

NP Report for PC – July 2020

Following the report that Western Power Distribution (WPD) wanted £125,000 to move the sub-station near the A379 access to CFF, email correspondence was submitted to WPD in accordance with the wording agreed with Mr Dixon on 16/06/2020.

WPD replied on 17/06/2020 and advised *“The substation maintenance team had been informed and have programmed for the foliage to be removed. Although the substation building is old, WPD do not believe it to be unsafe and if it is WPD will rectify it. The substation is still required and supplies existing customers in the village”*. WPD visited the sub-station on 19/06/2020 and carried out maintenance and repair work to the building. Photographs were circulated to councillors hi-lighting the difference.

Mr Dixon responded with the following on 18/06/2020:

I appreciate that what you are trying to do is reduce the cost of constructing a second entrance by the pub car park.

I think you are wasting your time for following reasons

- 1. WPD confirm below that the Substation is still needed*
- 2. Even if they agreed that it was not needed, they would probably charge just as much to remove it and reorganise the wiring*
- 3. Even if they did just remove it and reorganise the wiring, they still own the freehold of the site and say they would charge £50,000 for their share of the development value*
- 4. Your suggestion of putting in an unadoptable private road without involving WPD is not realistic. No one would be willing to maintain it and there would be arguments about serving the proposed carpark over a private road.*

It is looking increasingly likely that the second entrance by the pub carpark is an unaffordable luxury with such a small development.

Following dialogue with Duncan Smith of SHDC and members of the NP Steering Group it was agreed that we approach Mr Dixon with the following on 22/06/2020:

We very much wish to support you in your negotiations with WPD and resolve the impasse that currently exists in securing practical benefits for the community of Strete as set out in the Neighbourhood Plan.

Together with you and political support we believe we could help in applying appropriate pressure on WPD to reduce their costs significantly that will add to development savings. In our opinion, their cost breakdown includes a sum for betterment, considering the condition of the existing facility, that should not be applicable.

Having previously negotiated with you the reduction in second homes for sale as part of the development to help cost savings, it is important to note that the community of Strete are passionate about retaining the character and quality of life in the village where they live within the surrounding AONB now, and for future generations.

We appeal to you to let us work with you to find a way together to meet the aspirations set out in the Neighbourhood Plan that we believe will, in the long-term, prove mutually beneficial.

The alternative of removing the site from the plan and returning it to a potential exception

site, due to the JLP policy requirements, would not, in our opinion, provide either party with an acceptable resolution.

With six weeks until 31 July the completion of your viability appraisal would help move the examination process of the Neighbourhood Plan forward to closure.

Mr Dixon replied with the following on 22/06/2020:

There is no negotiation with WPD. It is a question of take it or leave it. They do not negotiate. They have a ransom over the second entrance and will extract full value for their freehold. It is nothing to do with the condition of the transformer.

The fact is this small number of houses does not need two entrances and a link road. You have dreamt up a scheme that is not likely to be viable.

Either the number and value of open market houses needs to increase or alternatively the costs radically reduced.

We shall in due course complete our viability study and come back to you.

On 26/06/2020 Mr Dixon replied with the following:

My Clients have now concluded a viability analysis of the Development Scheme proposed by Strete Parish Council.

My clients have concluded that the scheme is not financially viable and accordingly cannot support it.

Accordingly my clients will continue to maintain their position to the Planning Inspector that whilst they do support the general principle of development on the land they do not support the Council's proposed unviable scheme and accordingly the land is not available for development under the Parish Council's proposed Neighbourhood Plan policy.

In February of this year you suggested that I should consult Mr Joe McCarthy of Plymouth City Council on the issue of viability and I did at the time speak to Mr McCarthy on the telephone and also offer to send to him my clients Viability analysis. I have not done this to date as I have been reflecting on Mr McCarthy's position as a professional surveyor in effect employed by SHDC. As my clients have now gone to the expense of commissioning their own viability analysis, I cannot see any point in speaking to Mr McCarthy nor sending him my client's analysis. It will of course be open to your Council to commission your own viability analysis from Mr McCarthy if you wish to, but as this is not a question of negotiating viability, I am not inclined to take this aspect any further.

