CIRCULATED IN ADVANCE OF THE MEETING

ALTERATIONS AND ADDITIONS REPORT

18 September 2018

Item 8 DC/15/3288/OUT Saint Felix School Halesworth Road Reydon

Reydon Parish Council comment as follows:-

"As you are aware the original planning submission was unanimously refused by Reydon Parish Council. This was further strengthened by the Reydon Parish Council's submission at the planning review in July 2017.

Based on these submissions to comment on the draft 106 document would be contradictory to that decision. However, we feel that the 106 draft document submitted by Waveney District Council in regards to the Saint Felix School development has certain issues that even if we wanted to enter into dialogue regarding this would amount to some misinterpretations.

It appears that the 106 draft document was drawn up by Birketts LLP one would assume that as Waveney District Council is featured in many of the control aspects (please refer to paragraph on Enforceability) that it would have been drawn up by Waveney District Council's legal team.

Also as far as Reydon Parish Council is aware Section 106 Agreements should be negotiated between the District Council and the Developers under the Government National Policy Planning Framework (NPPF). As we are aware there is a test criteria to be met within this framework, we find it difficult to understand this in the light that there is not an appointed Developer. Although there is reference to this framework within the document we must assume that once a developer is involved these could change to the detriment of the local interest.

Enforceability: Once the school has sold the playing field, the future developer will be bound by the agreement to the extent that the provisions concerns what is done or not done on the development site.

Similarly, the School will be bound only to the extent that the provisions concern what is done or not done on the School's retained land. It is questionable whether the agreement (or parts of it) comply with legislation (s106 Town & Country Planning Act and Regulations 122 & 123 Community Infrastructure Regulations).

Only Waveney District Council can enforce the agreement. Whether it is ultimately enforced depends on:

- Whether WDC effectively monitors it;

- Whether it is legally watertight; and

- Whether, in the event of breach, WDC is willing to take action which ultimately could require an application to the court for an injunction.

General Provisions: In the Conditionality clause it makes all of the obligations set out in the 106 conditional on the commencement of the development. But many of the covenants impose obligations that must be performed prior to the commencement of development!!

Affordable Housing: We also notice there is no registered provider (Housing Association) in regards to the affordable housing.

Current outline application is for 69 houses. We may find that the developer may well conclude that it would be more profitable to build a smaller number of expensive houses, therefore, they would only have to deliver proportionately less affordable housing.

Sports and Recreation Facilities: Neither the RPC nor the community has been consulted on whether the sports facilities, as described in the Draft Community User Agreement, are wanted or will be used by the community. We therefore question whether they are a community asset.

Access to Green Spaces:The creation of a green playing space adjacent to the proposed development area, means unnecessary destruction of habitat in a CWS.

The provision of Accessible Natural Green Space and New Footpath Access Network (A44.2667) duplicates what already exists and, there again, means unnecessary destruction of habitat in an AONB and CWS. There is already a circular path which accesses ANGS's and there are numerous tracks on the St Felix parkland, part of the equestrian cross-country course. The creation of an additional path and green spaces are simply not required.

What does anyone think? Personally, I'm very concerned about the various environmental implications.

We find that the draft document submitted is anomalous in many aspects. We have outlined the few above as pointers.

In closing we would like to clarify our original objections and these are primarily the infrastructure of the area, in particular the poor performance of the local sewerage and the necessity for more research into the impact on traffic in particular the summer time volumes in the area of the development."

Southwold and Reydon Society;

It is considered the S106 agreement as drafted will make the application acceptable in planning terms. They state all their previous comments and objections still stand and they remain of the view that the application should be refused.

Neighbour consultations/representations

32 additional letters have been received from local residents and the Reydon Action Group for the Environment (RAGE) which has some 160 members. A summary of their concerns are as follows:

i. The draft agreement is ineffective and cannot ensure delivery of the claimed benefits and it follows that it is not a material consideration and should be disregarded and the application refused as being contrary to the Local Plan;

ii. Where the works referred to in the S106 will require planning permission there is no certainty that planning permission will be granted;

iii. The agreement is drafted by the School's solicitors contrary to the WDC Constitution, resulting in the agreement being slanted in the applicants favour;

iv. The agreement does not meet the requirements of the S106 Town & Country Planning Act 1990 and Regulations 122 and 123 Community Infrastructure Levy Regulations 2010 (CIL);

v. The S106 contains numerous drafting errors and ambiguities;

vi. Given there is yet no developer that would normally be party to the agreement this has led to a convoluted process in the agreement whereby some obligations are intended to be enforceable against the Development Land, some against the Retained Land and some against both which is not workable;

vii. No assurance sought from the Bank that is party to the agreement, as to continued funding and agreement to the expenditure in the Investment Schedule.

