

NORTH HERTFORDSHIRE DISTRICT COUNCIL

PLANNING CONTROL COMMITTEE

**MEETING HELD IN THE SPIRELLA BALLROOM, ICKNIELD WAY, LETCHWORTH
GARDEN CITY ON THURSDAY, 12TH OCTOBER, 2017 AT 7.30 PM**

MINUTES

Present: *Councillors Councillor David Barnard (Chairman), Councillor Fiona Hill (Vice-Chairman), John Bishop, John Booth, Paul Clark, Bill Davidson, Jean Green, Cathryn Henry, Tony Hunter, Ian Mantle, Mike Rice and Harry Spencer-Smith*

In Attendance:

Simon Ellis (Development and Conservation Manager), Tom Rea (Area Planning Officer), Jo Cousins (Senior Planning Officer), Kate Poyser (Senior Planning Officer), Nurainatta Katevu (Property and Planning Lawyer) and Hilary Dineen (Committee and Member Services Officer)

Also Present:

At the commencement of the meeting Councillors Julian Cunningham, David Levett and Lynda Needham, 36 members of the public, including 6 registered speakers and 2 Member Advocates (Councillors Jane Gray and Steve Hemingway).

66 APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors Michael Muir, Adrian Smith and Martin Stears-Handscomb.

Councillor Val Shanley was substituting for Councillor Michael Muir.

67 MINUTES - 14 SEPTEMBER 2017

RESOLVED: That the Minutes of the meeting of the Planning Control Committee held on 14 September 2017 be approved as a true record of the proceedings and signed by the Chairman.

68 NOTIFICATION OF OTHER BUSINESS

There was no other business notified.

69 CHAIRMAN'S ANNOUNCEMENTS

- (1) The Chairman welcomed the Committee, officers, general public and speakers to this Planning Control Committee Meeting;
- (2) The Chairman announced that Members of the public and the press may use their devices to film/photograph, or make a sound recording of the meeting, but he asked them to not use flash and to disable any beeps or other sound notifications that emitted from their devices;
- (3) The Chairman reminded Members and speakers that in line with Council policy, this meeting would be audio recorded;

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- (4) The Chairman advised that Members would be using hand held microphones and asked they wait until they had been handed a microphone before starting to speak;
- (5) The Chairman requested that all Members, officers and speakers announce their names before speaking;
- (6) The Chairman clarified that each group of speakers would have a maximum of 5 minutes. The bell would sound after 4 1/2 minutes as a warning, and then again at 5 minutes to signal that the presentation must cease;
- (7) The Chairman advised Members of the Committee and members of the public about the process regarding the items about Land at Junction of Potters Heath Road and Danesbury Park Road, Welwyn.

The Committee would listen to the information and ask questions regarding item 6 after which Members of the press and public would be excluded and Members will consider Item 11.

Once consideration of Item 11 was complete, members of the public and press would be invited to return to the room, at which time the Committee would undertake any further Part 1 debate required and make a decision.

Following completion of these items there would be a 10 minute recess to allow members of the public to leave if they wished to do so.

- (8) Members were reminded that any declarations of interest in respect of any business set out in the agenda should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and were required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest which required they leave the room under Paragraph 7.4 of the Code of Conduct, could speak on the item, but must leave the room before the debate and vote.

70 PUBLIC PARTICIPATION

The Chairman confirmed that the 6 registered speakers and 2 Member Advocates were present.

71 16/02460/1 - LAND AT JUNCTION OF POTTERSHEATH ROAD AND, DANESBURY PARK ROAD, WELWYN

Retrospective application for change of use of land to use as a residential caravan site for two gypsy families, each with two caravans including no more than one static mobile home, erection of two utility buildings, additional hardstanding, associated parking spaces, erection of entrance gates, timber fence and ancillary works (as amended by plan no. 3 and site layout plan received 7/12/16).

The Development and Conservation Manager presented the report of, supported by a visual presentation consisting of plans, drawings and photographs of the site.

The Development and Conservation Manager advised that Members had before them a legal opinion on behalf of Codicote Parish Council and an appeal decision which, he had been informed, had been emailed out in advance of the meeting.

The legal opinion had been reviewed by the Council's appointed barrister, who had provided further written response.

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He stated that he had been advised by the Council's Corporate Legal Manager and Monitoring Officer that he could not reveal the content of this further advice in Part 1, however copies would be distributed to Members in Part 2 for their consideration.