There is then the question of whether my clients are willing to show their viability analysis to your Council (including Mr McCarthy as your advisor) and the Parish Council. My Clients analysis is their confidential commercial information which they have paid for. I asked whether either council would be prepared to contribute towards the cost, but you all refused to contribute. In fact, my clients were never keen on incurring non recoverable costs in this matter, but they were forced by you and Strete Parish council to do so. However, my clients are willing to make their analysis available on a confidential basis to your Council and Strete parish Council but on strict terms which are

- 1. The analysis will be accessible by Staff (including Mr J McCarthy) and Councillors of both councils but not anybody else.*
- 2. The analysis will not be published or accessible by the general public on any of the two councils' websites or Neighbourhood plan website or other means of council publication.*

3. *That before the analysis is made available that I receive written confirmation from both Councils to these conditions*

I need to make the Planning Inspector aware of my client's position, in the near future, but will wait to hear from you initially.

On 29/06/2020 Duncan Smith of SHDC contacted Mr Dixon with the following:

I would be pleased if you would pass the Assessment to me. I can confirm that the conditions that you apply to its release will be met by South Hams. I have similarly confirmed with the Strete Group that they will comply with those conditions.

This was followed up on 06/07/2020 with the following from Duncan:

I have sought advice from my legal colleagues in respect of your request. As you will appreciate the Council has a statutory duty to comply with the provisions of the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 both of which require the Council to release information it holds unless an exemption/exception provided in the legislation applies.

Commercial confidentiality is one of several exceptions that exist and could apply to viability studies. However, the Information Commissioner's Office and NPPG have given a clear steer that viability information should be publicly available. I refer you to Paragraph: 021 Reference ID: 10-021-20190509 of the NPPF

<https://www.gov.uk/guidance/viability#viability-and-plan-making>

As you will understand without seeing your report, I am unable to inform you what may be caught by the exemption and what, if anything, would not be. It is likely that some information would need to be publicly available in order that there is transparency in the planning process. As you will note from the paragraph referred to there is an expectation that this will be the case.

Therefore, we can only agree to the conditions subject to the proviso that it permits disclosure where we are required to do so by law.

In terms of the Neighbourhood Plan Group I will await your response before contacting them. It will be for them to consider your position, in the light of my email, and provide any assurance you may require.

On 08/07/2020 Mr Dixon replied with the following:

The viability assessment carried out by my clients at their own expense has not been carried out as part of any formal Plan making process. Nor has it been carried out in consequence of any Planning condition, S106 agreement or other planning obligation. The NPPF is therefore not relevant.

It was carried out as a private initiative by a private individual to inform a decision by that person. You and Strete PC have asked to see that private information. It is obviously commercial information and it is reasonable for it to be made available on the conditions required by my clients.

I appreciate however that SHDC need to impose the caveat that you state below "we can only agree to the conditions subject to the proviso that it permits disclosure where we are required to do so by law.". My clients are willing to accept this condition from SHDC and Strete Parish Council (SPC)

The conditions that will therefore apply are:

- 1. The analysis will be accessible by Staff (including Mr J McCarthy) and Councillors of both councils but not anybody else.*
- 2. The analysis will not be published or accessible by the general public on any of the two councils' websites or Neighbourhood plan website or other means of council publication.*
- 3. That before the analysis is made available that written confirmation is received from both Councils to these conditions*
- 4. The two Councils agree to these terms subject to the proviso that it permits disclosure where they are required to do so by law."*

Please now write and confirm agreement on behalf of South Hams District Council. If you can't persuade any senior officer to write and confirm please reply to me and copy in an appropriate senior officer in a manner that his or her name and role can be clearly identified on the email as being copied into the agreement by SHDC

I understand from your final paragraph below that you will now seek agreement from Strete Parish council to these conditions. I should clarify that what you refer to as the Neighbourhood Plan Group is a committee which I assume is made up partly of Councillors and partly co-opted volunteers. I cannot see that it is ever possible to impose any conditions on co-opted volunteers so that the agreement in condition 1 above is to make the assessment available to Councillors and Council staff only.

