

Post committee compliance report

Planning ref: 24/02606/FP
Site address: Land west of Tuthill House, Kelshall Tops, Therfield, Herts
Proposal: Erection of three detached dwellings (1x3-bed; 1x4-bed & 1x5-bed with associated infrastructure and landscaping.
Applicant: Mr & Mrs Bullard.
Date of registration of application: 29/11/24
Reason for application going to Planning Control Committee (PCC) for determination: site area is greater than 0.5 ha.
Date of PCC meeting: 03/04/25
Date final draft S106 posted on website: 05/06/25
Case Officer: Anne McDonald

1.0 Purpose of report

- 1.1 The purpose of this report is to provide an update to the Development and Conservation Manager on any amendments to the proposed conditions and planning obligations pursuant to those agreed by the Planning Control Committee (PCC), and to demonstrate that the Section 106 Heads of Terms agreed by PCC have been captured in the final S106 agreement or similar mechanism. The Addendum to the main report at 2.3 refers to planning obligations being delivered through either a S106 Agreement or Deed of Variation.
- 1.2 This report also considers whether there have been any relevant material considerations arising between the PCC meeting and the date of preparing this report, which could have led PCC Members to a different planning decision, and which would require reconsideration at PCC.
- 1.3 This report summarises the relevant issues raised by representations received on the application since the PCC meeting. Any representations that raise new planning issues are addressed in this report.
- 1.4 The report also lists any relevant changes to legislation, planning policies and guidance since the assessment of the application.

2.0 Recommendation

- 2.1 That planning permission be GRANTED for application 24/02606/FP subject to a S106 Agreement first being entered into and the proposed conditions as listed in the PCC report and updated at the PCC meeting.

3.0 Background

- 3.1 The PCC resolved to grant planning permission subject to the completion of a S106 agreement or Deed of Variation at its meeting on 03/04/25. Since this meeting there has been no change to the proposed conditions. A S106 Agreement has been negotiated and is now agreed and is awaiting final sealing.

4.0 Condition amendments

- 4.1 Condition 10 was updated at the PCC meeting. There have been no further changes to any of the recommended conditions.

5.0 Representations received by interested parties and statutory consultees since the PCC meeting

5.1 Since the application was presented to PCC, there have been responses received from one neighbour and one response from Therfield Parish Council. The comments raised by the Parish Council are regarding the final draft S106 Agreement document following its publication on the Planning Register and viewable on line. Their points are:

- The draft does not clearly set out the extent of the land that is covered by the variation agreement. This will cause issues in the future as those who rely on the covenants need to know both what the scope and which coloured areas are covered by which agreement.
- The Committee was not told that NHDC would be varying the existing agreement without the consent of the bounding landowners. Our legal advisor believes that this is not appropriate nor legally possible.
- There is confusion in relation to the unidentified landowner of part of the S106 land. The current planning permission was granted on the condition that the applicant acquire all the S106 land, yet no land has transferred ownership since the application. The applicant has either not acquired the land and not met the condition, or the status of the land was misrepresented during the application. Please could you confirm which is the case?
- The draft variation, goes far beyond the requirements to meet the needs of the application. The proposal goes against the requirements of the Committee's decision to require the landscaping covenants to remain as it was part of the applicants proposal to justify the scheme. Why are officers making unilateral decisions without going back to the committee?

5.2 Several responses have been received from the same neighbour. Key points raised include:

- disputes the ownership information stated in the draft S106;
- considers the application site as drawn by the applicants excludes part of the land the subject of the existing S106 Agreement;
- considers that the legal agreement should be a Deed of Variation to the original S106 and not a new S106 Agreement;
- a Judicial Review will be sought if the planning permission is granted based upon the draft S106 agreement;
- states that where a Judicial Review is in contemplation that the Courts expect parties to engage with each other;
- disputes that the PCC were aware / able to make a resolution to grant planning permission subject to a legal agreement as the legal agreement and the proposed changes to it were not part of the committee report;
- considers the recommendation to PCC did not make it clear that the decision was subject to a S106 Agreement.