He did however confirm that the Council's barrister strongly disagreed with the position taken by Codicote Parish Council's barrister.

The Development and Conservation Manager advised that, as this was not a typical planning report and recommendation and the decision was not to grant or refuse planning permission, he would summarise the position for the benefit of Members.

Members were not being asked to grant or refuse planning permission, but were being advised to review the Council's position in relation to the forthcoming appeal.

As things stand and regardless of the decision made this evening, the decision regarding whether or not planning permission should be granted rested with the appointed Planning Inspector.

As set out in Paragraph 7.1 of the report, Members resolved to refuse planning permission for this development at the meeting held on 17 January 2017. This was contrary to the officer recommendation to grant temporary 3 year planning permission.

Paragraph 7.3 of the report detailed that an appeal against this decision was received in March 2017.

In an appeal proceeding, the Planning Inspectorate decided the method of appeal to be used to enable the planning inspector to reach a decision. In this case the Inspectorate had decided that the appeal must be decided by way of a public inquiry rather than a hearing or written representations. The inquiry dates were set for 3 days commencing on 5 December 2017.

The purpose of a public inquiry was to enable all members and parties to present evidence for their position and to allow that evidence to be scrutinised under cross examination. Each party would normally have legal representation at the inquiry.

As Members were aware, Planning Officers are unable, under their professional Code of Conduct, to present evidence on behalf of the Council which was contrary to their professional view.

As the Officer view, in this case, was that a temporary planning permission was justified, this ruled out the ability of Officers to represent the Committee's decision to refuse planning permission at the inquiry.

In this case officers considered the case to be marginal and therefore employed the services of a highly experienced Planning Consultant, Philip Hughes, to be Council's expert witness at the inquiry.

The duty of each participant on the inquiry was to assist the appointed inspector in their decision. This inquiry would not be about reviewing the basis for the decision that the Committee reached in January 2017, but to consider the issues in light of the most up to date evidence.

Therefore, as well as appointing a planning consultant to seek to defend the Committee's decision, officer's sought more up to date evidence on the welfare of the current occupiers of the site by undertaking a welfare assessment and, as part of the Local Plan process, updated the Gypsy and Traveller Accommodation Assessment, as attached at Appendix D to the report.

The welfare assessment, need and the appellant's statement case revealed that the number of children had increased by one since the time that planning permission was refused in January 2017. The welfare assessment was carried out on 27 June 2017 and it revealed there were now 5 children residing at the site ranging in age from 5 months to 12 years old, with the school aged children attending local schools. This was new information that Members needed to be aware of and that would be considered by the Inspector when the appeal was determined.

The updated Gypsy and Traveller Accommodation Assessment, conducted by the Council's appointed consultants (Opinion Research Services), which would inform the forthcoming examination into the Council's Local Plan, had concluded two matters of relevance to the appeal, which would also have a bearing on the Inspector's decision regarding the forthcoming appeal in respect of this case.

The first conclusion was that the current occupiers of this site did comply with the 2015 definition of Gypsies and travellers. This definition was contained in the 2015 Government publication 'Planning policy for travellers sites. Travellers were defined as:

"Persons of a nomadic habit of life, whatever their race or origin, including such persons who on grounds only of their own, their families or dependents' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

The second conclusion was that in order to meet the needs of the travelling community within the Plan period, while applying the assessment, based on up to date definition of travellers, was that an additional 10 pitches were required over the Gypsy and Traveller Site Assessment period of 2017 – 2032, rather than the 7 detailed in in the current submission of the Local Plan Policy HS7.

Whilst primarily this updated evidence would be for the examination in public, an Inspector would use the Local Plan evidence, but this new evidence would be a factor that the Inspector would wish to examine.

This change in accommodation need for the traveller community was another material change in circumstance that had taken place since January 2017, when Members resolved to refuse planning permission for this development.

Another change in circumstance, as set out in Paragraph 8.4 of the report, was that the temporary planning permission for six pitches at Pulmore Waters had now lapsed and this, together with other factors, called into question the feasibility of an alternative site that the Council was putting forward to meet identified need over the Plan period.

This was the playing field in which the public inquiry would meet and the issues that the Council would be required to provide evidence to assist the Inspector in reaching a decision as to whether to allow or dismiss this appeal.

