



COUNCIL

Council Summons and Agenda

You are hereby summoned to attend an **Extraordinary Meeting of Ryedale District Council** to be held in **The School Hall, Lady Lumley's School, Swainsea Lane, Pickering, YO18 8NG** on **Monday, 21 October 2013** at **6.30 pm** in the evening for the transaction of the following business:

Agenda

1 **Emergency Evacuation Procedure**

The Chairman to inform Members of the Public of the emergency evacuation procedure.

2 **Apologies for absence**

3 **Public Question Time**

4 **Declarations of Interest**

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

5 **Notices on Motion Submitted Pursuant to Council Procedure Rule 11 (Pages 5 - 28)**

Proposed by Councillor Clark and seconded by Councillor Ward.

The five members below wish to call an Extraordinary Full Council preferably in

Kirbymoorside. This Council to debate the Gladman application at Kirbymoorside (1300342/MOUT).

We wish to consider the decision taken on the 28th August 2013. As a result the Council resolves to approve the following:

- i. Instruct the Chief Executive to proceed with revocation of the decision

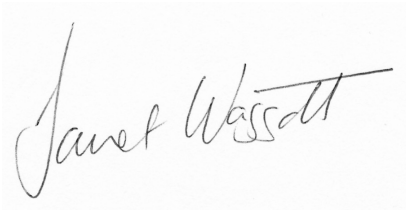
and

- ii. To not contest the Judicial Review that is expected on this planning application.

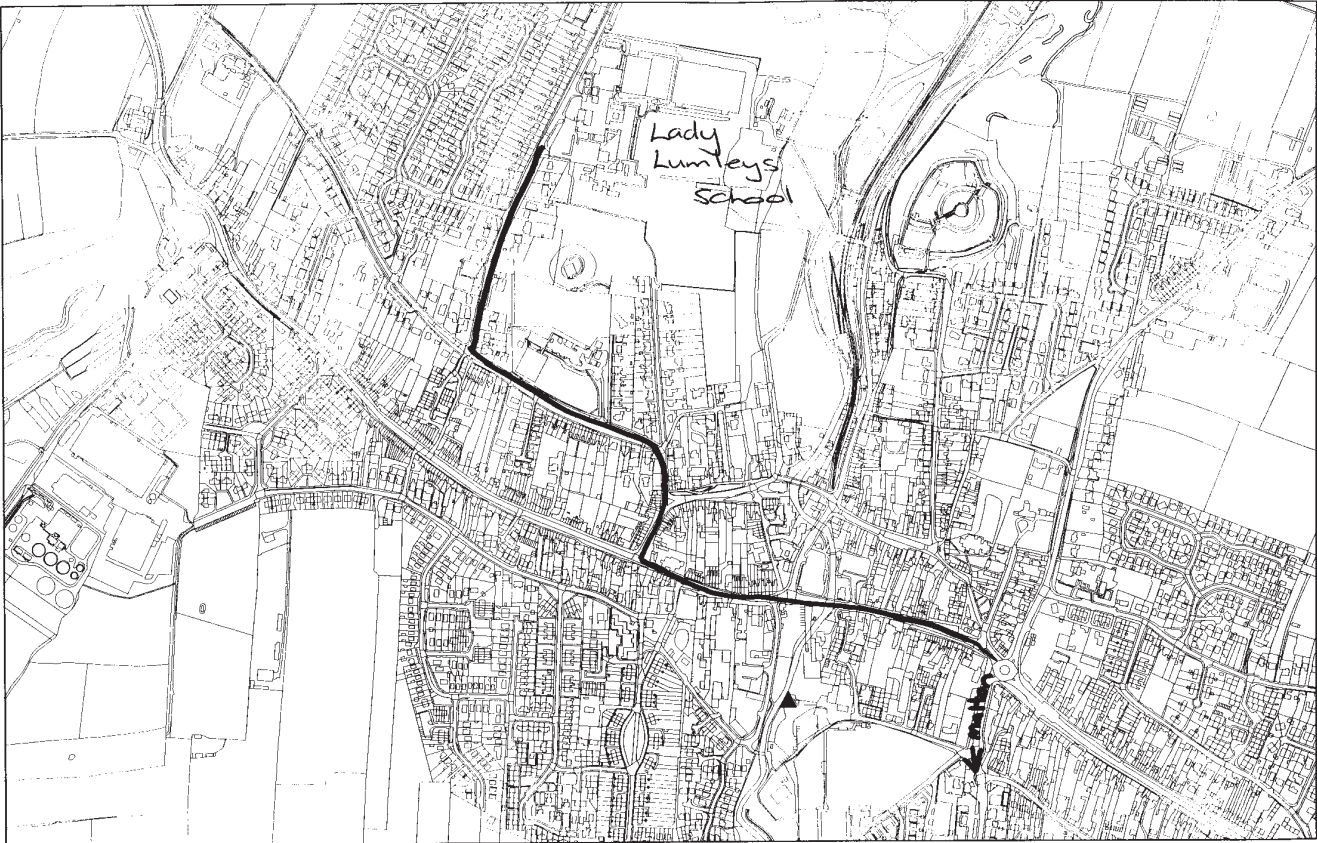
[Signatories requesting extraordinary Council meeting: J Clark, S Ward, T Woodward, J Andrews, L Richardson.]

NB In considering the above Motion on Notice, Council Members are requested to have due regard to the following Officer reports which are attached to this agenda:-

- (i) The Monitoring Officer's report (**Appendix 1**)
- (ii) The Corporate Director (Section 151) Officer's report (**Appendix 2**)

A handwritten signature in black ink, reading "Janet Waggott". The signature is written in a cursive style with a long horizontal stroke at the end.

