

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 22 MAY 2013

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

8. PLANNING APPEAL: DEVELOPMENT OF 160 HOUSES ETC. ON LAND NORTH OF HARE STREET ROAD, BUNTINGFORD: LPA REF: 3/12/1657/FP
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WARD(S) AFFECTED: Buntingford

Purpose/Summary of Report

- To update Members in relation to the current circumstances relating to the above appeal and to enable the position of the Council to be reassessed.

RECOMMENDATION FOR DEVELOPMENT CONTROL COMMITTEE:

That:

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| (A) | In respect of the current planning appeal process regarding application 3/12/1657/FP, the position that the Authority offers no evidence and does not pursue its case on the basis of reasons for refusal 1 (prematurity) and 2 (cemetery justification), be endorsed. |
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| (B) | Authority be delegated to the Head of Planning and Building Control, in consultation with the Chairman of the Development Control Committee and local ward Members, to further review the position of the Authority in relation to the remaining refusal reasons and to determine how the Authorities' case should be pursued. |

1.0 Background

1.1 Members will recall that the above development proposals were considered at the 5 December 2012 meeting of this Committee. A copy of the report submitted to that meeting is attached as ERP B to this report. The recommendation submitted to the meeting was that the proposals should be refused. Members endorsed this recommendation and planning permission was refused for the reasons set out in the report.

1.2 An appeal has now been submitted in relation to this decision.

The appellants have requested that the matter is dealt with by means of a public inquiry. A date for the inquiry is yet to be established.

2.0 Update

- 2.1 Since the refusal of permission, the applicants have reconsidered the details of the scheme to explore whether and the extent to which the reasons for refusal can be addressed. Members will also be aware of the position of the Council in relation to the production of its District Plan through the reports that have been submitted to and considered by the District Plan panel in February 2013. How these matters relate to the reasons for refusal and the implications for them are set out below. The applicants are still considering further changes to the submitted scheme. It is likely that further steps will be taken between the submission of this report and the committee meeting date. Members will be updated on any further information in this respect at the meeting.

Principle of development: Refusal reason 1

- 2.2 The issue of the acceptability of the development proposals in principle was set out in the earlier report. Members will note that the context of the commentary set out then included the expectation that the new District Plan would be available in a draft form in February of this year and that the Council's acknowledged housing land supply shortfall would be addressed as a result of this.
- 2.3 The context referred to above has now changed. It has not been possible to produce a draft of the District Plan to date and the District Plan panel in February 2013 received a report which set out the reasons for the delay. It is now anticipated that it will be possible to make a draft of the Plan available later this year, but no specific date can yet be identified.
- 2.4 The District Plan panel also received and endorsed the Annual Monitoring Report for the 2011/12 year. This set out that, depending on the base line figures used, the Council could establish a land supply figure of between 3.6 and 4.5 years.
- 2.5 The previous report also referred to the policy guidance set out in the National Planning Policy Framework (NPPF). The NPPF was published in March 2012 and, for a period of 12 months after its production, it set out that decision makers may continue to give

full weight to relevant policies set out in Local Plans adopted since 2004. This enabled full weight to be given to the policies of the existing East Herts Local Plan 2007.

- 2.6 That period of 12 months has now expired and the NPPF now requires that due weight should be given to relevant policies in existing plans, according to their degree of consistency with the NPPF. Whilst the policies in the Local Plan 2007 are considered largely to be consistent with the NPPF, there is a recognised deficiency in that the Local Plan does not identify adequate land to enable a five year supply of land for housing development.
- 2.7 A number of planning appeal and legal decisions made elsewhere have tested issues which are similar to those now relevant in this case. These decisions indicate that, where a development proposal by itself is not of such a scale that it is likely to prejudice significantly the outcome of local planning policy formulation and the stage reached in that planning policy formulation is an early one, then proposals for development are being supported through these appeal and legal decisions. Given this, independent legal advice has been sought in relation to the circumstances of the current case. That advice has confirmed that the context that now prevails is such that a decision not to support the proposed development in principle is not one that is likely to be supported at appeal and, indeed, may be seen as one which is unreasonable.
- 2.8 Officers recommendation to Members in respect of this matter is that the Council should not proceed with a case on the basis of this matter at the forthcoming appeal.

Transport and Highways Impact: Refusal reason 3

- 2.9 In its response to consultation on the matter the Highway Authority indicated that there was an absence of agreement on the measures that could be undertaken to mitigate the impact of the development proposals on the local highway network. From the details provided by the Highway Authority in its response it is your Officers understanding that this is a matter which can be satisfactorily resolved.
- 2.10 It does not appear to be a situation where there is no potential to undertake steps which would make the development proposals acceptable in highway terms. It is a case where, at present, those steps have not been sufficiently explored, identified and agreed between the parties involved.

- 2.11 At this stage, Officers remain of the view that it would not be appropriate to support a development which is unacceptable in terms of its highway impact. However, it is also understood that the developers agents are in discussion with Highway Officers to seek to establish a suitable set of mitigating measures that will mean the proposals are acceptable in respect of their highway impact. Officers will update members in respect of this matter at the meeting.

Other refusal reasons

- 2.12 Members will recall and see from the previous report that the five other reasons for refusal related to the following matters:
- justification for proposed cemetery;
 - layout and design;
 - relationship between proposed and existing dwellings;
 - childrens play provision;
 - impact on trees.

In relation to the cemetery issue, further information has been provided by the applicant and it is considered that appropriate justification is now demonstrated for the proposed development in this respect.

- 2.13 In relation to the remaining matters, the applicant is undertaking further work to seek to demonstrate that these matters can be satisfactorily addressed. In doing so, they have sought advice and guidance from Officers with regard to possible and appropriate amendments to the scheme. Again, it is possible that further information will be provided to Officers to enable them to update Members on the latest position at the meeting.

Current balance and conclusion

- 3.1 The current position and in summary of the above, is that Officers remain of the view that the development proposals, as they stand, are not ones that can be supported. They have the potential for harm in relation to the impact on the highway and are harmful in relation to layout and design issues, the relationship between dwellings, childrens play provision and the potential impact on trees.
- 3.2 However, Officers are of the view that it would not be appropriate to maintain the initial refusal reason in relation to the prematurity of development. The issue of the justification for the cemetery development has also been resolved.

3.3 In addition, it appears to Officers that it is quite possible that further submissions will be made shortly to resolve more of the outstanding refusal reasons. If that were to take place, it will be necessary to reach a further view on whether any remaining harm which may result from the development outweighs the benefits of it. Given the further potential for this position to change, members are requested to delegate authority to the Head of Planning and Building Control, in association with the Chairman of the Committee and local ward Members, to further review the position of the Council in relation to the appeal and determine the basis on which the Councils case should be formulated and where reasons for refusal should no longer be pursued. There is the potential for this to require, if all matters are satisfactorily addressed, for the applicant to be invited to submit a further application, revised in a way to overcome refusal reasons related to the current application.

4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Planning application 3/12/1657/FP.

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