5.3 The Development and Conservation Manager has responded to the neighbour and the Parish Council setting out:

- the PCC did know that they were making the determination subject to the completion of a legal agreement and the recommended conditions as this was set out in the recommendation to PCC;
- it is our normal practice to negotiate a legal agreement following the resolution to grant planning permission;

- the final draft legal agreement is published on the Council's website under the planning application ref. number for at least 5 working days ahead of the final sealing of the S106 Agreement. As stated above the final draft of the S106 Agreement has been posted on the website since 05/06/25. The sealed S106 will then be published on the website for at least 1 day before the issuing of the decision notice;
- the draft S106 clearly shows the area of the red line application site;
- any previous S106 Agreements tied into the current land use will in effect be superseded by this development upon implementation of this planning permission, and the new S106 Agreement will be the applicable S106 Agreement affecting the land;
- the LPA is of the view that it has not made a legal error in the processing of the application or S106 Agreement.

5.4 As a result, the concerns raised by the neighbour and the Parish Council, are not considered to be objections or concerns that result in the need for the application to be returned to the PCC for further consideration.

6.0 Planning Policies and Material considerations

6.1 This report considers whether the application:

- (a) Can be determined (by issuing a decision notice) based upon the existing resolution of PCC; or
- (b) Whether there have been any material changes in circumstances or new planning issues that would or could lead to the PCC reaching a different conclusion from that reached.

6.2 The Council is required to discharge its statutory duty under s70(2) of the Town and Country Planning Act (as amended), and in doing so the Council must consider whether to grant planning permission or not, considering all relevant material considerations at the time of issuing a decision notice on a planning application. Case law – *Kides, R (on the application of) v South Cambridgeshire District Council & Ors* [2002] EWCA Civ 1370, is relevant given that a period has passed following the resolution of the PCC to grant planning permission.

6.3 In summary the *Kides* case assessed the nature and extent of a Council's duty under Section 70(2) of the Act. The appellant's contention was based on a duration of more than five years passing between the Council's decision, in principle, to grant planning permission and the issuing of the decision notice; and that several material changes in circumstances had taken place during that period. The permission to apply for judicial review was refused and the appeal dismissed at the Court of Appeal. This was on the basis that the Council had not failed in its duty to 'have regard to' material considerations when issuing the decision. The case provides guidance to local planning authorities in considering whether new or emerging planning consideration would result in a requirement to refer back to planning committee. In the *Kides* case, it was found that it not in every case where a new material consideration arises, after passing a resolution, but before the issuing of a decision notice, that there has to be referral back to committee.

6.4 The judgement in *Kides* indicated that the Council's duty is discharged if, at the date on which the decision notice is issued, the Authority has considered all material

considerations relating to the application and has done so with the application in mind. In practical terms, therefore, where since the passing of the resolution, a new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a 'material consideration' the delegated officer should err on the side of caution and refer the application back to PCC for specific reconsideration, in light of that new factor.

6.5 The application should only proceed for determination if the delegated officer is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach the same decision. In the Kides case the Council did not accept that any of the factors were justified or significant objections at all, let alone ones, which taken together, would lead to a different result. The judge held that the Council's decision would have been the same.

6.6 Since the resolution by PCC, there have been no changes to the application only the progression of the S106 Agreement.

7.0 Planning Obligations – S106 Heads of Terms

7.1 The Heads of Terms presented to the PCC contained headlines summarising the proposed content of the detailed Section 106 Legal Agreement. In the intervening period between the meeting of PCC and this report, detailed s106 drafting has been undertaken, translating the headlines into detailed clauses, trigger point and contribution.

7.2 The final S106 is in accordance with the Heads of Terms.

8.0 Conclusion and Recommendation to the Development and Conservation Manager

8.1 Officers consider that no material considerations have arisen since PCC that would have resulted in a different recommendation from the PCC or would have affected the determination of the PCC.

8.2 It is considered that the Council's duty has been discharged in this case, as that the date at which the decision notice is to be issued, the authority has considered all material consideration affecting the application and has done so with the application in mind. Since the passing of the resolution, all new factors which might rationally be regarded as material considerations or the purposes of Section 70(2) of the Act, have been duly considered and the delegated officer is fully aware of their relevance to the decision-making process. On further consideration taking account all of the above, officers have concluded that the authority would reach the same decision.

8.3 The final S106 Legal Agreement is considered to accord with the Heads of Terms, and therefore it is recommended that the Development and Conservation Manager agree the details of the Section 106 Agreement for execution and issue the decision notice.

Recommending Officer and Date

Anne McDonald - 16/07/25

Authorising Officer and Date

Shaun Greaves 17/07/25