Janet Waggott
Chief Executive



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REPORT TO:	EXTRAORDINARY COUNCIL MEETING
DATE:	21 OCTOBER 2013
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP
TITLE OF REPORT:	MONITORING OFFICER'S REPORT UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989
WARDS AFFECTED:	ALL

1.0 PURPOSE OF REPORT

- 1.1 Members of Council are asked to consider this Monitoring Officer's report in relation to the following Motion on Notice which is on the agenda for the Council meeting on 21 October 2013:

"The five Members below wish to call an Extraordinary Full Council preferably in Kirbymoorside. This Council to debate the Gladman application at Kirbymoorside (13/00342/MOUT).

We wish to consider the decision taken on the 28 August 2013. As a result the Council resolves to approve the following:

- (i) Instruct the Chief Executive to proceed with revocation of the decision; and*
- (ii) To not contest the Judicial Review that is expected on this planning application."*

- 1.2 This report is prepared on the assumption that the above motion seeks in part to invite the District Council to revoke a planning permission which may be the subject of Judicial Review proceedings the remedy for which, in appropriate circumstances, can be the quashing of the planning permission. Any claimant has six weeks from Friday, 30 August 2013 to lodge an application for Judicial Review. This time period expires on Friday, 11 October 2013.

- 1.3 As the Monitoring Officer for Ryedale District Council, I have a duty to make a report under Section 5 of the Local Government and Housing Act 1989 on any proposal, decision or omission by the Authority, or a Committee which has given rise to, or is likely or would give rise to:-

- (1) A contravention of law or any Code of Practice made or approved by or under any enactment; or
- (2) Such maladministration or failure as is mentioned in Pt III of the Local Government Act 1974, ie in connection with action taken by or on behalf of the Authority, in the exercise of the Authority's administrative functions.

1.4 This requirement is referred to in the Council's Constitution: Part 2 Articles of the Constitution, Section 11.4 functions of the Monitoring Officer – Ensuring lawfulness and fairness of decision making (page 30).

1.5 Under Section 5(5) of the same Act the authority shall consider the report. In this case the meeting is the Extraordinary Council meeting to be held on 21 October 2013.

2.0 RECOMMENDATIONS

2.1 It is recommended that:

- (i) This report be received; and
- (ii) Council considers the advice in this report before deciding whether or not to pass the motion set out in paragraph 1.1 to be considered by Council on the 21 October 2013;
- (iii) Council does not seek to revoke the planning permission dated 30 August 2013 for major residential development of Kirkdale Road, Kirkbymoorside, North Yorkshire.

3.0 RECOMMENDED REASONS FOR DECISION

3.1 It is considered that a decision to initiate procedures to revoke the planning permission for residential development at Kirkdale Road, Kirkbymoorside, North Yorkshire would not be regarded as reasonable and lawful in all the circumstances and would, therefore, be a potentially irrational decision which in itself could be subject to Judicial Review.

4.0 ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION

4.1 Council Officers have explored what the Council's options are. In arriving at the advice in this report, I have sought specialist legal advice from an experienced planning law barrister from Cornerstone Chambers in London. The potential options are revocation of the planning permission and something called Self Judicial Review where in exceptional cases the Leader of the Council can apply for Judicial Review to quash the Council's decision.

4.2 The Council could revoke the planning permission under Section 97 Town and Country Planning Act 1990. This would give the applicant the right to compensation from public funds, based on the difference in the value of their land with and without the planning permission. That would be a windfall profit for the owners, who purchased the land without the benefit of the planning permission. The cost of the compensation would be met from the public purse. It is unlikely that the Council will be able to persuade the Secretary of State that it is expedient to revoke the permission, if any revocation is opposed. In deciding whether to revoke the Council

will take into account the compensation that would be due, estimated at between £3 and £5 million. However this level of compensation could be substantially higher depending on valuation issues being resolved. Planning permission could subsequently be granted for the same major residential development because the only professional planning opinion available indicates that the residential development is in accord with the National Planning Policy Framework and the Development Plan. Accordingly, in terms of preventing residential development, revocation would serve no useful purpose.

- 4.3 If the Council were to judicially review their own permission, even if the Court found that there was a technical error of law on the vote it would be unlikely to exercise its discretion to actually quash the decision. Accordingly this course of action is not recommended.

5.0 BACKGROUND

- 5.1 The key events that have occurred which is the context for the Motion on Notice referred to above are outlined in the attached **Annex 1**. A copy of the approved minutes of the Planning Committee meeting held on 28 August 2013 are also attached as **Annex 2**.

- 5.2 By way of background, Members are advised that four key matters that need to be considered by a Council exercising the legal powers of a local planning authority are as follows:

- (i) Planning powers should by law be exercised for a public purpose;
- (ii) Members of a Planning Committee are required to keep an open mind until they have all the information before proceeding to a decision and should not predetermine planning applications;
- (iii) Strong local opposition to a proposal is not of itself a basis for refusal unless based on proper planning grounds;
- (iv) Fiduciary duties of individual Members.

Each of these issues will be considered in turn.

Planning powers should by law be exercised for a public purpose

- 5.3 Members are advised that the House of Lords acting in a judicial capacity in *McGill v Porter* [2001] held that the exercise of statutory powers by a Council for party political advantage is unlawful. Lord Bingham of Cornhill observed in that case that:

“a public power is not exercised lawfully if it is exercised not for a public purpose for which the power was conferred but in order to promote the electoral advantage of a political party”.

