PS5 states that within these areas, development will be permitted where it is appropriate to the local character in terms of use; intensity, scale and appearance whilst not conflicting with other relevant development plan policies. With regard to housing development, policies H1, H2 and H5 are of relevance. At the present time, approval of the proposed dwellings would not exacerbate an oversupply of housing in the area; however, Policy H5 outlines a series of criteria to be met when assessing residential development. This includes the sustainability of the site and compliance with other Local Plan policies. The site is within close walking distance of local convenience stores and a bus stop is located nearby which serves the wider area. There is train station serving the settlement and there is a nearby Primary School. As such it is considered that this rural settlement is capable of sustaining further small-scale residential development.

Loss of a Community Facility

Policy RC12 of the adopted Congleton Borough Local First Review (LPFR) states that planning permission will not be granted for any proposed development, which would result in the loss of any community facility, which makes a positive contribution to the social or cultural life of a community, unless suitable alternative provision is made. It has not been demonstrated that the future use of the facility is unviable or that its loss would not be detrimental to the locality. As such it is considered that the facility

retains an important function in the Village and provides a positive service to the local resident population. Consequently, the Local Planning Authority would seek to secure the retention of such a facility.

Whilst the scheme would involve the loss of the existing youth centre building, the proposal would enable the provision of a new youth centre building elsewhere within Goostrey and would provide a modern facility to replace the existing outdated building. The new facility has already been permitted by virtue of planning ref; 07/0984/OUT and it is considered that the provision of this new centre would significantly enhance the community provision in the village. However, the new health care centre cannot be built until the funds from the existing site are released. Thus, in order to safeguard the retention of a youth centre within the village, it is recommended that a S106 legal agreement is used to secure this provision whilst enabling commencement of development on the existing Youth Centre site. The effect of this agreement will be to ensure that all the moneys generated from the sale of the existing site are ring fenced to the new replacement Youth Centre. The only exception to this will be a sum of money (the residual value of the land without planning permission), which should be given to Goostrey Parish Council. Goostrey Parish Council has confirmed that they would be willing to enter into such agreement and therefore subject to signing and completion, the scheme would comply with Policy RC12 of the LPFR.

Residential Amenity

As matters of appearance and layout are reserved for subsequent approval, full regard cannot be given to the amenities afforded to the nearest neighbouring property (no. 218 Main Road) insofar as the proximity of principal windows in relation to neighbouring windows is unknown. Nonetheless, it is considered that a dwelling could be accommodated on the site without materially harming the amenities of neighbouring occupiers. In reference to private amenity space, the dwelling would benefit from an adequate provision of rear garden space.

Ecological Implications

As the development would involve demolition of the existing building, the application is supported by a protected species survey that was carried out by a suitably qualified person. The survey appears to be comprehensive and concludes that the building is not used by barn owls and there is no evidence of current or historic use of the building by bats. As such, at this stage the LPA is satisfied that the proposal would not harm species protected by law.

Trees

There are a number of trees situated along the western boundary of the site that are protected by a Tree Preservation Order. Whilst landscaping is reserved for subsequent approval, it is important to consider whether such proposal could be accommodated without causing harm to the specimens. The Senior Landscape Officer (SLO) has been consulted on the application and considers that a new dwelling could be provided on the site without harm resulting to those trees covered by the TPO. As such, the SLO offers no objection subject to the retention and protection of the existing trees and hedges.

Conclusion

It is concluded that the proposed development is acceptable in principle subject to the signing and completion of a S106 legal agreement; to secure the provision of the replacement youth centre building. The provision of a dwelling would be acceptable in terms of the use and intensity and would not harm species protected by law. The proposal is deemed to be in compliance with relevant development plan policies and is therefore recommended for approval.

Recommendation

Approve subject to completion of a S106 Legal Agreement and the following conditions:

Conditions:-

- 1 Approval of the details of the access, appearance, landscaping, layout and scale (the reserved matters) shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 2 Application for the approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission.
- 3 The development to which this permission relates must be begun not later than whichever is the later of the following dates:
(a) The expiration of three years from the date of this permission OR
(b) The expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4 No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a Tree Preservation Order currently in force has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority.
- 5 The hedges surrounding the application site shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority.
- 6 The development hereby permitted shall not be occupied until the provision of two parking spaces have been constructed in accordance with details to be submitted to and approved by the Local Planning Authority. These areas shall be reserved exclusively for the parking and turning of vehicles and shall not be obstructed in any way.
- 7 No development shall commence until a desktop assessment to identify and evaluate all potential sources and impacts of land and/or groundwater contamination affecting the site has been carried out by a suitably qualified person and submitted to the Local Planning Authority.

If following examination of the desk top assessment, the Local Planning Authority is of the opinion that there is the potential for contamination of the site by substances and/or landfill gas, in on or under the land or from sites in close proximity to the site in question, then a full investigation shall be carried out by a suitably qualified person to ascertain the nature and extent of contamination together with a detailed Method Statement which shall specify:

- (i) the precise form of any remediation works; and
- (ii) arrangements for the supervision and monitoring of the remediation works, which shall require a minimum of 3 days notice to be given to the Council's Scientific Officer prior to the works commencing.

The Method Statement shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation works commencing. No development shall commence until the remediation works have been completed in accordance with the approved scheme and the Local Authority has confirmed the completion in writing.

- 8 Hours of construction shall be restricted to the following times:

Monday - Friday	08.00 - 18.00
Saturday	08.00 - 13.00
Sunday	Nil
Bank Holidays	Nil

9 Should the development hereby permitted require a piling foundation system then construction shall be restricted to the following times:

Monday - Friday	09.00 - 17.00
Saturday	Nil
Sunday	Nil
Bank Holidays	Nil

Reasons:-

- 1 This is an outline planning permission with these matters reserved for subsequent consideration.
- 2 To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990.
- 3 For the avoidance of doubt and to ensure that the permission and the Legal Agreement are read in conjunction with one another in compliance with Policies GR1 and GR2 of the adopted Congleton Borough Local Plan First Review.
- 4 To protect existing trees and other vegetation in the interests of visual amenity, and to comply with Policy GR1 of the adopted Congleton Borough Local Plan First Review.
- 5 In the interests of visual amenity and to comply with Policy GR1 of the adopted Congleton Borough Local Plan First Review.
- 6 In the interests of highway safety and to comply with Policy GR9 of the adopted Congleton Borough Local Plan First Review.
- 7 In the interests of public safety and the future occupants of the site and to comply with Policy GR7 of the adopted Congleton Borough Local Plan First Review.
- 8 To protect the amenities of neighbouring properties and to comply with Policies GR1 and GR6 of the adopted Congleton Borough Local Plan First Review.
- 9 To protect the amenities of neighbouring properties and to comply with Policies GR1 and GR6 of the adopted Congleton Borough Local Plan First Review.

Reason(s) for Decision

- 0 Having regard to the relevant provisions of the development plan, namely policies GR1, GR6, GR7, GR9, H1, H5, NR1 and NR2 of the adopted Congleton Borough Local Plan First Review, it is considered that subject to compliance with the conditions attached to this permission the proposed development would be acceptable.