On 13/07/2020 Duncan Smith replied with the following:

Thanks for your email. The purpose of the preparation of a viability assessment is, in my view, to test whether the Cox's Field site can be brought forward as a Neighbourhood Plan allocation in a manner that is satisfactory to the Neighbourhood Plan Group, the landowner and ultimately the Parish Council (PC) which is the key decision maker in regard of the Plan's progress. As such, the viability assessment will be crucial to the evidence base accompanying the Neighbourhood Plan. It would therefore be subject to the strictures of the Freedom of Information/Environmental Information Regulations. I have been involved with Neighbourhood Plans where these Regulations have been successfully employed to obtain such information whether it be from the Council or the Parish Council.

I am concerned that the restrictions that you are seeking to apply will not allow the transparency that is expected in the preparation of Neighbourhood Plans. For example, some of the members of the Neighbourhood Plan Group (NPG) are Parish Councillors others are not. I cannot see how the NPG can make an effective recommendation to the PC if non parish councillors are not party to the same information.

As far as I see it the Council and the Parish Council can only agree to protect such information to which an exemption applies. As we are not party to the viability assessment I cannot advise further on this particular issue.

I am not sure given your stance that we will be able to reach a position that is satisfactory to you and your client. In light of this perhaps we should pass the correspondence between us to the Examiner to obtain a view.

On 13/07/2020 Mr Dixon wrote to Deborah McCann (the Examiner) with the following:

I am writing on behalf of the Landowner with regard to the proposed policy SNP8 in Strete Neighbourhood Plan.

It has not been possible to agree an amended wording with Strete Parish Council. My clients have undertaken their own (private) viability assessment of the Parish Council's proposal and have reached the conclusion that it is not viable for my clients. Accordingly, I write to confirm that my clients continue to object to the policy and confirm that the land is not available for development under the terms of the Parish Council's proposal.

At the hearing last year, you indicated that if the Landowner was not prepared to agree to the council's proposal then you would remove the policy from the Neighbourhood Plan.

My Clients request that the policy is removed from the plan.

On 14/07/2010 Duncan Smith spoke to the Examiner and advised that the impasse with Mr Dixon representing Strete Estate in respect of Strete NP could not be resolved.

The Examiner has asked Strete PC and NPG to consider their options and advise their decision going forward on 17/07/2020.

Option 1 – Remove CFF site from the Plan and tighten the boundary to be outside the Settlement Boundary. It is suggested this mirrors the boundary of CFF owned by Strete Estate provided by Mr Dixon. Duncan has advised that he will help us tighten the policy wording in the Plan especially SNP9: Principal Residence Requirement. Regulation 15 for this change is not expected to require an extended period for consultation and the current Examiner is expected to be able to conclude the examination process with minimum delay.

Option 2 – Identify another site for development. The only alternative site that, in my opinion, could be considered is Mewstone Paddock owned by Prof. Malcolm Hollis. It is unknown if Prof. Hollis would be willing to release the land for development and it would require more negotiations as well as Regulation 15 consultation and a new Examination. It is for members of Strete Neighbourhood Plan Steering Group to inform Strete Parish Council of their preferred option.

It should be noted that by selecting Option 1 Strete Estate may return with a planning application for development in CFF which Strete PC and Strete Community will have an opportunity to comment on following consultation with any developer. If this is the case, in my opinion, Strete PC will need to engage someone who is knowledgeable of the policies in the Plymouth & South West Devon Joint Local Plan with the objective of presenting a strong case to SHDC Planning Committee that complies with the policies of the JLP as well as meeting with a majority approval of Strete Community.