**MINUTES of**
**DISTRICT PLANNING COMMITTEE**
**6 SEPTEMBER 2023**

**PRESENT**

| | |
|---|---|
| Chairperson | Councillor K M H Lagan |
| Councillors | M G Bassenger, D O Bown, S J Burwood, J Driver, A Fittock, A S Fluker, L J Haywood, K Jennings, A M Lay, W J Laybourn, N R Miller, C P Morley, M G Neall, N G F Shaughnessy, R H Siddall, U C G Siddall-Norman, N D Spenceley, P L Spenceley, W Stamp, CC, E L Stephens, J C Stilts, N J Swindle, M E Thompson and L L Wiffen |

## 221. CHAIRPERSON'S NOTICES

The Chairperson welcomed everyone to the extraordinary meeting of the Council and went through some general housekeeping arrangements for the meeting. He advised that he was suspending Procedure Rule 4(8)3 standing to address the Chairperson.

## 222. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors V J Bell, M F L Durham CC, J C Hughes, S J N Morgan, R G Pratt and S White.

## 223. MINUTES OF THE LAST MEETING

**RESOLVED** that the Minutes of the meeting of the District Planning Committee held on 11 July 2023 be approved and confirmed.

## 224. DISCLOSURE OF INTEREST

There were none.

## 225. 23/00076/FUL - LAND NORTH WEST OF RIVERSLEIGH, NIPSELLS CHASE, MAYLAND

| | |
|---|---|
| **Application Number** | **23/00076/FUL** |
| **Location** | Land North West of Riversleigh, Nipsells Chase, Mayland |
| **Proposal** | Change of use from agricultural building to 2 bedroom bungalow (C3 Use) and alterations to fenestration |
| **Applicant** | Mr & Mrs Kenny Paton |
| **Agent** | None |
| **Target Decision Date** | 13.04.2023 |
| **Case Officer** | Devan Hearnah |

| Parish | MAYLAND |
|---|---|
| **Reason for Referral to the Committee / Council** | Member of the Council |

The South Eastern Area Planning Committee (SEAC), at its meeting on 28 June 2023, had deferred determination of this application to this Committee and the report set out the reason for deferral. The application had at the District Planning Committee meeting on 11 July 2023 been deferred following receipt of extensive additional information from the Applicant and on advice of the Monitoring Officer and Head of Development Management. Appendix 1 to the report provided a response to the Applicant's submission.

It was noted from the Members' Update that four letters of support and one letter of comment had been received. The Members' Update circulated at the SEAC meeting was attached as Appendix 1 to the Members' Update for information purposes.

Prior to her presentation the Officer provided a verbal update, informing the Committee that further letters of support had been received (making 14 in total), along with legal advice from the Applicant's Barrister which had been received the day before the Committee meeting. The Officer then highlighted some of the points raised within the Barrister's submission, concluding that Officers' view had not changed in that this was a change of use application for a building that did not have permission. Therefore, it could not legally be granted.

In response to a question regarding the case law being referred to by the Council, the Lead Legal Specialist and Monitoring Officer explained to the Council why the Kwik-Save case law (Kwik-Save Discount Group Ltd v Secretary of State for Wales (1981) 42 P&CR 166) was no longer felt necessary. He advised that the Council had, by taking enforcement action, made a decision that this was an unauthorised building and change of use could not be granted for a building that was unlawful.

In accordance with the Council's public participation scheme, a supporter, Mrs McBean, Parish Council representative, Councillor Down and the Applicant's Barrister, Mr Whale then addressed the Committee. In response to comments made the Lead Legal Specialist and Monitoring Officer confirmed that although the enforcement notice had not taken effect it had been issued and it taking effect had only been deferred because the notice was the subject of an appeal.

Councillor K M H Lagan moved the Officers' recommendation of refusal as set out in the report. This was duly seconded.

In response to a comment made, the Head of Service – Development Management advised that Officers had never been pressured by Members to issue an Enforcement Notice.

A lengthy debate ensued, during which a number of Members commented and raised questions in relation to the application and the related enforcement action. In response to the debate, Officers provided the Committee with additional information and clarification which included:

- The Council would not have served an enforcement notice unless there was clear evidence to support an allegation of a breach of planning control and a failure to remedy the breach upon being given an opportunity to do so. It was confirmed that Officers followed due process in this case. Members were reminded that the matter for consideration at this meeting was the Planning Permission and not the enforcement action.

- Once a planning application had been approved, the development had to be built in accordance with the approved planning permission and if it was not the development could then be treated an authorised development not in accordance with the permission and at risk of enforcement action.
- A change of use application could only be made on an authorised building and the Council, via its enforcement investigation, had said that this building as constructed was not authorised.
- It was confirmed that this planning application had been submitted prior to the enforcement notice being served.
- In response to a question regarding why retrospective planning permission had not been discussed, the Specialist Development Management drew Members' attention to correspondence with the Applicant during the validation stage of this application advising that the application could not be assessed as a change of use. Confirmation was received from the Applicant to proceed with the application as submitted.
- The wording of the suggested reason for refusal related back to Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 WLR 983 case law. However it was in Members' gift to amend this.

Further guidance on the planning appeal process both if planning permission was granted or refused were detailed by Officers in response to questions.

Councillor A S Fluker referred to the appeal against the enforcement notice and whether the Council could defer this application until after the Planning Inspectorate had determined the appeal. In response the Lead Legal Specialist and Monitoring Officer confirmed that deferral would be a lawful decision, however the Applicant could appeal to the Planning Inspectorate for non-determination of the planning application. Councillor Fluker proposed that this application be deferred until the appeal against the related enforcement notice was dealt with. This proposal was not seconded.

The Chairperson then moved the earlier proposition of refusal.

In accordance with Procedure Rule No. 13 (3) Councillor A S Fluker requested a recorded vote, and this was duly seconded. The voting for refusal of the application was as follows:

For the recommendation:
Councillors M G Bassenger, S J Burwood, J Driver, T Fittock, L J Haywood, K Jennings, A M Lay, M G Neall, R H Siddall, N Spenceley, P Spenceley, E L Stephens, N Swindle and M E Thompson.

Against the recommendation:
Councillors D O Bown, A S Fluker, K M H Lagan, W J Laybourn, C P Morley, W Stamp, J C Stilts and L L Wiffen.

Abstention:
Councillors N R Miller and N G F Shaughnessy.

It was noted that Councillor U G C Siddall-Norman was unable to vote.

The Chairman declared that the application was therefore refused.

**RESOLVED** that this application be **REFUSED** for the following reason:

1 Based on the information submitted and available to the Council, and having regard to the design, appearance, layout, character and purpose of the

application building, it has not been demonstrated that the building as constructed constitutes an 'apple storage barn' as authorised by the grant of planning permission 20/00574/FUL. Consequently, the building is unauthorised development, and the Council cannot, having regard to relevant Case Law, approve an application for a permission for a 'change of use' of a building where the construction of the building is unauthorised.

## 226. ANY OTHER ITEMS OF BUSINESS THAT THE CHAIRPERSON OF THE COMMITTEE DECIDES ARE URGENT

The Chairperson advised that following a request he had agreed to allow Councillor A S Fluker to raise a matter under this item of business. Councillor Fluker referred back to reports that Area Planning Committees used to receive on a regular basis regarding appeal decisions. He requested that these reports be reinstated as they were very informative and useful. In response the Chairperson advised he was happy to meet with Officers to discuss this.

There being no other items of business the Chairperson closed the meeting at 8.51 pm.

K M H LAGAN
CHAIRPERSON