Members of a Planning Committee are required to keep an open mind

- 5.4 Clearly in the context of determining planning applications, the public purpose is served by making decisions in accordance with the policies of the development plan unless material considerations indicate otherwise. If a Member adopted an approach of favouring or opposing planning applications of a certain type, allowing irrelevant matters to outweigh important planning considerations, giving undue weight to the opinion of the planning applicant or objectors and not giving due weight in the decision making process to professional opinion from Officers and/or failing to give

clear and convincing planning reasons for approving or refusing a planning application contrary to such advice and/or contrary to the policies of the development plan and the National Planning Policy Framework, then questions may be raised as to whether a Member is properly discharging the role of a Planning Committee Member and or has pre-determined the planning application. The Ombudsman is also likely to find this behaviour to be maladministration.

- 5.5 The objection to predetermination has been ably described by Mr Justice Ouseley in the High Court case of Bovis Homes (2002) as follows:-

"The further vice of predetermination is that the very process of democratic decision making, weighing and balancing relevant factors and taking account of any other viewpoints, which may justify a different balance, is evaded. Even if all the considerations have passed through the predetermined mind, the weighing and balancing of them will not have been undertaken in the manner required. Additionally, where a view has been predetermined, the reasons given may support that view without actually being the true reasons. The decision-making process will not then have proceeded from reasoning to decision, but in the reverse order. In those circumstances, the reasons given would not be true reasons but a sham".

- 5.6 It is important for Members to keep an open mind until they have all the information before proceeding to a decision. Guidance on the proper approach to the decision making process is contained in the Planning Code of Practice.

Strong local opposition to a proposal is not of itself a basis for refusal unless based on proper planning grounds.

- 5.7 It is clear in this case that the strength of local opposition to the proposal has been great but that, unless based on proper planning grounds, cannot be a basis for refusal. Costs Circular 03/2009 is clear:

B21. "While planning authorities are expected to consider the views of local residents when determining a planning application, the extent of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial evidence."

B22. "Planning authorities will be at risk of an award of costs for unsubstantiated objections where they include valid reasons for refusal but rely almost exclusively on local opposition from third parties, through representations and attendance at an inquiry or hearing, to support the decision."

Where Planning Committees fail to have regard to this national policy guidance when making planning decisions and an appeal is lodged, it is almost certain that the Council will be punished by an adverse costs award.

Fiduciary duties of individual Members

- 5.8 In considering the motion on notice Members are asked to have in mind the following considerations:-

- (i) Local authorities owe a fiduciary duty to their ratepayers, analogous to that owed by trustees to their beneficiaries.

It has been stated in relevant case law that “the Council must preserve a balance between the duty owed to that general body of ratepayers and the duty owed to [others]”.

Accordingly, in deciding to spend money, a local authority must take account of the interests of the council taxpayers who have contributed to the authority’s income and balance those interests against those who benefit from the expenditure. A failure to take account of the interests of the council taxpayer may constitute a failure to have regard to a relevant consideration; the way in which the balance is struck may be challenged on the ground of irrationality.

- (ii) Members are advised that this fiduciary duty is personal to each Member. If a decision of the Council is scrutinised by the High Court, or by the External Auditor it is no defence that a Member felt obliged to vote in a particular way out of loyalty to a Ward Member or a political group.

6.0 REPORT

6.1 Independent specialist legal advice from an experienced planning barrister of Cornerstone Chambers in London and Sharpe Pritchard LLP Solicitors of London has been sought in relation to the grant of planning permission dated 30 August 2013 for major residential development of Kirkdale Road, Kirkbymoorside, North Yorkshire.

6.2 Council Officers have explored what the Council’s options are. These are revocation of the planning permission and something called Self Judicial Review where in exceptional cases the Leader of the Council can apply for Judicial Review to quash the Council’s decision.

6.3 In relation to revocation the District Council’s barrister has reached the following conclusion:-

“It is unlikely that the Council will be able to persuade the Secretary of State that it is expedient to revoke the permission, if any revocation is opposed. In deciding whether to revoke the Council will take into account the compensation that would be due, estimated at between £3 and £5 million.”

6.4 With regard to the second option, there are two hurdles to obtaining a Judicial Review. Firstly there must be a legal/procedural error of law. Secondly the Judge must consider it reasonable having regard to all the relevant circumstances to exercise his or her discretion to quash the planning permission. In relation to self Judicial Review the barrister has reached the following conclusions:

- (a) If the Council were to judicially review their own permission, even if the Court found that there was a technical error of law on the vote it would be unlikely to exercise its discretion to actually quash the decision.
- (b) On the issue of the exercise of the Court’s discretion in a Judicial Review application the barrister reached the conclusion that the Court would not quash the planning permission for the following reasons:-
 - a. The planning merits, as accepted by the Council in their June meeting, appear to be in favour of grant. No reasons of sufficient weight in planning terms have been put forward explaining why the Council should depart from their June decision and consider

that there is an in principle objection to development at the site. Therefore, at this stage, there do not appear to be any defensible planning reasons in favour of refusal.

- b. The developer would be strongly prejudiced by the decision being quashed. It appears to be accepted that had this decision been refused he would have been highly likely to succeed on his appeal against the first non-determination, not least because the Council had no outstanding objections to the scheme.
- c. Quashing would simply serve no purpose. Given that it appears the planning merits are reasonably clearly in one direction. If the decision is quashed either the Council would reasonably be expected to vote for the proposal next time or their refusal to do so would be overturned on appeal.

