

COMMITTEE UPDATE SHEET

SUPPLEMENTARY REPORT OF THE PLANNING MANAGER

This sheet is to be read in conjunction with the main report.

Agenda Item No: 6 Planning Applications to be determined

Planning Site Visits held on 28 June 2019 commencing at 10:00hours.

PRESENT:-

Members: Councillors D Adams, A Bailey, A Clarke, N Clarke, J Clifton, P Cooper, T Munro, G Parkin, L Smyth, J Tait, D Watson, and J Wilson.

Officers: Chris Fridlington and Kay Gregory

APOLOGIES

Apologies were received from Councillors S Fritchley, N Hoy, C Kane, and D McGregor.

SITES VISITED

- 1) 18/00481/REM: Blind Lane, Bolsover**
- 2) 19/00083/FUL: Bolsover Road, Shuttlewood**

The meeting concluded at 11:00 hours

Updates:

Agenda Item 6.1: Blind Lane, Bolsover (18/00481/REM)

Since the publication of the officer report, the applicant has again confirmed they are unable to consider converting the affordable housing offer (30% of houses at 20% less than local market value) to 10% or even 5% affordable houses for social rent. The applicant says that it generally costs less per month to buy one of their houses than to rent from an RSL and also draws attention to the surplus of rented accommodation in the area.

The applicant would consider a 'local occupancy clause' so the affordable housing 'as proposed' would be prioritised for first-time buyers from within the District but not on particularly good terms i.e. the applicant suggests allowing the Council the opportunity to nominate local people (possibly from the council house waiting list), 2/3 weeks ahead of being released to the general public.

Officers would consider a clause similar to the Derbyshire Occupancy Clause would be more meaningful i.e. occupancy restricted to a person (and their dependents) who has lived or worked in the District for a minimum of three years prior to purchase. However, the applicant

cannot agree to this clause either saying that it would be extremely difficult to capture such a request legally with regard to future sales of private homes.

The applicant goes on to say that most lenders would not entertain lending with such a restriction in place and this would lead to much higher mortgage costs due to the limited funding availability from a small number of lenders.

In these respects, members are reminded that they can determine the reserved matters application separately from the proposals to amend the s.106 legal agreement although they are interlinked in viability terms. In other words, the reserved matters could be approved but the proposed amendment could be declined but this approach may mean the scheme is no longer deliverable.

In addition, the Council is able to consider amendments to an existing s.106 legal agreement but can decline to accept an application to modify or discharge an application until a period of a five years after it was first entered into. The existing legal agreement was first entered into in January 2017.

However, for the reasons set out in the original report, officers consider that the proposed amendment to the s.106 legal agreement warrants approval not least to promote delivery of housing on this site. Equally, officers are satisfied that the reserved matters application can be approved. Therefore, officers are not proposing any changes to the recommendation of conditional approval as set out on p.27 of the original officer report.

Agenda Item 6.2: Bolsover Road, Shuttlewood (19/00083/FUL)

There are no further updates since publication of the original officer report but officers have been asked to revisit the issue of local infrastructure contributions to allow members to make a fully informed decision on this application.

The table below shows the obligations proposed by the applicant compared to the requests from the relevant consultees. It can be seen that the applicant is only proposing affordable housing.

Consultee	Request	Need	Agreed
Affordable Housing	8 houses = 10% of total	2 bed (4 person) social rented	✓
CCG	£29,671	Existing medical practice at capacity	✗
Education	£292,700	12 secondary places at Bolsover School	✗
Leisure	£63,648	Towards improving nearby playground – no space on site for on-site provision	✗

Leisure	£75,738	Towards off-site outdoor / built sports facilities	x
Public Art	1% of development costs	Policy requirement	x

As set out in the original officer report and shown in the following table, this offer is identical to that agreed at outline stage in 2013.

Consultee	Original Request	Agreed (2012)	Current Request	Agreed (2019)
Affordable Housing	8 houses = 10% of total	8 houses = 10% of total	8 houses = 10% of total	8 houses = 10% of total
CCG	£0 – sufficient capacity	No contribution	£29,671	£0
Education	£182,384	No contribution	£292,700	£0
Leisure	£56,320	No contribution	£63,648	£0
Leisure	£66,880	No contribution	£75,738	£0
Public Art	1% of development costs	No contribution	1% of development costs	£0

The above table shows that the current application is only policy compliant in respect of affordable housing. This is important because the current application is a ‘fresh application’ for full planning permission and needs to be determined on its individual merits. However, it remains true to say that the contributions agreed when the outline consent was granted (for housing on this site) has some bearing on the Council’s ability to seek additional obligations in this particular case.

