

DURHAM COUNTY COUNCIL

At a Meeting of **County Planning Committee** held **Remote Meeting - This meeting is being held remotely via Microsoft Teams on Tuesday 1 December 2020 at 9.30 am**

Present:

Councillor J Robinson (Chair)

Members of the Committee:

Councillors J Atkinson, J Clare, K Corrigan, A Hopgood, I Jewell, A Laing, G Richardson, F Tinsley (Vice-Chair), M Wilkes and S Wilson

- 1 Apologies for Absence**
- 2 Substitute Members**
- 3 Declarations of Interest**
- 4 Minutes of the meeting held on 3 November 2020**
- 5 Applications to be determined**
 - a DM/20/01846/FPA - Land At Aykley Heads Durham**
 - b DM/20/01183/FPA and DM/20/01184/LB - Raby Castle, Raby Park, Staindrop, Bishop Auckland**
 - c DM/20/01185/FPA - Land to the West of Grice Court, Staindrop**

The Committee considered a report of the Senior Planning Officer with regards to the erection of 72 residential dwellings (Use Class C3) associated infrastructure and landscaping and demolition of on-site buildings and structures on Land to the West of Grice Court, Staindrop (for copy see file of minutes).

The Senior Planning Officer provided a detailed presentation which included a site location plan, aerial photographs of the site and photographs of the site and plans showing the proposed site layout.

The Senior Planning Officer highlighted that since the publication of the Committee report a further 9 letters of representation had been received broadly raising concerns already summarised within the Committee Report such as flood risk, the concept of enabling development, impacts upon the village and countryside, the recommendation of officers and that residents' concerns had been disregarded. New issues raised include concern at the absence of a sustainability statement on which the Senior Planning Officer advised was not a validation requirement at the time the application was validated, the Committee Report explains why officers consider the site is considered a sustainable location for the development and condition 10 requires a scheme of CO2 reduction.

The Senior Planning Officer referred to an error in the report at paragraph 149 and confirmed that it should read;

'The majority of housing is located within Flood Zone 1 although a small portion is proposed within Flood Zones 2 and 3a. As the development is considered 'more vulnerable' and parts of the built development lie within floodzone 3a there is a requirement to undertake the exception test. The submitted flood risk assessment fully acknowledges the relevant flood zones, the requirement to undertake the exception test and why this is passed. Furthermore, relevant consultees such as the Environment Agency have assessed the development on this basis therefore the error within my report doesn't change the overall outcomes reached or the comments they have provided. I do however need to update you on what the exception test is and how the development is considered to have passed it.'

Paragraphs 160 and 161 of the NPPF outlines that for the exception test to be passed it should be demonstrated that:

- the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*
- the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*

Both elements of the exception test should be satisfied for development to be allocated or permitted.'

Councillor I Royston, Vice Chairman of Staindrop Parish Council addressed the Committee on behalf of the Parish Council. The application was immensely important to the Parish Council, the proposed development was

the most significant seen in Staindrop for many years but it was also deeply unloved and unwanted in the village.

Councillor Royston asked Members to picture a hypothetical planning application, somewhere in County Durham, involving an application for 80 houses, 5% affordable homes, in open countryside and an area of High Landscape Value, outside the boundary of a conservation village with a population of 1200, on land which regularly flooded, by a speculative developer. He suggested that despite falling foul of so many policies the present application set aside all policies and under the device of Enabling Development, local people were deprived of all normal protections offered by the County Development Plan. There was no dispute in the report that the application breached Policy 6, as the development would be outside the built-up area of Staindrop and was not well related to the settlement' and Policy 10 development in the countryside.

The Parish Council argued that Policy 39 was also breached as the development caused unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views, in an area of High Landscape Value. If this was an enabling development, the applicant managed to sidestep Policy 15, meaning that only 4 affordable houses would be provided instead of the 14 required by the Policy. It was reasonable to question the point of these valuable planning policy protections, if they could be ignored by an applicant claiming a new housing site in Staindrop was essential to finance works at Raby Castle.

The Parish Council considered that in the absence of Enabling Development the application would have little prospect of approval. He referred to paragraphs 84 -94 which dealt with Enabling Development which in his opinion did not provide sufficient information to enable members to arrive at a lawful decision.