6.5 It is important to note that once a planning permission has been issued by the Council or an appeal by a Planning Inspector, the Local Planning Authority is *Functus Officio* and cannot, thereafter, make any correction or withdraw the planning permission. **Note: *Functus Officio* is Latin for “Having performed his or her function”. The Local Planning Authority has performed its task and its function has been exhausted.**

6.6 Against this background the only realistic way that the planning permission can be quashed is if a third party successfully pursues a Judicial Review action against the Council. Gladmans would clearly oppose any such legal action.

6.7 In the event of a third party commencing Judicial Review proceedings it is considered that as the prejudice in quashing the planning permission would be to the developer, it is most appropriate that Gladmans take the lead in defending any such legal action and explaining the prejudice to the Court.

IS THERE LIKELY TO BE ANY ILLEGALITY OR MALADMINISTRATION FOR THE PURPOSE OF SECTION 5 OF THE LOCAL GOVERNMENT & HOUSING ACT 1989?

6.8 Having carefully considered the contents of the report of the section 151 Officer and having regard to the Council’s statutory obligations and procedures, I have decided to exercise my powers as the Council’s Monitoring Officer under Section 5 of the Local Government & Housing Act 1989 to prepare a report with respect to the Extra ordinary Council meeting considering the adoption of the resolution to incur substantial expenditure to revoke the planning permission dated 30 August 2013 for major residential development on land near Kirkdale Road, Kirkbymoorside, North Yorkshire.

6.9 Three considerations which arise in this case are:-

- (i) No recognised harm has arisen even if there was a technical error in the vote. The only available professional planning opinion is that there is no material planning objection to the proposed residential development;
- (ii) In the absence of any material planning objection to the existing location of the proposed residential development, there is no recognised benefit justifying the Council incurring expenditure estimated at £3-5 million to revoke the planning permission;

- (iii) A justification for the expenditure put forward is that it restores the trust and confidence of the local community in the Council. However this proposal has no regard to considerations of recognised harm or benefit. Even if it was found that a technical error was made in the voting at the Planning Committee, the making of such an error does not automatically give rise to a legal obligation on the Council to incur substantial expenditure in remedying the perceived consequences of that error in the eyes of objectors. Considerations of recognised harm are relevant.

6.10 Although this is the view that I take as Monitoring Officer for the Council only the Courts can give a definitive interpretation.

7.0 OPTIONS

7.1 The only legal mechanisms for extinguishing a planning permission are as follows:-

- (i) Revocation
- (ii) Judicial Review seeking to have the grant of outline planning permission quashed.

7.2 Each of the above theoretical options will be considered below.

8.0 REVOCATION

8.1 The Council has a power under Section 97 of the Town and Country Planning Act to revoke the planning permission. The Local Planning Authority can do this if they think it is expedient to do so, having taken into account the Development Plan and all the material considerations.

8.2 If the Council revokes the planning permission the Council becomes liable for compensation to cover the applicant's aborted expenditure, and compensation for any other loss directly attributable to the revocation. This means that the Council would be liable to pay the owners of the land the difference between the value of their land with and without the planning permission.

8.3 An Order under Section 97 of the Town and Country Planning Act 1990 would either have to be made with the applicant's consent, or would have to be confirmed by the Secretary of State. If the Order is not by agreement, then there is likely to be a public inquiry into whether the Order should be made. But even if the Order is made with the consent of the applicants, it must still be advertised publicly. Persons affected by the Order then have a specified period within which to give the Secretary of State notice that they want a public inquiry.

8.4 In the case of *The Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent)* [2012], the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke or modify a planning permission they are entitled to take into account the compensation they could have to pay.

8.5 The Secretary of State also has the power to revoke the planning permission himself, at the Council's expense. This power is rarely used. The Minister of Planning made a statement to the House of Commons in December 1989 in relation to which he said that:

“the powers should be used only if the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest ... He may well be prepared to exercise his power to revoke a planning permission where he considers that consistency is needed between the Local Planning Authority’s decision in different cases, in order to ensure that similar circumstances give rise to similar decisions and that the provisions of the Development Plan, so far as it is material, and other material considerations have been taken into account. My Right Honourable Friend wishes to remind Planning Authorities of the importance of behaving equitably as between applicants, and being seen to do so. Where applicants for similar permissions in similar circumstances have been treated differently, it can seem capricious and unfair. Although there is a place in the planning system for consideration of personal circumstances, my Right Honourable Friend thinks that these have to be very marked indeed to justify treating similar applications differently. He also wishes to remind all Members of Planning Committees that their decisions should be governed by material planning considerations alone. They should be most careful to avoid even the appearance that they may have been influenced by immaterial considerations”.

- 8.6 As already mentioned above, it is unlikely that the Council will be able to persuade the Secretary of State that it is expedient to revoke the permission, if any revocation is opposed. In deciding whether to revoke the Council will take into account the compensation that would be due, estimated at between £3 and £5 million.

