

# CHESHIRE EAST COUNCIL

## NORTHERN PLANNING COMMITTEE

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**Date:** 6<sup>th</sup> July 2016

**Report of:** Nick Hulland – Senior Planning Officer

**Title:** Update following the resolution to approve application 16/0604C – Residential Development of 4nr detached dwellings (4/5 bed) and 1nr cottage mews block of 5 dwellings (1bed flat; 2/3 bed houses) inclusive of associated external works and landscaping

**Site:** Land Adjacent To, Padgate, Twemlow Lane, Cranage

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### 1.0 Purpose of Report

1.1 Planning application 16/0604C was referred to Northern Planning Committee on 4<sup>th</sup> May 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*

*That authority be DELEGATED to the Planning and Enforcement Manager in Consultation with the Chairman and Vice-Chairman of Northern Planning Committee to APPROVE the application for the reasons set out in the report, subject to completion of a Section 106 legal agreement to secure:*

- *Confirmation from the Council's Education Department of any contributions required.*
- *A 21 day notification period to Jodrell Bank (Manchester University) of the intent to grant planning permission; and*
- *A Section 106 Agreement to secure the provision of three on-site affordable dwellings – to be split as per IPS into two Affordable Rent and one for Intermediate Tenure*

*And the following conditions:*

*Time – 2 years*

1. *In accordance with approved plans*
2. *Materials – Prior submission/approval*
3. *Site drained on a separate system*
4. *Prior approval of a surface water drainage and maintenance plan*

5. *Prior approval of a Flood Risk Assessment*
6. *Prior approval of a Piling Method Statement*
7. *Prior approval of a dust mitigation scheme*
8. *Prior approval of soil testing results for imported material*
9. *Works to stop if contamination encountered*
10. *Prior approval of a scheme for Archaeological works*
11. *Prior approval of a Landscaping scheme*
12. *Landscaping – Implementation*
13. *Prior approval of tree/hedgerow protection*
14. *Prior approval of a 'No dig' method statement of any areas of hard surfacing in tree root protection areas*
15. *Prior approval of boundary treatment*
16. *Implementation of protected species mitigation*
17. *Prior approval of Electromagnetic Screening*
18. *Removal of PD Rights: Classes A-E, Part 1, Schedule 2 on Plot 9 only and Class A, Part 2, Schedule 2 for the entire site*
19. *Completion of a Section 278 for road widening prior to commencement of development.*
20. *Construction Management Plan*
21. *Gable ends*
22. *Visibility splays to be maintained within site*
23. *Tree landscaping*

*In order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority is delegated to the Planning Manager (Regulation) in consultation with the Chair (or in their absence the Vice Chair) 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.*

*Should the application be subject to an appeal approval is given to enter into a S106 Agreement to secure the following Heads of Terms:*

- *Provision of 3 on-site affordable dwellings - to be split as per IPS into Affordable Rent and 1 for Intermediate Tenure*

## **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 green field site located to the northern side of Twemlow Lane, Cranage, Cheshire within the Open Countryside.

- 3.2 Northern Planning Committee resolved to approve the development of 9 dwellings on this site on the 4<sup>th</sup> May 2016 under application 16/0604C, subject to conditions and a S106 Agreement.

#### **4 Proposed Development**

- 4.1 The proposal still seeks full planning permission for the construction of dwellings. However, as a result of the Court of Appeal decision the number of dwellings sought for approval has changed from 9 to 8 units.
- 4.2 The scheme will comprise of x5 detached 4/5 bed dwellings and x1 Mews property comprising of x2, 2 bed units and x2 3 bed units.
- 4.3 Minor external alterations to the Mews property are also sought to account for the loss of a 1-bed unit.

#### **5 Officer Comment**

- 5.1 This Committee resolution includes the requirement that the developer enters into a S106 Agreement to ensure that the on-site affordable housing provision is secured.
- 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 floor space 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 the maximum combined gross floor space of no more than 1000sqm is sought (984sqm). 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.

6.2 A revised plan condition will be required to account for the change in plans.

## **7 Recommendation**

7.1 The Heads of Terms for the S106 Agreement are removed from this resolution and a revised approved plans condition is attached to the recommendation.

## **8 Financial Implications**

8.1 There are no financial implications.

## **9 Legal Implications**

9.1 No S106 Agreement now required.

## **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:***

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### ***Background Documents:***

- Application 16/0604C