viii. Clause 7 makes all the obligations in the S106 conditional on commencement of development but many of the covenants impose obligations that must be performed prior to commencement of development.

ix. The covenant regarding title is incorrect;

x. No obligation to deliver a specific number of affordable housing units only a percentage. In the absence of any other details no assurance that the affordable housing will comply with policy DM18. A RP is not party to the agreement and if one cannot be found the affordable housing obligations will fall away;

xi. The open space covenants are meaningless as no commitment to submit details or to comply with WDC policy;

xii. Contributions to bus stop improvements do not make the development compliant with the transport policy and do not satisfy terms of Reg 122 CIL. No indication bus operators are willing to support such a system;

xiii. The replacement playing pitches will be harmful to landscape features, the AONB and CWS contrary to Policy DM29 and no feasibility study done for the larger area now to be provided. No assessment on impact on CWS ben done. Public access will ne minimal;

xiv. The S106 refers to obtaining any necessary planning permission whereas the recommendation to Members was for the developer to obtain planning permission so not meeting the terms of the committee resolution.

xv. It is not clear that a requirement to apply for planning permission can be included in the S106;

xvi. Not clear how new sports changing facilities can be regarded as necessary to make the development acceptable therefore contrary to Reg 122 CIL.

xvii. Community use also falls foul of Reg 122 CIL as it is not necessary to make the development acceptable;

xviii. The proposed community use does not apply to the swimming pool even though the school intends to use the sale proceeds to upgrade the pool, therefore will not provide a public benefit;

xix. No provision made for replacement equestrian course;

xx. The measures to mitigate damage to European Sites have not in themselves been assessed in terms of impact on AONB and CWS and measures will breach policy DM29.

xxi. The new ANGS will involve the removal of existing vegetation damaging the CWS;

xxii. Given off-site open space is 'relevant infrastructure' which WDC funds out of CIL, it cannot be required to separately funded by a S106.

xxiii. New footpaths should be accessible for the public not just for future residents;

xxiv. The signage and interpretation facilities will turn the open areas into a miniature country park which is unnecessary;

xxv. The measure require payment to Suffolk Coast RAMS which does not yet exist. It may not be adopted and WDC may not join.

xxvi. No reason to suppose the measures will actually deter dog walkers from venturing as far as the protected sites;

xxvii. With regard to the school refurbishment the delivery cannot be ensured and the prvisions fall foul of S106 TCPA and Reg122 CIL. There is no workable mechanism to govern

how the sale proceeds will be spent. There is a retrospective review process which is useless because by that time the money will have already been spent.

xxviii. The bulk of the monies (76%) would go on routine maintenance;

xxix. The agreement is silent with regard to any surplus funds;

xxx. The only basis for consenting the application contrary to the Local plan is that it is 'enabling', i.e it enables desirable improvements to be made to the school which will provide public benefit. The refurbishment provisions do not secure those benefits.

xxxi. S106 is unworkable, not legally enforceable and does not make the proposed development acceptable in planning terms;

xxxii. The schools obligations count for nothing unless the school remains in business for the long term which in turn depends on the school retaining support from its bankers, which is uncertain.

xxxiii. The original decision is flawed as it claimed objections were not material. The planning application should be re-visited and rejected.

xxxiv. If approved could set a precedent for accepting enabling development for securing the future conservation of any non-designated heritage asset;

xxxv. Given only a small proportion of the funds generated by selling off the playing field for housing will be used for conservation it fails to comply with the provisions of enabling development as set out in the NPPF.

xxxvi. It is clear that the proceeds will be used for capital investment to attract wealthy overseas clients to hopefully increase student numbers. No marketing data been presented to show the investments will increase their revenue. If the school was convinced of their marketing strategy it could have borrowed the money from the bank. The school has no vision and is doing what it has done for the last 20 years, selling land to maintain its facilities which it is not able to do from receipts generated by school fees.

xxxvii. The development does not qualify as enabling development and no guarantee that St Felix will improve its financial position as a result of the development.

Officer Comments

In response to the comments made regarding enabling development the following information is offered to only confirm that the decision made by Members previously to the principle of development is sound:

The concept of enabling development relates to a development proposal that may not be considered to fully accord with the Adopted Development Plan but, based on the public benefits that it gives rise to, is considered to comprise a material consideration of weight, which, where appropriate, is considered to make a development acceptable. There is no statutory definition of enabling development in planning legislation. However, the National

Planning Policy Framework (NPPF) addresses the principle of enabling development. More specifically, paragraph 79 of the NPPF states that applications for housing in the countryside which would not normally be acceptable in planning terms maybe appropriate.

