

# CHESHIRE EAST COUNCIL

## SOUTHERN PLANNING COMMITTEE REPORT

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**Date:** 3<sup>rd</sup> August 2016

**Report of:** Philippa Radia – Senior Planning Officer

**Title:** Update following the resolution to approve application 15/3752N – Construction of five, detached two-storey dwellings with car parking and car parking for existing workshop with shared access.

**Site:** 416, Newcastle Road, Shavington, CW2 5EB.

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### 1.0 Purpose of Report

- 1.1 Planning application 15/3752N was referred to Southern Planning Committee on 25<sup>th</sup> November 2015. This report is to consider a recent Court of Appeal judgement which 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 authority be DELEGATED to the Head of Planning (Regulation), in consultation with the Chairman of Southern Planning Committee, to APPROVE the application for the reasons set out in the report, subject to the completion of a s106 agreement to secure a contribution for off-site affordable housing and the following conditions:*

- 1. Commencement*
- 2. Submission of reserved matters (all matters other than access)*
- 3. Approved plans*
- 4. Submission of a Phase II Contaminated Land Investigation*
- 5. Submission and approval of a construction management plan including any piling operations and a construction compound within the site*
- 6. Restriction on hours of piling to 9am to 5.30pm Monday to Friday, 9am to 1pm Saturday and no working on Sundays or public holidays*
- 7. Reserved matters to include details of any external lighting*
- 8. Submission of a drainage scheme to include foul and surface water including sustainable drainage systems*
- 9. Tree and hedgerow protection measures*
- 10. Breeding bird survey for works in the nesting season*

11. *Reserved matters to include details of boundary treatments in particular acoustic fencing*
12. *Reserved matters to include details of existing and proposed levels*
13. *Reserved matters to include details of bin/cycle storage*
14. *Reserved matters to include a single electric vehicle charging point for each dwelling*
15. *Reserved Matters to include a pedestrian footway through the site*

*(b) That, in the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal prior to the decision being issued. The Head of Planning (Regulation) be granted delegated authority to do so in consultation with the Chairman of Southern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.*

*(c) 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 Southern Planning Committee to enter into a planning agreement in accordance with the S106 Town and Country Planning Act to secure the Heads of Terms for a S106 Agreement.*

## **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 located on the southern side of Newcastle Road just outside the Shavington Settlement Boundary and within the Open Countryside. The site is currently occupied by a parking area and a strip of landscaping. To the north-west of the site is a petrol filling station, to the west of the site is a garage (ABP) and a childrens play centre (Playworld). To the north-east of the site is 418 Newcastle Road, which is a detached dwelling and an area of gravelled land which has planning permission for 2 units of B1/B8 use.

## **4 Proposed Development**

- 4.1 The proposal seeks outline planning permission for the erection of five, two-storey detached dwellings on this site. The application is in outline form with access to be determined at this point, with all other matters reserved (layout, scale, appearance and landscaping)

## **5 Officer Comment**

- 5.1 This committee resolution includes the requirement that the developer enters into a S106 Agreement to secure a contribution for off-site affordable housing provision.
- 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.

## **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:***

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

- *Application 15/3752N*