9.0 JUDICIAL REVIEW

- 9.1 Judicial Review is a process by which the High Court reviews the legality of decisions made by public bodies. The Court is concerned with whether the decision was within the public authority’s powers, and whether the procedure was correct. The Court does not try to make the decision itself. If an application for Judicial Review succeeds, the result is usually that the decision is cancelled (“quashed”), and the public authority is required to make it again.
- 9.2 The Council cannot itself apply to have its own decision judicially reviewed, but it is possible for an elected Member to apply, if they have relevant responsibilities within the Council. The application would then be made by that Member, but interested third parties could, if they wished, take part in the proceedings.
- 9.3 There are three types of reason for seeking review of a decision, which in practice tend to overlap.
- (a) **Illegality:** The Council's powers come from statute, and can only be exercised lawfully within the limits that the statute imposes. Consequently, if a decision has clearly been made for the wrong purpose, with an improper motive or in bad faith, the decision is outside the Council’s powers.
 - (b) **Irrationality:** The decision must take the relevant considerations into account, and must not give weight to irrelevant issues. It must be possible to understand how the Council could reach the decision they did reach, on the basis of the relevant considerations, without reference to any irrelevant considerations.
 - (c) **Procedural Irregularity:** If the Council does not comply with its own procedures, the decision may be invalid. In particular, the decision must be

reached fairly, without bias or the appearance of bias.

- 9.4 As already mentioned above, if the Council were to judicially review their own permission, even if the Court found that there was a technical error of law on the vote it would be unlikely to exercise its discretion to actually quash the decision.

10.0 CONCLUSION

- 10.1 Having carefully considered, in my capacity as the District Council's Monitoring Officer, all the relevant considerations in this case, including specialist legal advice, I have concluded that it is highly unlikely that a decision to initiate procedures to revoke the planning permission for residential development at Kirkdale Road, Kirkbymoorside, North Yorkshire would be regarded as reasonable and lawful in all the circumstances and would, therefore, be a potentially irrational decision which in itself could be subject to Judicial Review.

Anthony Winship Council Solicitor and Monitoring Officer

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Background Papers:

Revocation of planning permission – House of Commons Library Standard Note published 22 May 2013

STATEMENT ON GLADMAN'S PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT AT KIRKDALE ROAD, KIRKBYMOORSIDE

Gladmans have submitted two planning applications for residential development at Kirkdale Road, Kirkbymoorside. Gladmans submitted a non determination appeal on the first planning application before they had resolved outstanding matters on issues like affordable housing and the Inquiry date was 3 September 2013. The Planning Committee meeting on Wednesday, 28 August 2013 made a decision on the second Gladman's planning application. Gladmans indicated they would withdraw the appeal if the second planning application was approved at the Planning Committee.

The report of the Head of Planning and Housing to the Planning Committee meeting on 28 August 2013 included a recommendation of approval of Gladman's second planning application. The report considered all the relevant material planning considerations including local objections to the scheme, the presumption in favour of sustainable development in the National Planning Policy Framework and the fact that 74 affordable homes would be delivered by approving the scheme.

Taking all the material considerations into account the professional planning view was that the planning balance favoured a recommendation of approval. The professional planning opinion of the Head of Planning and Housing in relation to the interpretation of emerging Local Plan policy was supported by written advice from an experienced Planning Law Barrister, Mr David Manley QC of Kings Chambers, Manchester.

After considerable debate by Members on the planning application, a vote was taken on the application at the Planning Committee using the electronic voting system. Two Members voted for the proposal to be refused and two Members voted against the proposal. There were six abstentions. The Chairman used his casting vote to break the deadlock. Accordingly, the proposal to refuse was not carried. The Chairman declared the result as one of approval.

The Planning Committee have used the electronic voting system for more than two years. Members of the Committee have received training in using the system. There have been no recorded difficulties in using the electronic voting system and Members have much experience in using the system.

There have been subsequent reports after the Planning Committee meeting that a Member made a voting error when using the electronic voting system. However, the Member concerned did not express that view before the Chairman declared the result at the Planning Committee meeting on Wednesday, 28 August 2013.

Against this background the planning permission was signed on Friday, 30 August 2013 after completion of the planning obligation.

One Member has asked if the planning permission can be withdrawn. There are only two legal ways that the planning permission could be extinguished. These are:

- (i) Firstly by a Revocation Order made by the Council. This would give rise to compensation which in this case could potentially run into millions of pounds;

- (ii) Secondly by an application for judicial review (JR) by a third party if it was believed there was a legal flaw in the Planning Committees decision making process. JR is a process for challenging the lawfulness of decisions. A JR does not revisit the merits or seek to substitute a planning decision. Such applications have to be made promptly and within six weeks from the date the grounds for challenge arise. There are no compensation implications for the Council as there are in (i) above.

It should be noted that Gladmans had a non-determination appeal in relation to the first planning application. The Inquiry start date was planned for Tuesday, 3 September 2013. The District Council's Planning Committee meeting on 4 June 2013 agreed the four notional reasons for refusal as being inadequate information on:-

- (i) Affordable housing
- (ii) Education contributions
- (iii) Archaeology
- (iv) Landscaping

All the above four reasons for refusal had been resolved by Friday, 30 August 2013. Accordingly there were no grounds on which the District Council could oppose the appeal proposals based on the first planning application.

Because the planning permission had been issued for the second planning application on Friday, 30 August 2013 Gladmans withdrew the non determination appeal on the same day. The Planning Inspectorate cancelled the Inquiry on Monday, 2 September 2013.

It should also be noted that the Planning Committee meeting on 4 June 2013 raised no fundamental objection in principle to the first planning application submitted by Gladmans. Officers at the Committee stressed to Members that the principle of the development was not considered to be at odds with National Policy or locally adopted and emerging Plan policies. Against that background it was highly likely that the Inspector would have allowed the appeal.