“Where such development would represent the optimal viable use of the heritage asset, or would be appropriate enabling development to secure the future of heritage assets”.

The document goes on to state at paragraph 202 that:

“Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies”.

The text of the NPPF demonstrates that the principle of enabling development is a valid material consideration in the determination of planning applications.

Whilst it is acknowledged that the NPPF does not refer to enabling development other than in the context of the conservation of heritage assets, the principle has been adopted in the determination of a number of planning applications and in the High Court. In making judgement on a case in 2014 (Thakeham Village Action Ltd, R (On the Application of) v Horsham District Council (2014) Ref JPL772) relating to a residential development that sought to facilitate the retention and continued operation of a local business providing local employment opportunities, Justice Lindblom stated that:

“I do not believe that the principles of enabling Development are limited to ventures that would protect the heritage asset or a facility that serves or is accessible to the public …..The scope for enabling development is wide. There are many ways in which it may serve a proper planning purpose. It may fund work of repair or improvement to a listed building. It may fund the protection of a particular habitat. It may fund the provision of swimming pool for public use, or some other public facility, but that is far from being an exhaustive list of the benefits it may help to provide”.

Accordingly, it has been established by the High Court that enabling development which relates to matters other than the conservation of historic buildings, can be a material consideration in the determination of a planning application. It is key that there is sufficient degree of connection between the enabling and enabled development i.e. that the financial contribution received from one development will enable the other development to proceed, and it is for the decision maker to consider the weight to be afforded to the social, cultural and/or economic public benefits that will arise from the proposal and whether they are sufficient to outweigh any harm potentially caused by it.

On the basis of the foregoing, it is key that the proposals can demonstrate it is required in order to deliver the improvements at Saint Felix School which will give rise to social, cultural and/or economic benefits.

With regard to the drafting of the S106 it is common practice for applicants lawyers to draft the agreement and for the Council to review and where necessary amend to ensure it adheres to the Planning Committee resolution and appropriate legislation such as Circular 05/2005, CIL, housing law etc.

Item 9 DC/18/2406/FUL Site at Junction of Station Road and Blyth Road, Southwold

Suffolk County Council – Highway Authority

Following their holding objection to the application the applicants sought to provide further information which resulted in the following comments being made:-

1. the development as currently proposed is not ideal.

2. If the remote car park cannot be secured prior to commencement then the scheme would definitely be recommended for refusal by SCC as LHA, therefore Grampian condition relating to the car park is required to enable SCC as LHA to recommend approval

3. The red and blue lines should be amended to the property boundary (rather than the building line)

4. The possibility of two on-site private residents' parking spaces on the Blyth Road frontage should be considered, including how the building line of building 1 would need to be altered to give space for pedestrians between parked vehicles and the front of the building.

5. Even if private on-site parking spaces are ruled out on Blyth Road, the frontage treatment at the boundary between private property the highway maintainable at public expense will be required to be a pre-commencement condition to ensure a safe boundary with kerbs (separating pedestrian and carriageway areas) and to ensure surface water issues are addressed particularly preventing highway surface water entering the buildings during exceedance events.

6. The frontage treatment on Blyth Road will likely require a new TRO to extend the parking prohibition – possible a single yellow line 8am to 6pm waiting prohibition, or limited waiting prohibition, to be progressed by s106 obligation.

The highway authority also suggested that the courtyard was being used for parking by the premises fronting Station Road, but it is confirmed by the applicant that the internal open courtyard area is leased to the garage for their use only.

Further to the above comments from the Highway Authority the applicants are considering whether there is any merit in accommodating two resident parking spaces on Blyth Road.

Neighbour consultations/representations

One further letter of objection has been received for the reasons mentioned in the planning officers report.

Revised Plans

The applicants have submitted some revised plans amending the design of the building fronting Station Road. This was to address concerns raised by the consultation responses and include some amendments suggested by the Senior Design and Conservation Officer. The revisions made however do not in the opinion of officers offer an improvement to the original scheme. They seek looks to reduce the amount of glazing at ground floor to allow more wall space for the shop retailer to use. This has resulted in changes to a number of elements on the building, namely the location and size of fenestration at both ground and first floor (which has changes the balance between brickwork and openings), the amount and location of the flintwork panels and the introduction of a bay feature. All these elements need to work together to create an attractive building frontage to the street scene of both Station and Blyth Road. The current proposal needs further revision/ alteration of these elements/detailing and colour of finishes in order to achieve this. The applicant is agreeable to negotiate further on the design.

