

**BRENCHELEY AND MATFIELD PARISH COUNCIL
PLANNING APPLICATION 19/01099/OUT
STATEMENT TO RESIDENTS AND BUSINESSES IN THE PARISH**

The determination of planning application 19/01099/OUT, relating to the site known locally as "The Island Site", took place on December 11, 2019. It was approved on the casting-vote of the Chairman of the Planning Committee.

Following the meeting, several residents wrote to the Chief Executive of TWBC to express concern about the conduct of the meeting, the role of officers during proceedings, and the actions of the Chairman. Copies of the e-mails were sent to the Parish Council. Given the scale and nature of the concerns expressed by residents, the PC requested its independent planning consultant, Lindsay Frost, to review the contents of the officer report, and the recording of the proceedings relating to the application.

Set out below are the reports from Mr. Frost received by the PC. Except for reformatting, the texts have not been altered. They are here presented as information to the general public.

Given the conclusions of Mr. Frost's review, the Parish Council will not be taking any further action, but will eagerly await comment on the full planning application.

Report No.1.

1. The form of the application and matters of materiality and weight

Here, I think the local concern is that this is such a sensitive site (in AONB, outside LBD and subject to considerable local objection in recent draft local plan) that it needs an application for full planning permission with all details provided to assess it properly, or that it ought to have been refused pp (so allowing the applicants to test it on appeal).

An outline application establishes whether development is acceptable in principle , normally leaving details to be sorted out later through a subsequent "reserved matters " application. If TWBC thought that that an outline application was insufficient to allow proper consideration of the principle of development on this site, they could have asked for detailed information on any matters affecting the principle of development to be provided at the outline stage. This information is usually flagged-up in pre-application discussions between the applicants and the local authority. The only aspect where they sought such detailed information was on **access**, indicating that they were content for all other matters to be covered by planning conditions and resolved at the reserved matters stage, if outline planning permission was granted. This suggests that they were happy for matters such as the detailed layout of the development and the design/materials of the housing to be sorted out later, notwithstanding its location beyond the LBD and within the High Weald AONB .

All planning applications have to be decided on their individual merits by reference to national and local planning policies and to other material planning applications. Local authorities should not refuse applications just to curry favour with objectors, or because the applicants have a chance to test a refusal decision on appeal. They must act responsibly and not refuse planning permission without good reason.

I think TWBC officers have methodically gone through all the national and local planning policies, and identified all the material planning considerations. They have to do this by law and, if they fail to do so, the decision may be flawed legally. Having done this - the officers in writing their report, and the councillors on the committee in debating and deciding the application - have to decide what **weight** to attach to the various planning policies and material considerations in coming to their decision. Here, **councillors have a wide degree of discretion in the weight they attach to the various planning policies and material planning considerations.** However, they must not act perversely and must be able to justify the decision they take.

One material planning consideration they had to take into account was TWBC's current inability to demonstrate a five-year supply of housing. This activates the so-called "tilted balance" in paragraph 11 of the NPPF 2019 which means that if the local authority are minded to refuse pp:

i. the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed;

or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

This tilts consideration in favour of applications, unless the harm "significantly and demonstrably outweighs the benefits". This was clearly a major factor in this case as it headlines the officers' "summary of reasons for recommendation".

2. Mitigation of the harm caused by the development and

3. Level of Funding

The officer report accepts that the proposal would cause "significant harm to the character and appearance of the High Weald AONB" and "less than substantial harm to the setting of the Matfield Conservation Area and nearby listed buildings". **However , as a matter of planning judgement, the officers (and by extension the councillors in accepting their recommendations) state that this harm would be outweighed by the housing benefits the proposal would provide (at a time when the area has insufficient housing) and by the benefits from highway works, play facilities, ecological enhancements and financial contributions to community facilities.**

I can accept that some of these are matters of planning judgement and weight which the councillors were entitled to take. However, I think they are wrong in terming some of the things provided by the development as "benefits" to be weighed in the planning balance in favour of development. They are no such thing: **they are payments required to mitigate the external impact of the development** (for example, secondary education, libraries, primary health care, play area and community facilities) and would not be needed but for the development itself.

Procedural points raised by local residents

I have seen the "Matfield's Future" posting on Facebook with its critique of the procedural arrangements and the conduct of certain officers and councillors.

It is hard for me to comment specifically upon such allegations as I was not present at the meeting and the Facebook posting is clearly strongly coloured by disappointment at the outcome of the case. However, I can make the following general comments:

(a) whilst the officer's report should be factually accurate, balanced and impartial, she does have to explain and defend the conclusions she has reached. I do not think this represents bias;

(b) yes, the newly published local plan, whilst a material planning consideration, carries little weight at the present time and the earlier adopted plans will carry more weight in planning decisions;

(c) it is open to councillors to abstain from voting if they wish and for the chair to exercise a casting vote if an initial vote is tied, as long as all is line with TWBC's published standing orders;

(d) if the conduct of a councillor or officer is subject to criticism, the appropriate avenue is normally TWBC's complaints system, rather than an objection to a planning decision.

