

MID SUFFOLK DISTRICT COUNCIL  
DEVELOPMENT CONTROL COMMITTEE - 24 September 2014

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**AGENDA ITEM NO** 1  
**APPLICATION NO** 2613/11  
**PROPOSAL** Outline application for residential and retail development with demolition of existing structures and new access road (application for a new planning permission to replace extant planning permission OL/140/04 in order to extend the time limit for implementation.)  
**SITE LOCATION** Thurston Granary, Station Hill, Thurston  
**SITE AREA (Ha)** 0.95  
**APPLICANT** Playdri Products Ltd  
**RECEIVED** July 29, 2011  
**EXPIRY DATE** October 28, 2011

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**REASONS FOR REFERENCE TO COMMITTEE**

1. At their meeting on Wednesday 26 March 2014 Members of Development Control Committee 'A' considered an update on the application for mixed residential/retail development at the Thurston Granary. At that meeting (which followed a viability appraisal carried out by your Asset Utilisation officers) Members resolved to grant outline planning permission subject to securing a proportion of the residential element as affordable housing together with other contributions in respect of infrastructure. The details of Members' resolution and your officers' recommendation to that meeting are considered below.

During subsequent negotiations regarding the terms of the S106 planning obligation sought by Members the applicant challenged the Council's appraisal of the scheme's viability, therefore in order to provide a conclusive resolution to the matter your officers commissioned an appraisal by an independent specialist consultancy. The final appraisal was received by your officers in August.

The application is now reported to Planning Committee because the final independent viability appraisal concluded the development would not be financially viable and would not be able to support any contributions towards affordable housing or Social Infrastructure. This does not accord with the resolution of Development Control Committee 'A' to secure a minimum of 10% affordable housing and other contributions as set out at the meeting held on 26 March 2014. Moreover this represents a significant planning issue with potentially wider relevance that warrants strategic consideration. The application is therefore reported to Planning Committee with the agreement of the Chairman.

On 7 August the applicant submitted an appeal to the Planning Inspectorate on the grounds that the Council has failed to determine the application within the statutory 13 week period allowed for a major application. Although the application was due for determination by 28 October 2011, the applicant had mutually agreed with your officers to extend the time limit for determination while negotiations were on-going.

Once an appeal has been accepted by the Planning Inspectorate the Council is no longer able to determine the application, however the Council's position on the matter currently remains that as resolved by Members at their meeting on 26 March 2014, however this does not take account of the final independent viability appraisal.

**The matter is therefore reported to Planning Committee for further consideration and to determine whether Members would or would not *be minded* to grant a replacement outline planning permission taking into account the outcome of the final viability appraisal and its implications in terms of delivering affordable housing and other contributions.**

A copy of the relevant part of the minutes of the meeting held on 26 March 2014 is attached as an Appendix to this report (Appendix A), together with a copy of your officers' original report to Committee on 23 October 2013, the updated report to Committee on 26 March 2014 and relevant decision Notices. This report also includes plans and elevations relating to the first 'reserved matters' scheme submitted pursuant to outline permission OL/140/04 and approved on appeal under reference 2419/08. This aspect is considered further below.

### **OUTCOME OF THE INDEPENDENT VIABILITY APPRAISAL CARRIED OUT IN JULY 2014**

2. The independent viability appraisal considered two scenarios securing 35% and 15.5% affordable housing respectively, together with other contributions in respect of infrastructure totalling £109,000 and a third scenario with no planning contributions. The appraisal concluded that even with no contributions the scheme would be economically unviable and would still return a deficit.

At the meeting of Development Control Committee 'A' held on 26 March 2014 Members resolved to grant outline planning permission subject to securing a minimum of 10% affordable housing (whereas your officers had recommended up to 15% be secured), and also added 'rail crossing safety measures' to the wider category of "infrastructure contributions". They also added a planning condition seeking a scheme of measures to "safeguard rail and rail crossing users accessing the site."

The independent viability appraisal essentially concludes that the obligations sought would render the scheme financially unviable and your officers have therefore now revised their recommendation following receipt of the final appraisal to take into account the specific circumstances of this application for a replacement outline planning permission.

