

CHESHIRE EAST COUNCIL

SOUTHERN PLANNING COMMITTEE REPORT

Date: 29th June 2016

Report of: Daniel Evans – Principal Planning Officer

Title: Update following the resolution to approve application 15/1249N – Proposed construction of 10 No. Dwelling complete with access, associated parking and landscaping.

Site: Grenson Motors Co Ltd, Middlewich Road, Minshull Vernon, Cheshire, CW1 4RA

1.0 Purpose of Report

- 1.1 Planning application 15/1249N was referred to Southern Planning Committee on 30th March 2016. This report is to consider a recent Court of Appeal has ruled that a 2014 ministerial statement introducing the 'vacant building credit' and exempting small sites from affordable housing contributions was not unlawful.
- 1.2 The minutes from the meeting are as follows:

RESOLVED

(a) That, for the reasons set out in the report, the application be APPROVED subject to the completion of a S106 Agreement to secure the following:

The reserved matters application to include the submission of an updated viability report which shall be assessed by an independent viability consultant (agreed between both parties and paid for by the applicant) which shall determine any affordable housing provision to be provided at the reserved matters stage.

and the following conditions:

- 1. Submission of Reserved Matters*
- 2. Application for Approval of Reserved Matters*
- 3. Commencement of Development*
- 4. Plans*
- 5. Noise mitigation measures (construction of the dwellings)*
- 6. Noise mitigation measures (fencing)*
- 7. Dust control measures to be submitted for approval*
- 8. Submission / Approval of Information regarding Contaminated Land*
- 9. Surface Water Drainage Scheme*

10. *Surface Water Disposal via SUDs*
11. *Protection of Great Crested Newts*
12. *Tree Protection Condition*
13. *Construction Management Plan*

(a) That, in order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority be delegated to the Head of Planning (Regulation) in consultation with the Chairman (or in her absence, the Vice Chairman) of the Southern Planning Committee, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

(b) That, should this application be the subject of an appeal, authority be delegated to the Head of Planning (Regulation) in consultation with the Chairman of the Southern Planning Committee to enter into a planning agreement in accordance with the S106 Town and Country Planning Act to secure the following:

- *The reserved matters application to include the submission of an updated viability report which shall be assessed by an independent viability consultant (agreed between both parties and paid for by the applicant) which shall determine any affordable housing provision to be provided at the reserved matters stage.*

2.0 Decision Required

- 2.1 Since the resolution above the Court of Appeal has ruled that a 2014 ministerial statement introducing the 'vacant building credit' and exempting small sites from affordable housing contributions was not unlawful (*Secretary of State for Communities and Local Government v West Berkshire District Council and Another* [2016] EWCA Civ 441 (11 May 2016)).

3.0 Background

- 3.1 The application site is a former garage and petrol station located to the western side of Middlewich Road in Bradfield Green. The site lies within the open countryside.
- 3.2 An application under 09/3251N was granted planning permission on 25th July 2012 to demolish the garage and petrol station and construct 11 no. dwellings. The garage and petrol station have since been demolished.
- 3.3 Dwellings lie to the north and south of the site whilst a public house lies immediately adjacent to the east. Open fields lie to the west.

4 Proposed Development

- 4.1 The proposal seeks outline planning permission and approval of access for the construction of 10 no. detached dwellings. The works would include the provision of private driveways and hard and soft landscaping.

5 Officer Comment

- 5.1 This committee resolution includes the requirement that the developer enters into a S106 Agreement to ensure that the reserved matters application includes the submission of an updated viability report which shall be assessed by an independent viability consultant (agreed between both parties and paid for by the applicant) which shall determine any affordable housing provision to be provided at the reserved matters stage.

- 5.2 Following the Court of Appeal judgement referred to above the Planning Practice Guidance has been amended and this states that the in the following circumstances contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development;

- *Contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1000sqm*
- *in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development.*

- 5.3 In this case it is clear that the development is of 10 units or less and a condition could be attached to ensure that the reserved matters is limited to a maximum combined gross floorspace of no more than 1000sqm. On this basis the Council is unable to require affordable provision on this site.

- 5.4 It should also be noted that the site is not located within a rural area as described under Section 157(1) of the Housing Act 1985 and the second point above does not apply.

6 Conclusion

- 6.1 On the basis of the above, the Council is unable to require the developer to enter into a S106 Agreement to secure affordable housing on this development and this should be removed from the committee resolution. An additional condition will be required to state that the reserved matters application should have a maximum combined gross floorspace of no more than 1000sqm.

7 Recommendation

- 7.1 The Heads of Terms for the S106 Agreement are removed from this resolution and an additional condition is attached to the recommendation.

8 Financial Implications

- 8.1 There are no financial implications.

9 Legal Implications

- 9.1 The Borough Solicitor has been consulted on the proposals and raised no objections

10 Risk Assessment

- 10.1 There are no risks associated with this decision.

11 Reasons for Recommendation

- 11.1 To reflect the recent Court of Appeal judgement.

For further information:

Portfolio Holder: Councillor Ainsley Arnold
Officer: Daniel Evans – Principal Planning Officer
Tel No: 01270 686751
Email: daniel.evans@cheshireeast.gov.uk

Background Documents:

- *Application 15/1249N*