

EAST HERTS COUNCIL

DEVELOPMENT MANAGEMENT COMMITTEE – 3 FEBRUARY 2016

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

BISHOP'S STORTFORD NORTH, ASR5 UPDATE

WARD(S) AFFECTED: Bishop's Stortford Meads

Purpose/Summary of Report:

- To update Members of the Committee in relation to the development proposals at the above site and the outstanding planning application determination.

RECOMMENDATIONS FOR DECISION: That:

(A)	The Head of Planning and Building Control be authorised to undertake all necessary and appropriate actions on behalf of the Council in relation to any case to be submitted to the outstanding appeal inquiry, in order to ensure that any risk of exposure to a claim for costs against it is minimised; and
(B)	Subject to all planning mitigation obligations being secured in line with the resolution of this Committee at its meeting of 18 August 2015, the actions detailed in A above can, if required, allow a unilateral obligation to be accepted in relation to matters currently being dealt with in an agreement to which the County Council is party.

1.0 Background

- 1.1 This report relates to Area of Special Restraint 5 (ASR5), that part of the Bishop's Stortford North site that lies between Farnham Road and Hazelend Road, north of the town.
- 1.2 Two planning applications have been considered in relation to the site. The first (ref 3/13/1501/OP) was reported to a meeting of the DM Committee on 16 March 2015. This was in outline form, with details of a first phase of residential dwellings (130 new homes) and details of the means of access to the site.

- 1.3 It was recommended that the proposals could be supported. However, Members were concerned in relation to the provision of affordable housing (22.5% of overall provision) and that the proposals did not provide sufficient certainty in relation to the timing, location and adequacy of primary education provision. The proposals were refused on the basis of these matters.
- 1.4 The applicant has appealed against that decision and an inquiry has been timetabled to commence on 12 April 2016.
- 1.5 The second application (3/13/0886/OP) is wholly in outline form, with all details reserved except for the access arrangements. That application was reported to the DM Committee meeting of 18 August 2015. By this stage, the provision of affordable housing had been increased to 25% overall and further information was available in relation to the provision of primary education. Members resolved that planning permission could be granted subject to the completion of s106 agreements (one dealing with District matters and the other County matters).
- 2.0 Progress and Appeal Risk
- 2.1 It has been anticipated that, subsequent to the resolution to grant planning permission at the 18 August 2015 meeting, the s106 agreements would have been concluded significantly in advance of the appeal inquiry date, relating to the first application considered (and refused), such that the appeal would be withdrawn and there would be no requirement to undertake work in relation to it.
- 2.2 However, that position has not yet been reached. The s106 agreements are currently not concluded. There has been a range of issues and matters of detail that have required significant attention during the preparation of the agreements. It now appears that matters are resolved, a meeting between the parties of 20 January 2016 concluding outstanding matters.
- 2.3 However, it is necessary for final drafting work on the agreements to be undertaken and it appears this may take a further period of 3 – 4 weeks.
- 2.4 There is the potential for this timescale for outstanding work to place the Council in position of some risk in relation to costs claims relating to the outstanding appeal. Even though Council

Officers and the applicants are working to conclude matters, it is appropriate for the Council to address this risk.

- 2.5 The risk arises as follows: Given that the outstanding appeal inquiry is timetabled for 12 April 2016, it is a requirement that evidence for that inquiry is submitted by 15 March 2016. Preparation timescales can vary, but it would not be unreasonable for preparation to commence up to 4 weeks in advance of that deadline, thus in the week commencing 15 February 2016.
- 2.6 Without the conclusion of the s106 agreements and the release of the planning permission notice and if the appellant undertakes preparation work for the inquiry, there is the potential that this work will be abortive. This is because the appeal is either subsequently withdrawn, or the appeal proceeds, but no counter submissions are made as the other parties (District and County Councils) are now satisfied that there are no outstanding issues to be addressed. If those circumstances occur there is a risk that a claim for the costs of the abortive will be made against the Council which has some reasonable chance of success.
- 2.7 The Council can take steps to minimise the exposure to this risk. It can indicate as early as possible that its matters of concern, articulated in the reason for refusal of the first application, are now resolved. Therefore it will not seek to pursue these at the appeal. These issues were dealt with by the increase of affordable housing provision and the further clarity in relation to primary education capacity which were taken into account in the determination of the second application. The Council has indicated that those issues are dealt with to its satisfaction in making a resolution to grant planning permission.
- 2.8 The Council can also take further control of the matter by indicating that it will accept a unilateral undertaking in relation to matters that are currently being dealt with through the tri-party agreement with the County Council. This ensures that the timescales referred to above are met, but none of the required obligations are lost.
- 2.9 Depending on the response by the appellant to any actions of this nature and depending on actions they may take, there are a number of further steps that the Council can take to further ensure that its exposure to any risk of claims for cost in this matter are minimised.

2.10 Given that the Council has now articulated (the decision of the DM Committee of 18 August 2015) that the development proposals are acceptable, subject to the conclusion of the s106 agreements, it would be appropriate to take actions that minimise its exposure to any cost claim risk. Given the range of actions that can be taken, a general delegated authority is sought now by the Head of Planning and Building Control to take any necessary actions in relation to the outstanding appeal inquiry in this case, to deal with the Council's case as appropriate and to minimise the risk of a claim for costs being made against it.

3.0 Implications/Consultations

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

Background Papers

Planning applications 3/13/0886/OP and 3/13/1501/OP.

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