### **CONSULTATIONS**

3. Two consultation responses have been received (from Suffolk County Council Development Contributions Manager and Suffolk County Council Fire & Rescue Service) since this application was previously considered by Committee in March 2014 and are attached to this updated report. The original consultation responses are attached to the original report dated 23 October 2013 (at Appendix 'C').

**Suffolk County Council (Development Contributions Manager) – Education**

forecasts for Thurston show sufficient surplus places to accommodate all pupils anticipated to arise from the development. No education contributions are now sought.

**Suffolk County Council Fire & Rescue Service** – Comments relating to Building Regulations; Repeats comments made in respect of the original outline permission OL/140/04 and subsequent applications for a replacement planning permission.

#### LOCAL REPRESENTATIONS

4. No local or other third party representations were received in respect of the application.

#### PLANNING ASSESSMENT

5. As noted in your officers' original report to Committee 'A' on 23 October 2013, paragraph 22 of the document 'Greater Flexibility for Planning Permissions' makes it clear that if 'reserved matters' have already been approved they do not necessarily have to be applied for again. It states:

*'If both the local planning authority and the applicant are still content with the reserved matters approvals, they can simply be referred to in the new decision notice. There is no need to reapply for them or pay any further fees. However, there may be circumstances in which one or other party wishes to make a change, perhaps in order to ensure that the scheme is still acceptable in the light of new policies. In this case, the applicant may choose to resubmit a reserved matters application, or the local planning authority may request that the applicant resubmits.'*

Irrespective of policy considerations regarding affordable housing the potential for a major mixed-use development without any affordable housing provision would result in a material change in circumstances potentially affecting the planning merit of the scheme (because the applicant has always held that the 'reserved matters' previously approved on appeal under reference 2419/08 and which included some affordable housing units over shops should form part of the current application).

When considering an earlier application for a replacement permission (1700/11) your housing officers were concerned that the affordable housing units shown on the reserved matters approval 2419/08 would no longer be acceptable to a Registered Social Landlord because, *inter alia*, they were located above the retail elements.

On that basis, having regard to the guidance issued by the DCLG (above), your officers were not content to include the details approved under the reserved matters approval 2419/08 because there appeared to be a significant risk that a developer would not be able to meet his obligations in terms of delivering that affordable housing. This was subsequently upheld at the planning appeal in respect of application 1700/11 (Attached as Appendix 'D'). Your officers have maintained their position throughout the current application while the situation

regarding affordable housing provision was being considered.

As the final viability report concludes that the scheme would be economically unviable the applicant argues that because the residential units above the retail units would now be 'free market' dwellings (rather than 'affordable') the Council has no reason to exclude assessment of the 'reserved matters' previously approved under reference 2419/08. This revised report now includes those 'reserved matters' that were approved by the Planning Inspectorate on appeal (under reference 2419/08) on 16 September 2009 as they form part of the applicant's original submission.

Your officers' assessment of planning merit has therefore been revised from that set out in the original report (attached hereto as Appendix 'C'), to take account (a) of the inclusion of the 'reserved matters' details approved on appeal (under reference 2419/08), and (b) to the fact that the scheme would not deliver any affordable housing or other planning contributions.

**(a) Assessment of the previously approved 'Reserved Matters' (in respect of appearance, amenity, highway safety and other planning considerations excluding affordable housing):**

The original outline planning permission OL/140/04 made no reference to the number of residential units to be provided, nor to the amount of retail space. The first 'reserved matters' submission (reference 2419/08) provided for 97 one and two bedroom flats and 705 square metres of retail space, and was refused by the Council on 23 September 2008. The application was subsequently allowed on appeal on 16 September 2009.

The Inspector considering the appeal noted the Council's reasons for refusal but did not consider the proposal would be over-dominant or detrimental to the character of the area, commenting that the proposal met the criteria attached to the original outline permission in terms of the height to eaves level and the number of storeys to be constructed. He also opined that he considered the proposal preferable to a later 'reserved matters' scheme approved by the Council under reference 2430/08.

Although there have been significant changes to the planning system both nationally and locally since the appeal decision in respect of 'reserved matters' application 2419/08, there have been few changes to development plan policies that might be considered to affect the assessment of that scheme as far as they relate to the character and appearance of the area, residential amenity, highway safety or other matters. For that reason your officers are content there are no changes which alter their overall assessment from that taken by the Inspector at appeal in relation to the above aspects. Your officers are therefore satisfied that the *details* of the scheme approved under reserved matters approval 2419/08 remain acceptable as far as the above planning considerations are concerned.