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Public Document Pack

Planning Committee

Held at Council Chamber, Ryedale House, Malton
Wednesday 28 August 2013

Present

Councillors Mrs Burr MBE, Clark (Substitute), Cussons, Mrs Goodrick, Hope, Maud, Raper (Chairman), Mrs Sanderson, Wainwright (Observer), Windress (Vice-Chairman) and Woodward

Substitutes: Councillor J S Clark

In Attendance

Gary Housden, Shaun Robson, Bridget Skaife and Anthony Winship

Minutes

53 **Apologies for absence**

Apologies were received from Cllr Richardson.

54 **Minutes of the meeting held on 29 July 2013**

Decision

That the minutes of the meeting of the Planning Committee held on 29 July 2013 be approved and signed by the Chairman as a correct record.

55 **Urgent Business**

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

56 **Declarations of Interest**

The following Members indicated that they would be declaring interests under the Member's Code of conduct in respect of the following item.

Councillor	Application
Cussons	12
Goodrick	7,8
Windress	8

Sanderson	7,8,12
Hope	8,11
Raper	7,8,12
Maud	12
Woodward	7,8
Clark	7,8
Burr	7,8

57 **The Community Infrastructure Levy (CIL), Preliminary Draft Charging Schedule - Consultation Draft**

Decision Delegated to the Planning Committee

The Community Infrastructure Levy (CIL), Preliminary Draft Charging Schedule be approved for a 6 week public consultation period.

58 **Schedule of items to be determined by Committee**

59 **13/00016/MOUT - Land At OS Field 9525, Crossgate Lane, Pickering**

13/00016/MOUT - The erection of a retirement community of 168no. assisted living units comprising 90no. care suites/apartments and 78no. bungalows together with associated community facilities, access, parking and landscaping (site area 4.37ha)

Decision

PERMISSION GRANTED – Subject to conditions as recommended and completion of 106 Agreement.

In accordance with the Members' Code of Conduct Councillors Mrs Goodrick, Windress, Mrs Sanderson, Raper, Woodward, Clark and Mrs Burr declared a personal non pecuniary but not prejudicial interest.

60 **13/00342/MOUT - Land At Westfields, Kirkbymoorside**

13/00342/MOUT - Development of up to 210no. (Use Class C3) residential dwellings, 50no. (Use Class C2) apartments with care for older people, the provision of expansion land to Kirkbymoorside Community Primary School (Use Class D1), landscape, open space, highway improvement works and associated works (site area 11.6ha)

The Head of Planning and Housing submitted a report to the Planning Committee which have previously circulated.



The Development Manager advised the Planning Committee that Gladmans had submitted two major planning applications for residential development at Kirkdale Road, Kirkbymoorside. Members had previously attended a site inspection on the first planning application and the second planning application was substantially the same. The planning application before Members was the second application. Gladmans submitted a non determination appeal on the first planning application before they had resolved outstanding matters on issues including affordable housing, structural landscaping, archaeology and education contributions and the Inquiry date was set for 3 September 2013. Gladmans had indicated in writing that if the second planning application was approved the appeal on the first application would be withdrawn.

The District Council's Planning Committee meeting on 4 June 2013 agreed the four notional reasons for refusal in relation to the first planning application as being inadequate information on:-

- (i) Affordable housing
- (ii) Education contributions
- (iii) Archaeology
- (iv) Landscaping

Members were advised that the Planning Committee meeting on 4 June 2013 raised no fundamental objection in principle to the first planning application submitted by Gladmans. Officers at the Committee advised Members that the principle of the development was not considered to be at odds with National Policy or locally adopted and emerging Plan policies. All the above four reasons for refusal had been resolved. Accordingly there were no reasonable grounds on which the District Council could oppose the appeal proposals based on the first planning application.

The report of the Head of Planning and Housing recommended approval of the second planning application before the Planning Committee. The proposed development was considered on balance to be in accordance with National Policy, locally adopted policies and emerging Plan policies. Councillor Cussons moved refusal and Councillor Clark duly seconded the proposal.

The reasons for refusal put forward by Councillor Clark were:-

- (i) The proposed development was not a small/medium size development and was contrary to the emerging Local Plan Strategy.
- (ii) The proposed development is outside the 'saved' development limits.
- (iii) The proposed development was on good quality agricultural land.

~~No Member indicated that they intended to move a proposal for a site inspection or deferral during the debate.~~

At the conclusion of the debate the Committee moved to the vote using the electronic voting system. The voting result was as follows:-

For

Clark
Woodward

Against

Raper
Cussons

Abstentions

Burr
Goodrick
Hope
Maud
Sanderson
Windress

Because there was an equality of votes the Chairman exercised his casting vote ~~and voted against the proposal of refusal:~~

by using his casting vote for the application.

The Chairman declared that the proposal to refuse the planning application was not carried and declared the application approved.

as a consequence
Reasons for Approval

(As amended at the meeting held 24 September 2013)

The Planning Committee had given due regard to all material considerations including the Officer's report on the planning application which recommended approval subject to the completion of a Section 106 Planning Obligation and conditions and to all other representations.

The proposed development was in accordance with the guidance contained within the National Planning Policy Framework which provided for a presumption in favour of sustainable development.

The Council does not have a demonstrable five year supply of housing sites and the Sites Allocation Document part of the emerging development plan is not at an advanced stage of production.

Whilst the site lies outside the 'saved' development limits for settlement in terms of the old Ryedale Plan (2002), it lies adjacent to existing housing and is well

related to the built-up area of Kirkbymoorside which is designated as a Local Centre Service in the emerging Local Plan Strategy Document.