Item 10 DC/18/2231/FUL – Land at Fallowfields, Oulton

Suffolk County Council – Highways Department:

No objection subject to conditions.

Item 12 DC/18/2576/FUL – Former Mill Road Service Station, Mill Road, Lowestoft

Following submission of the acoustic report and subsequent conversations with the Environmental Health Officer, the applicant has agreed to restrict the delivery hours to that of the previously approved scheme; therefore the following condition is required:

> Deliveries or collection of packaging, waste or other items, to the unit hereby permitted, shall not take place outside the hours of 8am and 6pm Monday to Saturday and outside the hours of 10am and 4pm on Sundays and bank holidays.

In addition, the Environmental Health Officer does not consider that the operational noise associated from the proposal would result in any adverse impact on the neighbours. However, the Environmental Health Officer still has concerns with regards to the potential impact that the plant machinery may have on the site given its 24 hour operation. It is likely that the impact can be reduced to an acceptable level, however, these details will need to be presented to the Environmental Health Officer prior to them recommending appropriate conditions.

Therefore the recommendation is for one of delegated authority of approval subject to the Environmental Health Officer raising no objection and any additional conditions which are deemed appropriate in order to minimise potential amenity impact.

Item 13 DC/18/2583/ADI – Former Mill Road Service Station, Mill Road, Lowestoft

SCC Highways Authority have raised an objection to the proposed totem signs as the signage area is greater than 10m2, and the proposed max illumination of 600 c/dm2 is greater than the maximum acceptable illumination of 300 c/dm2 for signs greater than 10m2 in a town/city zone. However, the areas of luminance on the totems signs are smaller than 10m2, and signs with an area of less than 10m2 can have a max illumination of 600 c/dm2. Therefore, it is not considered that the proposal would have any adverse impact to highway safety.

Item 14 DC/18/2584/ADI – Former Mill Road Service Station, Mill Road, Lowestoft

SCC Highways Authority has raised no objection to this application.

Item 15 DC/18/2585/ADN – Land At Kirkley Rise, Mill Road, Lowestoft

SCC Highways Authority have raised an objection to the proposed 'Gateway' sign as the signage area is greater than 10m2, and the proposed max illumination of 600 c/dm2 is greater than the maximum acceptable illumination of 300 c/dm2 for signs greater than 10m2 in a town/city zone. However, the areas of luminance on the totems signs are smaller than 10m2, and signs with an area of less than 10m2 can have a max illumination of 600 c/dm2. Therefore, it is not considered that the proposal would have any adverse impact to highway safety.

Item 16 DC/18/2950/DCO – The Lake Lothing Third Crossing, Lowestoft

Amend the recommendation by adding an additional paragraph for Noise to read:

10) If planning permission is granted, a full review of eligibility for further sound insulation under the NIR must be must be completed to protect the future amenity of the most affected residential receptors.

Amend the recommendation 2) Archaeology to read:

a) The Environmental Statement should **have made** clear that further archaeological work will be required

Amend paragraph 5.150 to read:

Regarding the Environmental Statement – the Written Scheme of Investigation (WSI) should make clear that there may need to be further work based on what is found during the

evaluation, and for elements which may be impacted by deeper works, subject to finalisation of the approach to construction.

Additional Paragraph regarding air quality and noise:

The Local Authorities should continue working with the applicant and contractors on the development of the Interim/Final Code of Construction Practice into a completed document. In particular the Council concurs with the points raised by SRL Technical Services Limited in their communication dated 5th September 2018, including:

- the need for additional baseline noise monitoring;
- the requirement for prediction and assessment of noise form the construction phase, including careful comparison of predicted noise against existing ambient noise levels;
- consideration and assessment of construction activities against eligibility thresholds for noise insulation in accordance with BS5228; and
- identification and assessment of any other sources of noise that will be associated with the operational phase, including alarms.

The detail of the Code of Construction Practice (such as existing ambient noise levels; Threshold Noise limits; working hours; assessment of the air quality impacts from construction HGVs; etc) cannot be agreed until definitive details of the project are known and the final Code of Construction Practice is in development. We do not rule out the possibility that Control of Pollution Act 1974 s61 applications (Prior consent for work on construction sites) would be required for any of the works.

This approach avoids prematurely committing the scheme to detailed controls based on the current level of available detail.