The officer report addresses these issues by concluding the reserved matter approval that has been implemented means there is a fall-back position, which would allow the developer to go ahead without making any contributions to local infrastructure other than providing the 10% affordable housing previously agreed.

However, it also remains true to say that if the applicant is unwilling to make the requested contributions to local infrastructure then they have a permission to fall-back on and this may be preferable to accepting the current application that does very little to mitigate for the development’s impact on local infrastructure as it goes forward in the here and now.

For example, at the time of the original outline application in 2012/2013, the CCG were not reporting issues with capacity but are now reporting there is a lack of capacity at the local

medical practices. Therefore, the absence of the requested contribution towards health would normally weigh against approval of this application.

In 2012/2013 the County Council were not willing to release their figures (based on demographic trends) to show how their request was justified and their original request was turned because it could not be demonstrated that the contribution was reasonably necessary.

At the current time, pressure on local school places still exists and there is no doubt this request would meet the three legal tests in the CIL regulations and the policy tests in the National Planning Policy Framework i.e. the request for £292,700 is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

The commuted sums requested for leisure relate to (i) the provision of some play equipment on Shuttlewood Recreation Ground, particularly for younger children who are not currently adequately provided for, and (ii) upgrading sports facilities on Shuttlewood Recreation Ground and other outdoor sport facilities within the parish of Bolsover.

Previously, these requests were deemed to be unreasonable because the audit of recreational facilities suggested there was no under provision in Shuttlewood. There is still no under provision of recreation facilities in Shuttlewood (based on the evidence base for the new Local Plan) and Policy HOU5 says these commuted sums would be reasonably required unless there is adequate provision already.

Therefore, the agent considers that the scheme is compliant with HOU5 on the basis adequate provision already exists but this analysis relies on the existing facilities being fit for purpose.

A contribution to Public Art is required by saved Local Plan policy GEN17 but officers have previously been reluctant to pursue contributions under this policy. Hence, the reason public art was not secured in 2013 when outline planning permission was granted but more recently, Inspectors have been willing to accept that this policy requirement meets the three legal tests in the CIL regulations and the policy tests in the National Planning Policy Framework

Of these issues, officers consider the education contribution is the biggest 'problem' because the shortfall in provision was identified in 2012/2013 and still exists. It might be said that the CCG could or should have factored in the contribution now requested from this development (as it was an existing commitment) over the intervening years and requested similar funding from other developments that have come forward over that time.

The leisure and public art requests are matters of planning judgement noting that identical requests were made when the original outline application was originally determined and more than five years have since passed.

However, in a very finely balanced planning judgement, officers are recommending acceptance of the current offer paying due regard to the viability and deliverability of the scheme and affording what is considered by officers to be 'due weight' to the fall-back position.

Therefore, the officer recommendation remains unchanged but if members wished to pursue this matter then it may be appropriate to ask the applicant to submit a formal viability appraisal to make a further assessment of the deliverability of this scheme before a final decision is made.

Agenda Item 6.3: McDonalds, Bolsover (19/00181/VAR)

Since the publication of the officer report, the applicant has made the following representations:

Environmental Health

The comments of the Environmental Protection Officer blatantly ignore the findings of the Applicant's Noise Impact Assessment ('NIA'), undertaken by Sustainable Acoustics. The NIA explicitly demonstrates that the proposed development will not have a significant adverse impact upon the residential amenity of the surrounding area by way of noise caused from a variety of sources. In fact, the conclusions of the NIA demonstrate that the proposal will result in no impact upon residential amenity. The evidence, provided by a qualified acoustic engineer, having undertaken quantitative measurements in line with accepted industry best practice, clearly show that the proposal is acceptable. The Council's Officer has made no effort to address this, and has produced no evidence to show that the proposal would cause any adverse effect, contrary to the conclusions of the NIA.

At Page 61 of the Officer's Report, it is stated that due to vehicle traffic and plant noise "it is considered that the development would create a harmful material impact on nearby residents contrary to Policy GEN 2 (Impact of Development on the Environment) of the Bolsover District Local Plan". Despite this statement, Environmental Health does not conclude that the proposal would result in such a level of impact. In fact, the officer's response to the previous application stated that it would result in "limited discernible impact". It follows that the level of impact assessed by the officer falls below that threshold outlined in Policy GEN 2.

Highways/ Vehicle Noise

The remarks from Environmental Health in relation to traffic pulling away from Tally's End are not relevant to this application. Vehicles can already use this road junction at any hour of the day or night. Furthermore, the Treble Bob public house, which is accessed via the same route, already has planning permission to operate the hours proposed by this application. It follows that, should the Treble Bob public house wish to open until 12 midnight (or even later) then vehicles would likely use this route. It follows that the level of impact which the Council is alleging to be unacceptable in this instance, has already been considered in a previous application for the public house, and been accepted. Therefore, to say that this application

would result in any greater impact upon residential amenity is prejudicial and casts doubt upon the Local Planning Authority's consistency of decision-making.