The development includes the provision of 74 affordable housing units, education contributions, land available to the further expansion of the school, contributions towards highway improvements and travel plan subject to the provision of a Section 106 Agreement.

The proposal is considered not to have an adverse impact on the amenities of adjacent residents and whilst the layout is indicative it illustrates that an acceptable form of development can be developed on site. The precise details of this will be dealt with by the subsequent reserved matters application.

Consideration was given to the Local Plan Strategy policy relating to residential planning applications being limited to small and medium sized developments for Kirkbymoorside.

In considering this scheme against the emerging Plan, the key issue is whether the scale of the scheme is significantly and demonstrably contrary to the emerging Plan.

It was considered, however, that given the Local Plan Strategy is indicative regarding the scale of sites, in policy principle terms the site is not significantly and demonstrably contrary to the Plan Strategy.

Against this background and weighing all material considerations in the decision making balance it was considered that the planning balance justified approval and there were no other material considerations of sufficient weight to justify refusal.

Decision

PERMISSION GRANTED – Subject to conditions as recommended and completion of 106 Agreement

In accordance with the Members' Code of Conduct Councillors Mrs Goodrick, Windress, Mrs Sanderson, Hope, Raper, Woodward, Clark, Mrs Burr declared a personal non pecuniary but not prejudicial interest.

61 **13/00710/MFUL - Area Of Hardstanding To East Of Wombleton Caravan Park, Moorfields Lane, Wombleton, Kirkbymoorside**

13/00710/MFUL - Change of use of concrete hardstanding to provide caravan storage area



Decision

PERMISSION REFUSED – For the reasons recommended in the Officer's report.

62 13/00628/FUL - Potters Lodge, Marton Road, Marton, Kirkbymoorside

13/00628/FUL - Change of use of land to domestic curtilage and erection of detached open fronted double garage with turning area

Decision

PERMISSION GRANTED – Subject to Conditions as recommended.

63 13/00600/FUL - Land Adjacent To Sauveterre, Low Street, Thornton Le Clay, Malton

13/00600/FUL - Erection of 1no. three bedroom dwelling with attached garage, amenity area and parking to include formation of vehicular access.

Decision

PERMISSION REFUSED - The proposed development fails to reflect local distinctiveness in terms of design and materials. As such, it is contrary to the principles of Section 7 of the National Planning Policy Framework and Policies SP16 and SP20 of the Local Plan Strategy.

Decision contrary to Officer recommendation of approval.

The Planning Committee attached more weight to the impact of the design on the locality since the proposed development was considered to be an inappropriate design in a traditional Ryedale village.

In accordance with the Members Code of Conduct Councillor Mr Hope declared a personal and prejudicial interest and left the room.

64 13/00696/HOUSE - 10 Keepersgate, Pickering

13/00696/HOUSE - Erection of replacement conservatory linking to existing detached garage.



Decision

PERMISSION GRANTED – Subject to conditions as recommended.

In accordance with the Members' Code of Conduct Councillors Cussons, Mrs Sanderson, Raper, Woodward declared a personal non pecuniary but not prejudicial interest.

- 65 **13/00820/FUL - Ryedale District Council, Ryedale House, Old Malton Road, Malton**

13/00820/FUL - Relocation of the existing roof mounted twin condenser unit from the reception roof to the civic suite roof.

Decision

Delegated to Head of Planning and Housing to Approve subject to conditions.

- 66 **13/00944/FUL - Land West Of Tara Park, Malton**

13/00944/FUL - Erection of replacement barrier to site entrance

Decision

Delegated to Head of Planning and Housing to Approve subject to conditions.

- 67 **Any other business that the Chairman decides is urgent.**

There are no items of urgent business.

- 68 **List of Applications determined under delegated Powers.**

The Head of Planning & Housing submitted for information (previously circulated) which gave details of the applicants determined by the Head of Planning & Housing in accordance with the Scheme of Delegated Decisions

- 69 **Update on Appeal Decisions**

Members' were advised of the following Appeal Decisions.

Ref Y2736/A/13/2195879, Barn to the rear of Manor Cottage, Main Street, Hovingham, YO62 4JT

Ref Y2736/D/13/2199956, 60A Bondgate, Helmsley, k York, YO62 5EZ

The Meeting Closed at 10.00pm

Signed 

Dated. 24/9/13



REPORT TO:	COUNCIL
DATE:	21 OCTOBER 2013
REPORT OF THE:	CORPORATE DIRECTOR (s151) PAUL CRESSWELL
TITLE OF REPORT:	REPORT UNDER SECTION 114 LOCAL GOVERNMENT FINANCE ACT 1988
WARDS AFFECTED:	ALL

1.0 PURPOSE OF REPORT

- 1.1 Members of Council are asked to consider this Section 151 Officer's report in relation to part (i) of the Motion on Notice, on the Agenda for the Extraordinary Council Meeting on 21 October 2013:

'The five members below wish to call an Extraordinary Full Council preferably in Kirbymoorside. This Council to debate the Gladman application at Kirbymoorside (1300342/MOUT).

We wish to consider the decision taken on the 28th August 2013. As a result the Council resolves to approve the following:

- i. Instruct the Chief Executive to proceed with revocation of the decision; and*
- ii. To not contest the Judicial Review that is expected on this planning application.'*

- 1.2 The Local Government Finance Act 1988 places certain responsibilities on the Chief Finance Officer (in Ryedale's case the Corporate Director (s151)), namely:

(2) Subject to subsection (2A), the chief finance officer of a relevant authority shall make a report under this section if it appears to him that the authority, a committee of the authority, a person holding any office or employment under the authority, a member of a police force maintained by the authority, or a joint committee on which the authority is represented—

(a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,

(b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or

(c) is about to enter an item of account the entry of which is unlawful.