In light of this new evidence, Philip Hughes advised that he was professionally unable to defend the position of refusal at a public inquiry.

Of crucial significance to this conclusion was the assessment of the best interests of the children who reside at this site, as required under Paragraph 16 of the August 2016 Planning Policy for Travellers Sites which stated:

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“Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”

The equation here was whether the best interests of the children residing on the site were best served by refusing planning permission, the consequence of which would be to remove them from the current site, leaving open the question of where they could live as part of the travelling community.

In the view of officers and the planning consultant, this argument when added to the current plan and need was compelling and they did not consider the refusal as sustainable at a public inquiry.

The Development and Conservation Manager recommended that Members reconsider the Council's position, given this change of circumstances, and accept the officer's recommendation.

The only alternative was for Members themselves to present the evidence at the public inquiry.

He then introduced Phillip Hughes and asked him to give a brief explanation of his experience in these matters.

Mr Phillip Hughes informed Members that he extensive experience of advising local planning authorities, parish councils and local amenity groups in respect of appeals including inquiries and hearings relating to gypsy and traveller sites for over 20 years.

He explained that his duty at an appeal, as a chartered town planner, was to assist an inspector to properly understand the evidence and outline his professional opinion in respect of the whole of the evidence presented.

In this case Members were in a position where the evidential base had moved on since reaching their decision. The application, as submitted, was accompanied by scant information, However since the appeal was submitted, a significantly enhanced amount of information had been submitted, in particular in respect of the need of the appellant and their personal circumstances.

Members will be aware of the appeal statement and appended witness statements of the occupants of the site. Attached to those witness statements was a list of previous sites occupied by the appellants, who came to this site from the road side.

In addition, as part of the Local Plan process, the Council had updated its own evidence base by completing an updated Gypsy and Traveller Accommodation Assessment (GTAA). The result of this review was to increase the level of need over the Plan period from 7 to 10 pitches. This level of need was significantly higher than that previously anticipated and currently planned for in the adopted or emerging Local Plan.

The emerging Local Plan, submitted in 2017, understandably did not make provision for the full level of gypsy and traveller sites for the period that had now been identified by the GTAA. Therefore permission would need to be granted outside the identified allocated sites.

Mr Hughes advised that there was no doubt in his mind that this proposal caused harm to the green belt, in terms of inappropriateness and loss of openness. It also offended the purpose of the green belt policy as the development encroached into the countryside.

The reason for refusal identified the inappropriateness and the harm to the openness and

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Members were entitled to carry out that planning balance and to conclude that the planning balance in favour of granting permission at that time did not amount to very special circumstances and thus refuse permission.

Having considered the up to date position this was no longer a viable position to defend, given that the circumstances of the occupants had evolved, in that there were now 5 children residing on the site. From the information submitted with the appeal, he also understood the local connections of the appellant and their circumstances more completely, as well as the circumstances of the children and their educational needs.

A refusal of planning permission would, in all likelihood, result in the applicant, including the children, having to resort to the roadside. In that regard, it was important to be conscious of the fact that the applicant had been moved on 12 times from the road side before alighting on this site.

The Council had no alternative site that it could point to for these occupants to occupy and currently had not identified enough land to meet the recognised need for pitches over the Plan period.

The circumstances were materially different to those at the time of the application and, in that context, he could not support the proposition that the best interests of the children on that site would be served by refusal of planning permission.

Parish Councillor Helena Gregory, Codicote Parish Council, thanked the Chairman for the opportunity to address the Committee in objection.

Parish Councillor Gregory informed Members that local residents and Codicote Parish Council had engaged the services of a barrister to uphold the decision to refuse the planning application and she would summarise that advice for Members.

Considering that a breach of planning regulations had taken place, there had been an expectation that the matter would be dealt with appropriately, but Councillors were now being asked to reverse their decision and invite the appellants to submit a further planning application.

Members were familiar with the grounds for overturning the recommendation and their barrister was clear that the reason set out in the report were flawed.

In January it was considered that the best needs of the 4 children living on the site did not give rise to special circumstances that outweighed the harm to the green belt. The material change to those circumstances was the additional of one child and the health issues of resident on the site. This did not demonstrate that planning permission would be granted on appeal.

The mere presence of children on the site and their need for education and healthcare did not automatically give rise to very special circumstance and the Government advice was clear on this.