The Officer's Report concedes that "background noise levels are already high in the area...". If that is the case, then the "limited discernible impact" identified by Environmental Health would be even further reduced, not amplified. The Council's Highways Officer has not objected to the application.

The Development Plan

Policy GEN 2 states, similar to the above, that "planning permission will not be granted for development which creates materially harmful impacts on the local environment...". The level of impact outlined in the NPPF which would warrant refusal on noise impact grounds is 'significant adverse impact'.

The only justification provided by the Council for alleging conflict with Policy GEN 2 is that the proposal will "add to background noise levels" and "there is potential for additional disturbance and anti-social behaviour". Nowhere in the Officer's Report does it conclude that the proposal will result in either a 'materially harmful' or a 'significant adverse' level of impact upon residential amenity. The evidence, presented in the NIA, in fact indicates the opposite. The restaurant is located some distance from residential premises across a busy road, the drive-thru lane is well screened, there are no existing anti-social behaviour issues and the existing background noise levels are high. Under any rational assessment, the impact of the restaurant opening for an additional hour in the evening and morning trade periods, will be modest.

The Recommended Reason for Refusal

The recommended reason for refusal is deeply flawed and is based upon an assessment of impact upon residential amenity which is not robust and lies in stark contrast to that provided by the Applicant in the NIA.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that decisions on planning applications must be made in accordance with the development plan, unless material considerations indicate otherwise. As we have demonstrated, the proposal does not conflict with the wording of Policy GEN 2, properly understood. As the proposed development accords with all other policies in the adopted development plan, it should be approved in accordance with the legal basis of Section 38(6).

Although most of these points are already covered in the original officer report, the applicant does raise the issue of the nearby 'Treble Bob' and it may be true to say that there are no planning conditions restricting the opening hours of the public house. However, this decision was taken in very different circumstances over ten years ago.

At that time, the potential impact of development at Tally's End wasn't as clearly understood as it is now and the Council cannot be bound by a 'historic decision' without reference to the current situation in the way the applicant is suggesting in the above representations.

Furthermore, the Council could take action against any of the businesses within the local area, through licensing for example, if they were giving rise to the same range and magnitude of complaints from the local area as McDonalds.

In these respects, members will already be aware from the original officer report that the officer recommendation does not hinge solely on the adequacy (or otherwise) of the noise impact assessment and officers are equally concerned about the range of impacts the existing operations have on the living conditions of local residents, which would be unacceptably diminished further if this application were to be approved.

On these points, officers would like to reiterate the provisions of paragraph 127 of the National Planning Policy Framework, which says, amongst other things:

Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

It should also be noted that national Planning Practice Guidance says:

The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.

These factors include:

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;*
- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;*
- the spectral content of the noise (ie whether or not the noise contains particular high or low frequency content) and the general character of the noise (ie whether or not the noise contains particular tonal characteristics or other particular features). The local topology and topography should also be taken into account along with the existing and, where appropriate, the planned character of the area.*

More specific factors to consider when relevant:

- *where applicable, the cumulative impacts of more than one source should be taken into account along with the extent to which the source of noise is intermittent and of limited duration;*
- *In cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur.*
- *Some commercial developments including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the noise that may be made by customers in the vicinity.*

Therefore, with due regard to national planning policy and guidance, officers are satisfied that the advice offered by the Council's Environmental Health Officer and the officer recommendation of refusal are sound. As such, there is no change to the officer recommendation but officers would recommend a minor amendment to the reasons for refusal as follows.

The application be REFUSED for the following reasons:

While there may be economic benefits from the proposal, through increased employment and provision of a food service at times of day when there is no similar provision in the immediate area, it is considered that the amenity impacts outweigh any economic and employment benefits. The proposal will add to background noise levels at sensitive times of day and there is potential for additional disturbance and anti-social behaviour from the additional pedestrian and vehicular traffic visiting the premises to the detriment of the amenities of nearby residents. The many objections received outline amenity problems already experienced by local residents which could potentially be extended into the quieter night time period when impacts can be more closely felt.

The proposal is therefore contrary to saved policy GEN2 (Impact of Development on the Environment) of the Bolsover District Local Plan and to policies of the Framework which seeks to ensure that development is appropriate for its location. In view of the impacts of the development the proposal is not considered to be sustainable development within the terms of the Framework and it has not been demonstrated that the social and economic benefits of granting planning for the current application would demonstrably or significantly offset or outweigh the adverse impacts of doing so.