

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD - URGENT ITEM

Date: 28 February 2018

Report of: David Malcolm Head of Planning (Regulation)

Title: Update following the resolution of Minded to Refuse application 12/3747N - Residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with maximum floor area of 1800sqm Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700sqm GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points and associated works, Land between Audlem Road/Broad Lane & Peter Destaplegh Way, Stapeley

and

12/3746N - New highway access road, including footways and cycleway and associated works, Land off Peter Destaplegh Way, Nantwich

1.0 Purpose of Report

- 1.1 To consider this item as a matter of urgency to allow a further update on the s106 contributions relating to the planning applications 12/3747N & 12/3746N for the Land off Peter Destaplegh Way, Nantwich.
- 1.2 This has been brought to Strategic Planning Board as an 'Urgent Item' due to the impending appeal timescales and the need for a speedy resolution of the s106 agreement decision which is needed by Friday 2 March.

2.0 Decision Required

- 2.1 To note and approve the Heads of Terms (as indicated in para 4.2) of a s106 legal agreement for Outline planning permission 12/3747N - Residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with maximum floor area of 1800sqm Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700sqm GIA; primary school; public open space including new village green, children's play

area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points and associated works, Land between Audlem Road/Broad Lane & Peter Destaplegh Way, Stapeley and 12/3746N - New highway access road, including footways and cycleway and associated works, Land off Peter Destaplegh Way, Nantwich.

3 Background

3.1 Planning applications 12/3747N & 12/3746N were considered by Strategic Planning Board on 22nd November 2017 where it was resolved that the Council would be Minded to Refuse the applications which are to be heard at a forthcoming Public Inquiry starting on the 20th February. The report however did not give authority to negotiate a Section 106 Agreement in the event that the appeal, if it were to be allowed, and this report seek that authority from Members.

3.2 The minutes from the meeting are as follows:

12/3747N:

That the Board be minded to refuse the application for the following reasons:-

1. The proposed development is unsustainable because it is located within the Open Countryside contrary to Policies PG6 (Open Countryside), SD1 (Sustainable Development in Cheshire East) and SD2 (Sustainable Development Principles) of the Cheshire East Local Plan Strategy, Policy RES.5 (Housing in the Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan, and Policies H1.5 & H5 of the Stapeley Neighbourhood Plan, and the principles of the National Planning Policy Framework, which seek to ensure development is directed to the right location and open countryside is protected from inappropriate development and maintained for future generations enjoyment and use.
2. The proposal will result in loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of 5 years, the applicant has also failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is unsustainable and contrary to Policy SE2 of the Cheshire East Local Plan Strategy and the provisions of the National Planning Policy Framework.

12/3746N:

That the Board be minded to refuse the application for the following reason:-

1. In the absence of planning permission for development of the adjacent site, there is no justification for approving an access road in open countryside which would be harmful to the character and appearance of the area and contrary to policy PG6 of the Cheshire East Local Plan Strategy.
- 3.3 As reported to Members in November 2017 and January 2018, “The previous Appeal Decision in respect of this planning application was quashed in the High Court; the Appeal must therefore be reheard by the Planning Inspectorate. The purpose of this report is to seek an updated position from the Council’s Strategic Planning Board to take forward to the forthcoming Public Inquiry.”
- 3.4 A Unilateral Undertaking was submitted to the Planning Inspector at the Public Inquiry back in July 2014. The Undertaking in relation to the main application 12/3747N contained the following:
 - Affordable Housing – 30% (65% Rental/35% Intermediate tenure)
 - CAVAT (Capital Asset Value for Amenity Trees) Contribution - £87,526.00
 - Education contribution – £347,081.00 (Primary Education)
 - Highways contribution – £130,000 (Towards bus stops, pedestrian crossing and provision of a bus service for 3 years).
 - Network Rail Contribution - £1,500 per dwelling
 - Public Open Space – To be agreed, laid out and managed by the applicant in perpetuity.

In relation to the application for the access road 12/3746N,

- LNCA – Landscape and Nature Conservation Area to include agreed works, maintenance and the land only to be used for these purposes.
- 3.5 In the Secretary of State’s decision letter of August 2016 (that was subsequently challenged and quashed) he does however discuss the Section 106 contributions and states:

“The Secretary of State concludes that the covenants and obligations within the Appeal A s106 UU, save for the Network Rail contribution and the sum for additional mitigation through the CAVAT method, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.” Going on to state:

“As to the Network Rail contribution, the Secretary of State agrees with the Inspector that, for the reasons given at IR11.3-11.5, the figure for the Network Rail contribution in the Appeal A UU cannot be considered as fairly and reasonably related in scale and kind to the proposed development, and so would not satisfy the third test in Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. The

Secretary of State agrees with the Inspector, for the reasons given at IR11.6, that the contribution relating to mitigation through the CAVAT method cannot be considered as fairly and reasonably related.”

In short The Secretary of State did not accept that the contributions towards Network Rail and CAVAT mitigation met the CIL Tests and as such should not go forward into any agreement.

4. Updated position

- 4.1 Following a re-consultation exercise in October 2017, prior to being reported to Members at SPB in November, and taking on board changes that have taken place since 2014 the following changes were agreed at the January 2017 meeting:

Main Application 12/3747N:

- Affordable Housing – 30% (65% Rental/35% Intermediate tenure)
- Education contribution – £532,253.00 (Towards Secondary (£441,253.00) and SEN Education (£91,000) but NO Primary contribution).
- Highways contribution – £130,000 (Towards bus stops, pedestrian crossing and provision of a bus service for 3 years).
- Public Open Space – To be agreed, laid out and managed by the applicant in perpetuity.

Access road 12/3746N:

- LNCA – Landscape and Nature Conservation Area to include agreed works, maintenance and the land only to be used for these purposes.

Linking the two applications - The access shall be used as the sole point of access to the site considered under 12/3747N and no access to be taken from Audlem Road to the south.

- 4.2 However, it has now come to light that the LNCA (Landscape Nature Conservation Area) reference should be referred to within the legal agreement for both the main application and the access application. This ensures that all of the LNCA Great Crested Newt area is put in place in the same time scales and is then maintained and transferred to the management company for maintenance into the future. **This results in the following change to the Heads of Terms.**

Main Application 12/3747N:

- *Affordable Housing – 30% (65% Rental/35% Intermediate tenure)*

- *Education contribution – £532,253.00 (Towards Secondary (£441,253.00) and SEN Education (£91,000) but NO Primary contribution).*
- *Highways contribution – £130,000 (Towards bus stops, pedestrian crossing and provision of a bus service for 3 years).*
- *Public Open Space – To be agreed, laid out and managed by the applicant in perpetuity.*
- ***LNCA – Landscape and Nature Conservation Area to include agreed works, maintenance and the land only to be used for these purposes.***

Access road 12/3746N:

- *LNCA – Landscape and Nature Conservation Area to include agreed works, maintenance and the land only to be used for these purposes.*

5 Recommendation

To note and approve the Heads of Terms (as indicated in para 4.2) of the s106 legal agreement for: Outline planning permission for Residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with maximum floor area of 1800sqm Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700sqm GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points and associated works and: New highway access road, including footways and cycleway and associated works, Land off Peter Destaplegh Way, Nantwich

6 Financial Implications

There are no financial implications.

7 Legal Implications

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

8 Risk Assessment

There are no risks associated with this decision.

9 Reasons for Recommendation

To agree the Heads of Terms to enable the Borough Solicitor to ensure the s106 is sealed and completed in the timescales set out by the Planning Inspectorate.

For further information:

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Background Documents:

- Application 12/3747N & 12/3746N