(3)The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

1.3 This requirement is replicated on the Council's Constitution: Part 2 Articles of the Constitution, section 11.3 functions of the Chief Finance Officer – Ensuring lawfulness and financial prudence of decision making (page 30).

1.4 Under Section 115 of the same Act the authority shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it. In this case the meeting is the Council meeting to be held on 21 October 2013.

2.0 RECOMMENDATIONS

2.1 It is recommended that:

- (i) this report be received; and
- (ii) Council considers this report before deciding whether or not to approve the motion set out in paragraph 1.1 to be considered by Council on the 21 October 2013.

3.0 BACKGROUND

3.1 On the 28 August 2013, the Council's Planning Committee resolved to approve application 1300342/MOUT:

“Development of up to 210no. (Use Class C3) residential dwellings, 50no. (Use Class C2) apartments with care for older people, the provision of expansion land to Kirkbymoorside Community Primary School (Use Class D1), landscape, open space, highway improvement works and associated works (site area 11.6ha) Land At Westfields Kirkbymoorside North Yorkshire”

4.0 REPORT

4.1 Independent external legal advice has been sought on the motion from Counsel. This advice is available for members to read.

4.2 Having considered the contents of the report of the Monitoring Officer and having regard to the Council's statutory obligations and procedures, I have decided to exercise my powers as the Council's Section 151 Officer and Chief Financial Officer under Section 114 of the Local Government Finance Act 1988 to prepare a report with respect to the Extraordinary Council meeting considering the adoption of the resolution to incur substantial expenditure to revoke the planning permission dated 30 August 2013 for major residential development on land near Kirkdale Road, Kirkbymoorside, North Yorkshire.

4.3 Members are asked to refer to the report of the Monitoring Officer on issues relating to the reasonableness and legality of passing a resolution in the terms proposed in the Motion on Notice. The conclusion on revocation from the legal advice is most pertinent to this report and says:

It is unlikely that the Council will be able to persuade the Secretary of State that it is expedient to revoke the permission, if any revocation is opposed. In deciding whether

to revoke the Council will want to take into account the compensation that would be due, estimated at between £3 and £5million.

- 4.4 A review of the Council's finances and available revenue resources which could be used to meet such an amount of compensation has been undertaken. It is of note that the developer has indicated that their estimate of compensation is significantly higher and undoubtedly should compensation be payable a potentially expensive legal process may be involved to determine the actual figure.
- 4.5 The Local Government Act 2003 (Section 27) requires each local authority's Chief Finance Officer to report to the authority if it appears likely that the authority's reserves will fall below the prescribed minimum level, and to explain why this is likely to happen, and what action should be taken. Therefore a minimum balance would need to be retained on the Council's general fund balances. The total of all remaining balances not yet committed to be spent (although in some cases there are plans for the spending of these balances for service delivery in the future) could meet c£700k of any compensation payment. Members should be aware that such a move could have serious impacts on the quality and standard of service delivery.
- 4.6 The Council would therefore, in the event that compensation was payable, likely to be several million pounds short of meeting its obligations and there would be insufficient resources available to meet its expenditure.
- 4.7 The exact process that would ensue is uncertain and would be without precedent. The LGA have said in considering the position of viability of a Council that there was no process nationally prescribed to deal with such a situation where a Council was not viable.
- 4.8 Sections 32 and 33 of the Local Government Finance Act 1992 prescribe the calculation of a Council's budget requirement and factors to be taken into account. These include
'such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year as has not already been provided for'
- 4.9 Therefore it is likely that the Council would meet a compensation payment through short term borrowing which it would then have to resolve as part of its following year's budget either through the cessation of services and/or increases in Council Tax.
- 4.10 A shortfall of say £2m, using the current Council Tax Base, would necessitate a c£103 increase in Council Tax per band D property, a 58% increase. This would require a referendum of Ryedale residents which if not approved would result in the Council being unable to set a balanced budget and meet the requirements of the legislation.
- 4.11 An alternative is that the Council could apply for capitalisation permission from the Government which would then allow long term borrowing (subject to affordability) or capital receipts to finance the costs. This is an uncertain process and the latest guidance states that capitalisation should be sought only for costs which are due largely to factors beyond the local authority's control and the capitalised expenditure is unavoidable. Clearly the rules in force at the time of the compensation being payable would be relevant, but based on existing guidance such an application is unlikely to be successful.

- 4.12 Clearly during this process high level discussions with the Government would need to take place and predicting that outcome would be highly speculative.
- 4.13 Auditor scrutiny may consider issues such as a Public Interest Report and with or without this there would be significant adverse media coverage.
- 4.14 Against the background of the information above I conclude that should Council approve the motion on the on the Agenda for the Extraordinary Council Meeting on 21 October 2013 and pursue it to its conclusion, it would lead to the authority being in an unlawful position and likely to cause a loss or deficiency on the part of the authority.
- 4.15 Although this is my view as Section 151 Officer for the Council only the Courts can give a definitive interpretation.
- 4.16 Under Section 114(4) of the Local Government Finance Act 1988 I am required to send a copy of this report to the Council's External Auditor and to each Member of the Council which has been done.

Paul Cresswell
Corporate Director (s151)

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Background Papers:
None.