Councillor Royston asked members to consider 2 main points
The report referred to the latest Historic England Good Practice Advice, but the Parish Council considered the advice had been quoted selectively and insufficient weight had been given to certain important points. Overall, the report painted enabling development in an unduly relaxed light as a useful conservation solution rather than as an absolute last resort. We believe instead that Officers should have stressed Historic England's emphasis on the seriousness of departing from planning policy.

Councillor Royston quoted various paragraphs which advised that if a decision maker was to agree to an exception to planning policy, the evidence would need to be clear and convincing, the harm done was likely to be permanent and irreversible, all reasonable alternative means to secure the future of the asset should be considered, enabling development was to be a

last resort and even then a decision maker would still need to assess whether the heritage and any other public benefits would outweigh the disbenefits of departing from planning policy.

The Parish Council did not believe that the Report provided enough information to allow members to decide whether the development was a necessary last resort - the castle and environs were in no danger. The 'heritage' works described were largely to facilitate greater visitor footfall and increased revenue which was by no means a bad thing but it should not be at the expense Staindrop.

Councillor Royston referred to the report which confirmed that the applicant had considered alternative sources, but there was no evidence for Members to assess. The guide's advice required applicants to set out evidence of efforts made to find alternative sources of funding and if it were available, Members should have had sight of it before coming to a decision, as required the NPPF.

Enabling development had been the subject of much litigation and whether the obligation to finance the Raby works was a material consideration that could legally be taken into account was a crucial, unavoidable question. The report only briefly summarised the Parish Council's objection but there was no attempt to say what the legal concerns were. Councillor Royston noted specific criteria developed by the courts for deciding on the lawfulness of material considerations in relation to enabling development and any planning obligation offered by the applicant dealing with the financial benefits would need to serve a planning purpose and not an ulterior one - there had to be a genuine connection other than ownership between the sites.

Councillor Royston continued that it was not good enough for Officers to say that the Staindrop site was considered reasonably near to Raby and there had been many recent cases which would suggest that in this case there would not be a sufficient connection. There was insufficient evidence in the report and although the Councils Solicitor had raised no concerns, if there was no legal connection between the two sites members would have no option but to refuse the application.

In summary the Parish Council argued that enabling development requirements had not been met and therefore the application should be refused. Alternatively, he would urge the Committee to postpone a decision until receipt of adequate evidence on the need for enabling development and a further report properly considering the legal issues raised.

Councillor Rowlandson confirmed that he had received numerous objections to this proposal and no support. He found it difficult to support the application as it was guised as enabling development, if it were not, it would have been

stopped at pre-application. This was an area that flooded and he was surprised that the officer had referred to a 1 in 1000 year flood exception.

This application would have a negative effect on the landscape, only included 5% affordable housing, was almost a mile from Raby Castle making it difficult to see how the sites could be linked.

Councillor Rowlandson noted that Raby Estates was a large development and questioned how they could not afford to repair their own assets without enabling development. He asked whether other funding had been considered. The Senior Planning Officer confirmed that other sources of funding had been considered and were listed at paragraph 87, to no avail. With regards to the separation of the site, she confirmed that it was not always desirable to have the sites side by side.

Councillor Richardson considered the affordable housing to be insufficient and noted the loss of agricultural land. The Senior Planning Officer confirmed that paragraph 173 confirmed that the agricultural land was not the best and most versatile and with regards affordable housing, the quantum of development had been independently verified and she added that advised

that with enabling development there would not normally be any housing at all.

Mr Peake referred to the flooding which had taken place last winter and was found to be from a blocked underground culvert. He also confirmed that prior to submission of the application an extensive public consultation in Staindrop and Gainford had taken place with 58% supporting the developments.

Councillor Wilkes displayed a flood zone map from the Environment Agency which showed category 3 flood zone although the developer could make improvements to decrease the flood risk. He had serious concerns with regards to homeowners insuring the properties as homes built after 2010 were not afforded the same government assurances that homes built prior to 2010 were. Councillor Wilkes suggested the approval of planning permission in an area that homeowners would potentially not be able to insure their new properties was irresponsible.

He referred to Bow bridge which was one of the key flood locations in the entire County and there was a road which was at serious flood risk. He could not accept building houses on a flood plane by an applicant with a substantial amount of land available to the applicant, he could not understand why this site had been chosen. He could not support an application that could have affordability issues in terms of insurance and if flooding occurred, would require the involvement of the council and emergency services. Although there was flood mitigation outlined in the report, it was potentially in breach of the Sustainable Design Policy 29.