**(b) Assessment of the principle of development (following the final viability appraisal) in respect of affordable housing and other planning contributions**

Your officers' previous recommendations in October 2013 and March 2014 to

grant a replacement outline planning permission have been predicated on the scheme delivering a proportion of the residential units as 'affordable housing' in accordance with Altered Policy H4. The final viability appraisal essentially removes that element from the overall scheme and raises further issues regarding the principle of development if no affordable housing were to be secured. Altered Policy H4 makes clear that:

*"...Negotiations with developers will take account of identified local needs, the economics and viability of development and the availability of local services"*

Although Altered Policy H4 allows for the level of contributions to be reduced to take account of viability, to fail to secure any affordable units within a major scheme such as this represents a significant departure from the objectives of that policy and as such your officers do not consider that it can be considered to accord with it. The Council's adopted Supplementary Planning Document for 'Social Infrastructure Including Open Space, Sport and Recreation' makes no reference to the viability of development being taken into account, neither does your Core Strategy policy CS6. On that basis a failure to secure any contributions is also not considered to accord with the SPD or policy CS6.

Although the NPPF makes a presumption in favour of sustainable development at paragraph 14, referring to it as a 'golden thread' running through plan-making and decision-taking, it does not change the status of the development plan as the 'starting point' for decision making (Paragraph 12). Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise. It has also been held that in order to be considered to be 'in accordance with the development plan' the proposal shall accord with that document when considered as a whole.

Your officers consider that failure to secure any of the 97 dwellings as affordable housing would be contrary to the Council's Altered Policy H4 and similarly the lack of any contributions towards Open Space and Social Infrastructure would conflict with Core Strategy policy CS6 and your Supplementary Planning Document on Social Infrastructure, including Open Space, which has applied to all residential developments from the 5th February 2007. Whereas conflict with one or more development plan policies may not necessarily result in the proposal being contrary to the development plan, Members must consider what weight should be accorded to those policies and other material considerations in order to arrive at an informed judgement.

In reaching their previous recommendation to grant outline planning permission your officers placed significant weight on a) the provision of some affordable housing, b) the use of 'previously developed land' in accordance with Core Strategy policy CS7 and c) the redevelopment of a site for mixed-use purposes in accordance with the objectives of the NPPF in particular as they relate to sustainable economic development. In light of the revised viability appraisal only two of those elements would now weigh in favour of permission being granted.

Although the Thurston Granary site is not an allocated industrial site it supports a number of businesses and its loss to mixed residential / retail uses would require those industrial activities to relocate. Policy E6 (Retention of Individual Industrial and Commercial Sites) makes clear that:

*"...In considering applications for change of use or the redevelopment of existing premises to non-employment generating activities, the district planning authority will expect significant benefit for the surrounding environment, particularly in terms of improved residential amenity or traffic safety".*

Although the amenity and highways aspects of the proposed development have previously been considered (both in terms of the outline application and 'reserved matters') and been found to be acceptable, your officers cannot identify the significant benefits to which policy E6 refers, and whilst the loss of the site for residential use would affect the Council's 5-year land supply, it would also result in a loss of a site with existing employment and potential further employment generating potential.

Your officers have taken into account the potential for employment creation carrying out the development, the fact that the outline permission and 'reserved matters' have previously been approved subject to a S106 planning obligation, the loss of the site from the Council's land supply and the contribution the development would make towards meeting the Council's targets for the re-use of previously developed land together with all other material planning considerations, but consider that none of the above weigh in favour of the proposal sufficiently to overcome the issue regarding the lack of affordable housing provision.

It is for Members to consider how much weight should be accorded to each of the above matters in order to determine whether or not the proposal accords with the development plan, and whether there are material considerations that outweigh that determination, however in view of the revised circumstances your officers are no longer able to support a proposal that would fail to deliver any benefits to the local community in terms of affordable housing or other contributions. Your officers consider that failure to secure any affordable housing provision within a scheme of this size and without any significant benefit in terms of improved amenity or highway safety would represent substantial conflict with the development plan in terms of delivering sustainable development and would warrant the refusal of permission.