[Supplementary]

There is no right of appeal against a local authority planning application decision for anyone but the applicants. The only recourse is to challenge a decision in the courts by seeking a Judicial Review (JR). **A JR is about the legal probity of the decision, not the planning merits of the case**, so someone seeking JR must show that either:

- (a) the decision fails to take account of a relevant planning policy or other material planning consideration; or
- (b) the decision has taken into account a non-material planning policy or other planning consideration; or
- (c) there has been some procedural error in the processing of the application.

I didn't see any evidence of any such legal flaws which would warrant a JR application to the courts in this case at Matfield. Anyone contemplating such action would be wise to seek legal advice first.

JR can be a long and expensive business with no guarantee of success, so it is obviously not to be undertaken lightly. Even if a JR is successful in the courts and the current decision is "quashed" (rendered void), this means that TWBC would then have to re-consider it and put right any legal flaw identified by the court. However, having done this, TWBC might well arrive at the same decision to grant planning permission, leaving plaintiffs with rather an empty "victory".

Report No.2.

I have listened to the online audio recording of the TWBC Planning Committee meeting on December 11, at which application 19/01099/OUT was determined, using the link provided..

Before I did that, I checked out the basis for decision making and member/officer conduct at TWBC. This is set out in TWBC's Constitution, approved in December 2013. This is a very lengthy suite of documents which can be found at :

<http://www.tunbridgewells.gov.uk/council/councillors-and-meetings/how-the-council-works/council-constitution>

Within the various documents , some key passages are :

**** Part 4 Rules of Procedure** Pages 44-46 Planning Committee procedure rules

**** Part 5 Codes and Protocols** Pages 80-89 Protocol for members involved in the planning process

The Committee meeting was preceded by a site visit earlier in the day, at which TWBC Committee members were afforded the opportunity to see the site and its surroundings, and see some of the main issues highlighted in the officer report (such as relationship to the village and surrounding countryside, AONB, conservation area and listed buildings, and the proposed access arrangements). This is good practice .

At the Committee meeting, the procedure was much as I would have expected and was typical of many other local planning authorities in covering the following matters in this order:

- (a) Introduction by the chair
- (b) updates to, and summary of, the officer report by case-officer
- (c) opportunity to speak by objectors and supporters (3 mins each)
- (d) officer response to points raised by speakers
- (e) committee members questions to officers on clarification of any matters in the report
- (f) debate by committee members, setting out their views and why they were inclined to either support or refuse the application, ultimately leading to a proposal by Cllr Pound to refuse the application, seconded by Cllr Podbury.

At this point, the officer (Peter Hockney, I think) pressed Cllr Pound to provide specific grounds of refusal as a basis for the vote (so councillors knew what they would be voting on) and which - if it prevails - TWBC officers could then reasonably defend at appeal.

I have seen this situation many times at council planning meetings around the country, where the "mood" of councillors is to refuse an application, in response to their own concerns and to public opposition evident in the committee room, but where they find it difficult to articulate this into a

coherent set of grounds of refusal, which will withstand scrutiny at appeal. I think it was reasonable for the officer to press this point (which goes to the heart of the planning authority's obligation to act reasonably) and I have done so several times in similar circumstances elsewhere.

In this case, the obvious grounds for refusal would be based on the view that **as a matter of planning judgement:**

(a) **the significant adverse impact** of this development beyond the built-up area boundary on the High Weald AONB (which was accepted by TWBC officers and even the applicants' agent in his speech) and which was strongly articulated by the Parish Council, AONB Unit, CPRE, Weald of Kent Society and a large number of local objectors **and**

(b) **the lesser adverse impact** on the setting of the Matfield Conservation Area and nearby listed buildings (again accepted by officers)

.... significantly and demonstrably outweighs any benefits arising from the boost it provides to local housing supply, provision of affordable housing over and above planning policy requirements, and improvements to biodiversity

This would have based the grounds of refusal firmly in the context of NPPF paragraph 11.

However, I do not think that clear and defensible grounds of refusal were set out to the meeting. Cllr Pound struggled to put together grounds of refusal which would stick at appeal.

Cllr Pound's proposal then went to a vote (4 in favour, 4 against, 2 abstentions). Cllr Noakes then exercised his casting vote to reject the proposal. A counter proposal in favour of the proposal was then put to the committee (the recording didn't seem to include a seconding), with the vote mirroring the earlier one, and then Cllr Noakes casting his vote in favour of approval.

As indicated earlier, I think the officer report gave members of the committee a fair and balanced picture of the case, and explained what was covered in an outline application and what matters would remain to be resolved in any subsequent reserved matters application.

The officer report, the site visit, the committee presentations and the debate meant that all members of the committee were aware of the adverse impacts of the development but ultimately, as a matter of planning judgement (albeit on a chair's casting vote) decided to grant outline planning permission. In my view, they were entitled to take such a view even though many local people will strongly disagree with it. On the basis of the audio recording, there seemed to be no obvious breach of procedure.

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