Councillor Wilkes did not agree with the recommendation despite enabling development as it went against Policy T6, 10, 39 and 15 and this was more than adequate for Members to reject the application.

The Senior Planning Officer confirmed that although it was in flood zone 3a, the Applicant proposed to raise the houses which would sit out of the flood zone and no objection has been raised by either the Environment Agency or the Council's Drainage and Coastal Protection Officers. The Environment Agency had confirmed the potential for the flood map to be redrawn which was something the Applicant may do to address some of the concerns.

Councillor Hopgood asked if the S106 contributions that would normally be available to the community, was all to be allocated to Raby Estates. She said that this was the first application for enabling development and she questioned whether use of the phrase suggested that all negative impacts could be ignored. The Solicitor emphasised that Members could not ignore the conflict with policy but must apply a balance test of whether the benefits of the proposal outweighed the negative impacts that arose from the application.

The issue of enabling development, the suggestion of there being no connection with the site and the works of the castle – the Historic England guidance was not policy or legislation and there did not always have to be a close physical proximity between the development site and heritage asset site. The S106 would secure the package of heritage works and was a sufficient legal connection in this case.

Councillor Wilkes asked specifically regarding the insurance, which policy could be used on the grounds that it was not sustainable if somebody could not afford to get insurance on the property.

Councillor Atkinson suggested that people would not buy a property if they could not get insurance for it.

The Principal Planning Officer confirmed that a matter of insurance was not a material planning consideration however if he wanted to refuse the application on flood risk grounds as he believed there was an unacceptable risk of flooding issues, it would be Policy 35.

Councillor Wilkes did not believe Policy 35 would not stand up on appeal, however he did agree with the reasons for refusal that the Parish Council had alluded to and he proposed refusal on the basis that it breached Policy 6, building outside a built up area, Policy 10 inappropriate development in the countryside, Policy 39 impact on the character of the landscape and Policy 15 lack of affordable housing.

Councillor Richardson said the application would be a significant increase in housing and he could not support it for sustainability reasons and seconded the recommendation to refuse.

Councillor Wilkes confirmed that with regards to enabling development the harm outweighed the benefits, but also that insufficient regard had been given to other possibilities and with all of the other resources the Applicant had, there could be another way of securing the funding.

Upon a vote being taken the motion was lost.

Councillor Laing moved the recommendation for approval, seconded by Councillor Atkinson.

Resolved:

That the application be **APPROVED** subject to the completion of a S106 Legal Agreement to secure the following;

- Heritage works to RCPG prior to the occupation of a specified number of plots

- The requirement to enter into a S.39 Agreement to secure the detailed habitat creation and long term management document, including a monitoring strategy of the biodiversity land
- £34,760 towards improving offsite open space and recreational provision within Barnard Castle East Electoral Division
- The dedication of a three new Public Right of Way as shown on drg. no. L-101 Rev. C - Footpath Plan
- The delivery of 5% affordable housing comprising of 4no. 3-bedroom houses for affordable home ownership;

And subject to the conditions outlined in the report.

d DM/20/01205/FPA - Land to the North and South of Spa Road, Gainford

The Committee considered a report of the Senior Planning Officer with regards to the erection of 79 residential dwellings (Use Class C3), associated infrastructure and landscaping and demolition of existing agricultural barn at Land to the North and South of Spa Road, Gainford (for copy see file of minutes).

The Senior Planning Officer provided a detailed presentation which included a site location plan, aerial photographs of the site and photographs of the site and plans showing the proposed site layout.

The Senior Planning Officer highlighted that since the publication of the report 1 further letter of objection had been received, the issues within raised within have predominantly been discussed within the report. One new issue is raised on whether the development is appropriate in the current economic climate and whether the development would be economically viable at a time of potential economic crisis, however, officers consider that this would not be an appropriate reason to refuse the application.

Councillor Rowlandson confirmed that he travelled on the A68 regularly and the entrance into the village is a picture, with the site in front of that view. Concerns were expressed in regards to a blind corner and the impact of the number of vehicles accessing and egressing. Councillor Rowlandson confirmed that he had many people objecting, but had also people in support of a new development in the village. However, with the loss of agricultural land and impact on the countryside he asked that the Committee refuse the application.

Councillor Richardson confirmed that he couldn't add anything else to James Rowlandson and he had to object for the people of Gainford, with regret he could not support.

Mr Peake confirmed that in Gainford a lot of local consultation had taken place. Support for this scheme was greater than it was in Staindrop. In response to the comment about Raby finding other sites Mr Peake confirmed that a review of all existing sites had been undertaken by the estate. However, for a development to be sustainable this means having good access to schools and shops, so though we do own a lot of land most is remote and in extremely rural locations where it would be completely unsustainable to build.

The statement of Dr A Walker was read out by the Senior Committee Services Officer as follows;

- New housing may be required in County Durham but it was questionable whether 79 houses were needed in a village with no local employment and poor public transport links
- Significant environmental impacts. This was a beautiful green field with loss of wildlife, risk of flooding and additional cars on the road
- The entrance to the development was dangerous, being built on a blind corner
- There was no mention of how 'green' this development was. A new development should be as green and environmentally friendly as possible. She asked whether there would be any future energy requirement for houses and vehicles
- Concerns with regards to safe access to the school as all the roads from the main road to the school were single track and had narrow footpaths or none
- Insufficient parking on the site and in the village. There did not seem to be enough parking per house. Most households had several cars which would be needed for commuting. The village already had many cars parked on the road and increased traffic would cause more issues when passing
- Village amenities were lacking. There was no longer a cafe or post office and the local shop was very basic so new residents would have to travel to access services
- Devolvement on the St Peters site should take priority as this was an eyesore and subject to repeated arson attacks and concerns that if this development succeeds, the St Peters development may not
- The development would change the feel of the village from a small local community to a commuter village with no centre point
- The view across the field was a protected view in a conservation area
- Most people would travel east from the village to the A1, train station, airport, Darlington, Teesside for employment and therefore pass through the narrow main road

Councillor Tinsley confirmed that having listened to the issues raised, the issue of enabling development was not as contentious as the application for Staindrop.

Councillor Tinsley commented on the difficulty for communities in places like Gainford and Staindrop as people wanted to live in desirable places and there was pressure from developers and the government for development. He read quotes in relation to the need to provide suitable housing developments from Rt Honourable Robert Jenerick and Rt Honourable Boris Johnson and proposed a recommendation to approve.

Councillor Atkinson seconded the motion to approve as on balance the benefits outweighed any negative impact.

Councillor Wilkes had referred to the Council's Strategic Housing Land Availability Assessment as this piece of land had not been included as a development site and it was part described as a large uncontained incursion into attractive countryside, beyond well assimilated settlement edge, likely to have significant landscape effects and cause significant adverse harm to the setting of the conservation area, with grade 1 and 2 listed buildings, unlikely to achieve suitable highway access without substantial hedge removal and substandard footpath links, and that was only one side of the road. There was no flood risk and part of the site suggested a yield of 86, yet this was significantly larger with only 79 houses proposed and he was less inclined to vote against despite there being a lot of reasons why it shouldn't be developed. As stated, it was a balance test of the positives and negatives. Cllr Wilkes concluded that he would like to listen to what any other Members say.

Councillor Richardson stated the application was similar in many ways to Staindrop and the statement from Dr Walker had drawn his attention to St Peters, with over 30 houses to come forward, this would be an additional 110 houses, which was a significant increase. The access was on a very busy road with a school opposite – crossing the road was a great worry.

Councillor Hopgood did not see the need for this application when there was an application at St Peters which had been approved in Gainford which had not commenced. She was staggered that we have waited for years for the County Durham Plan so that we can abide by it and have guidance and yet every application the Committee has gone against its policies.

Resolved:

That the application be APPROVED subject to the completion of a S106 Legal Agreement to secure the following:

- The urgent repair works to Gainford Hall and the Dovecote, the timescales for doing so, in addition to the management and maintenance regime for the hall and its marketing strategy
- Heritage works to RCPG prior to the occupation of a specified number of plots
- The requirement to enter into a S.39 Agreement to secure the long term management and maintenance, including a monitoring strategy of the biodiversity land
- £67,686 towards improving offsite open space and recreational provision within Barnard Castle East Electoral Division;
- The dedication of a new Public Right of Way as shown on drg. no. L-102 - Footpath Plan
- The delivery of 5% affordable housing comprising of 3no. 2-bedroom houses and 1no. 3-bedroom house for affordable home ownership