**SUMMARY**

- 6. As Members have previously resolved to grant outline permission subject to securing a minimum of 10% of the residential element as 'affordable' housing the matter has now been returned to Committee for Members further consideration following the applicant's decision to appeal against non-determination.

Your officers have reconsidered the proposal in light of the final viability appraisal. As that appraisal concluded that the scheme would not be economically viable the previously approved 'reserved matters' have now been taken into account because the residential units over the retail element would not have to be provided as 'affordable housing', and therefore the concerns expressed by your housing officers on the previous scheme (1700/11) that such units would not be acceptable to a Registered Social Landlord are no longer relevant.

Your officers have considered the proposal in light of the final viability report, relevant development plan policies and other material considerations however they are unable to support it. Your officers consider that failure to secure any

affordable housing provision or other contributions within a scheme of this size without any significant benefit to the local community (either in terms of providing affordable housing, improved amenity or highway safety) would be contrary to the Council's adopted conflict development plan and the National Planning Policy framework in terms of delivering sustainable economic development.

**RECOMMENDATION**

**Having regard to the appeal against non-determination that the position of the Council be stated that it would have been minded to REFUSE the application on the following grounds:-**

The proposal, by reason of a failure to secure any of the residential element of the mixed use scheme as affordable housing for the benefit of the local community would be contrary to the Council's Altered Policy H4 and would furthermore represent an unsustainable form of development contrary to the objectives of the National Planning Policy Framework as they relate to sustainable economic development, and in particular paragraphs 7, 8, 17, 19, 51, 70, 131 and 187.

Philip Isbell  
Corporate Manager - Development Management

Adrian Matthews  
Development Management  
Planning Officer

**APPENDIX A - PLANNING POLICIES**

**1. Mid Suffolk Core Strategy Development Plan Document and the Core Strategy Focused Review**

**Cor1 - CS1 Settlement Hierarchy Cor3 - CS3 Reduce Contributions to Climate Change Cor4 - CS4 Adapting to Climate Change Cor5 - CS5 Mid Suffolks Environment Cor6 - CS6 Services and Infrastructure Cor7 - CS7 Brown Field Target Cor8 - CS8 Provision and Distribution of Housing Cor9 - CS9 Density and Mix CSFR-FC1 - PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT CSFR-FC1.1 - MID SUFFOLK APPROACH TO DELIVERING SUSTAINABLE DEVELOPMENT**

**2. Mid Suffolk Local Plan**

**GP1 - DESIGN AND LAYOUT OF DEVELOPMENT  
H17 - KEEPING RESIDENTIAL DEVELOPMENT AWAY FROM POLLUTION  
H13 - DESIGN AND LAYOUT OF HOUSING DEVELOPMENT  
H15 - DEVELOPMENT TO REFLECT LOCAL CHARACTERISTICS  
T10 - HIGHWAY CONSIDERATIONS IN DEVELOPMENT  
HB1 - PROTECTION OF HISTORIC BUILDINGS  
H3 - HOUSING DEVELOPMENT IN VILLAGES  
H14 - A RANGE OF HOUSE TYPES TO MEET DIFFERENT ACCOMMODATION NEEDS  
H16 - PROTECTING EXISTING RESIDENTIAL AMENITY  
SB2 - DEVELOPMENT APPROPRIATE TO ITS SETTING  
E4 - PROTECTING EXISTING INDUSTRIAL/BUSINESS AREAS**

**E5 - COU WITHIN EXISTING INDUSTRIAL/COMMERCIAL AREAS**  
**E6 - RETENTION OF INDIVIDUAL INDUSTRIAL AND COMMERCIAL SITES**  
**S10 - CONVENIENCE GOODS STORES**  
**S7 - PROVISION OF LOCAL SHOPS**

**3. Planning Policy Statements, Circulars & Other policy**

**NPPF - National Planning Policy Framework**  
**C1195 - CIRCULAR 11/95: USE OF CONDITIONS IN PLANNING PERMISSION**

**APPENDIX B - NEIGHBOUR REPRESENTATIONS**

Letter(s) of representation(s) have been received from a total of **0** interested party(ies).

The following people **objected** to the application

The following people **supported** the application:

The following people **commented** on the application: