

Report to: **Development Management and Licensing Committee**

Date: **27 October 2020**

Title: **Review of the process followed in connection with Planning Application 3614/18/OPA - Land at SX482725 Plymouth Road Tavistock**

Portfolio Area: **Cllr Caroline Mott /Cllr Neil Jory**

Wards Affected: **Tavistock South West/Dartmoor**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision)

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Recommendations:

It is recommended that the Committee:

1. notes the findings and conclusions of the Review of the process followed in connection with Planning Application 3614/18/OPA - Land at SX482725 Plymouth Road Tavistock attached as Appendix A to this report;
2. agrees the recommendations made by the Review and which are set out in Appendix B to this report;
3. asks the Head of Planning to prepare an action plan to implement the recommendations for approval by the Committee at its next meeting; and
4. notes the intention to bring forward a progress review of the planning improvement action plan to a future meeting of the Overview and Scrutiny Committee in six months' time.

1. Executive summary

- 1.1 On 18 June 2020 the Council granted outline planning permission for the development of land at Plymouth Road Tavistock for 250 dwellings and 2.0 hectares of B1 commercial use (Planning Ref: 3614/18/OPA). The outline planning permission was subject to a condition requiring the completion of a planning agreement before building work was begun.
- 1.2 Following that decision local councillors and residents raised concerns about how the decision was made; the deliverability of the employment land and the terms of the draft planning agreement. As a result, the Chief Executive agreed with the Council Leader that a review would be carried out by one of the Council's Senior Legal Specialists ("the Review"). The report setting out the findings and conclusions of the Review is attached at Appendix A.
- 1.3 The Review concludes that the concerns raised were valid. It makes a number of recommendations about the draft section 106 agreement and how the Council might improve how it decides planning applications (Appendix B – Recommendations extracted from the Review). The recommendations are aimed at:
 - 1.3.1 giving Members more information about planning applications;
 - 1.3.2 ensuring that decisions on planning applications are taken on a sound basis;
 - 1.3.3 making the Council's decision-making arrangements clearer and more accountable; and
 - 1.3.4 encouraging proactive and constructive working with town and parish councils on planning applications.

2. Background

- 2.1 The decision to grant planning permission was made by the Head of Planning. Local councillors and residents felt that the decision should have been made by this Committee as there were concerns about: the adequacy of contributions to education and transport provision being requested by the County Council; and the deliverability of the employment floorspace.
- 2.2 The Chief Executive and the Council Leader agreed that the Council should review the process leading to the grant of the planning permission. The purpose of the Review was not to review the planning permission itself as this had already been granted, but to identify ways in which the Council might learn and improve.

- 2.3 The Review explains the background to the planning application, details the application itself and the processes leading up to the grant of the planning permission. It concludes that:
- 2.3.1 issues with the Council's planning management software resulted in a failure to consult with all of the Ward Members who were required to be consulted before planning officers could take the decision. No fault is attributed to planning officers for this. The issues did however contribute to the Council not following its own procedures.
 - 2.3.2 the Council should have been more robust in its analysis of the information provided by the applicant and consultees, particularly where there were inconsistencies.
 - 2.3.3 the Ward Members who were consulted about the application, Cllr Ewings and Cllr Bridgewater, acted reasonably in the circumstances.
 - 2.3.4 the Council's scheme of delegation relating to decisions on planning applications and agreements lacks clarity.
 - 2.3.5 although it would have been more usual to have a signed planning agreement in place before issuing a planning permission, it was lawful for the Council to grant the planning permission without the planning agreement having been completed, but subject to a condition requiring the landowners to complete a previously agreed draft planning agreement before beginning works. There were circumstances that could be considered to be exceptional and therefore justifying that way of doing things.
 - 2.3.6 changes to terms of the draft planning agreement should be sought to be agreed with the parties before the agreement is completed.
 - 2.3.7 although it was not unlawful for the draft planning agreement to give the Council the opportunity to buy the employment land for £1, the Council should have been more open and transparent in dealing with the potential or perceived conflict of interest.
 - 2.3.8 although the Council followed its usual practices when consulting with Tavistock Town Council and Plasterdown Parish Council, further improvements can be made.
- 2.4 In light of the conclusions reached, the Review makes a number of recommendations for improvements for going forward.

3. Outcomes/outputs

- 3.1 The Council aims to deliver efficient and effective services, working together with its communities, while protecting the natural environment. In granting planning permission the Council has the ability to affect the lives of those in its community.
- 3.2 Although based on past actions, the Review's purpose is to be forward looking and to identify how the Council can make improvements to make better informed decisions and to be more open, transparent and accountable.
- 3.3 The Review also reminds the Council of a couple of the recommendations and agreed actions identified following the peer challenge in 2016.

4. Options available and consideration of risk

- 4.1 In view of the concerns that had been raised by local residents and councillors, had no action been taken, there would have continuing damage to the Council's reputation. Equally, the Council would not have identified the issues or have had the opportunity to learn and make improvements. As a consequence it ran the risk of similar issues arising in the future and further reputational damage as well as significant dissatisfaction among residents.
- 4.2 In carrying out the Review conversations were had with Mr Parker, Cllr Ewings and Bridgewater and officers in the development management, planning policy, legal and assets teams. In addition, external advice was sought on the capacity of the employment land. Senior counsel's advice has also been sought.
- 4.3 Briefings on initial findings were held in August 2020 and were given to senior Members, Tavistock Members and senior officers of the Council. A briefing was also given to members of Tavistock Town Council.
- 4.4 Copies of an early draft report were provided to those materially referred to in that draft to comment on the accuracy of the facts and for views on confidentiality. This included the prospective parties to the draft section 106 agreement. The penultimate draft of the report was also circulated to Ward Members, officers in the development management and legal teams as well as to Devon County Council. Devon County Council declined to comment.

5. Proposed Way Forward

5.1 The Review makes a series of recommendations under the heading "The Way Ahead". The recommendations will, if agreed, help the Council to deliver efficient and effective services and improve how it works with its communities. In doing so, they will mitigate the risks of continuing damage to the Council's reputation. The recommendations are set out in Section 5 of the Review and for ease of reference extracted at Appendix B to this report.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Review explains that with regard to determining planning applications, the Town and Country Planning Act 1990 sets out the statutory framework within which decisions are to be made and while the Council's Scheme of Delegation under the Local Government Act 1972 sets out who is to make the decision and any internal procedures to be followed.</p> <p>The Review contains some information relating to an individual or from which they can be identified as well as information covered by legal professional privilege which in accordance with paragraphs 1, 2 and 5 of Schedule 12A of the Local Government Act 1972 is exempt information and the public interest in its disclosure is not outweighed by the public interest in maintaining the exemption. The information has therefore been redacted from the public version of the Review.</p>
Financial implications to include reference to value for money	N	There are no financial implications arising from the report.
Risk	Y	If agreed the recommendations in the Review the Council will reduce the risks of reputational damage, legal non-compliance, poor performance and customer satisfaction.
Supporting Corporate Strategy	Y	Please see paragraph 3.1 of the main body of the report.

Climate Change - Carbon / Biodiversity Impact	N	There are no direct climate change, carbon or biodiversity impacts arising from this report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	There are no direct equality and diversity implications arising from this report.
Safeguarding	N	There are no direct safeguarding implications arising from this report.
Community Safety, Crime and Disorder	N	There are no direct community safety, crime and disorder implications arising from this report.
Health, Safety and Wellbeing	N	There are no health, safety and wellbeing implications arising from this noting report.
Other implications		

Supporting Information

Appendices:

Appendix A - Review of the process followed in connection with Planning Application 3614/18/OPA - Land at SX482725 Plymouth Road Tavistock.

Appendix B – Extract from the Review – Recommendations and the way forward.

Background Papers:

None

Approval and clearance of report

Process checklist	Completed
Portfolio Holder briefed/sign off	Yes/No
SLT Rep briefed/sign off	Yes/No
Relevant Heads of Practice sign off (draft)	Yes/No
Data protection issues considered	Yes/No
Accessibility checked	Yes/No