The report highlighted that there was a shortfall in the number of Gypsy and Traveller accommodation identified in the proposed submission Local Plan and erroneously suggested that a marginal increase in unmet need was a material change in circumstance. The Planning Committee was well aware that there was an unmet need when it made the decision to refuse planning permission in January 2017.

In 2013 the Government made a statement which said that The Secretary of State considered that the single issue of unmet demand was unlikely to outweigh harm to the green belt in order to constitute the very special circumstances justifying inappropriate development in the green belt.

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The officer's report also failed to consider the August 2015 policy statement on green belt protection and intentional unauthorised development.

In a recent appeal decision the Inspector took into account that there was potential unauthorised development, that there was a significant unmet need that was unlikely to be met by the Authority in the short term and the personal circumstances and health needs of the applicant and the needs of his small children. In that case it was concluded that the harm caused to the green belt was not outweighed by the various factors relied upon. These factors were similar to those outlined in this case.

Members had also been advised that, if the appeal was pursued, it was likely that the Council would be found to have acted unreasonably and that this would lead to an award of costs against the Council. The guidance used to substantiate this assertion was out of date and was superseded by the planning policy guidance. This stated that the Local Planning Authority were at risk of an awards cost if they behaved unreasonably with respect to the matter under appeal, for example unreasonably refusing or failing to determine planning applications or by unreasonably extending the period.

In the light of relevant Government policy, it was far from inevitable that the new circumstances identified would carry significant weight in favour of granting permission. Even if the appeal was allowed and planning permission was granted, this would not necessarily indicate that the Council acted unreasonably in choosing to defend the appeal.

Legal matters aside, many issues that have had to be weighed up were superfluous. The original planning statement outlined a dispute which led to the family to flee in fear from their previous home, this dispute was now settled and very soon after the application was refused the applicants were seen back at their former home and continue to spend much of their time there.

Other Gypsy and Traveller sites in the Parish continued to flourish and the unmet need for pitches did not seem to be causing a huge problem as adverts for accommodation were regularly seen in the local paper and migrants from overseas travel to the site to live and work for the family business.

Parish Councillor Gregory concluded by stating that this was a rural leafy lane, where most of the residents had lived quietly as neighbours for years and asked Members to consider whether a neighbour someone who stops you in the street to ask after your health or someone who stops the traffic in the street to threaten your health after you have spoken to the Planning Control Committee.

She urged the Committee to consider all parties and make a stand against this illegal and unnecessary encroachment into the green belt.

The Chairman thanked Parish Councillor Gregory for her presentation.

Councillors Jane Gray and Steve Hemingway thanked the Chairman for the opportunity to address the Committee as Member Advocates in objection.

Councillor Hemingway advised that this site was within his Ward, although Councillor Gray had more frequent direct contact with Codicote Parish Council.

The site had had multiple applications made, all of which had been refused. It was a site not suitable for development.

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The temporary planning permission and retrospective planning permission had also been refused and the Committee was now being asked to accept that an additional child and an increase in demand of a handful of sites in the District, over the Plan period, suddenly changed everything and that the Committee should now accept the recommendation to no longer defend a decision that had been through proper process.

The argument was that, although a decision had been made to refuse the application, it was, in practice impossible to defend that decision at the public inquiry and Members had heard from an expert that circumstances were now such that the case was not able to be defended.

This was a considered a marginal decision and, as such, the Committee should not now view it as so clear cut that the decision was not defensible. This application demanded that a planning inspector make the decision and implicitly a series of similar applications on adjacent sites, as he was confident that, if this application was not defended, it would not be the last application of this nature.

It was very unsatisfactory that the Committee was being advised that a decision they had made could not be defended. The objector group had always assumed that, because the Council came to a proper decision, they would not have to the considerable expense of employing their own barrister and expert witness when it came to a public inquiry.

This was a considerable expense for a small rural community and the Council had much more resources available to address this important issue, which should be settled at a public inquiry.

The argument centering on the lack of sites was that there was not enough sites in the District, but that this opportunistic site was clearly the right site to meet the shortfall and that the carefully scrutinized process used to select sites for the Local Plan did not need to be followed in this case, as the Council would just accept that this particular site, where a family moved to overnight, was the right site.

Members had been given the opinion of the Parish Council's barrister, which clearly set out many new grounds and the position was obviously defensible.

Councillor Gray advised that she endorsed everything that Councillor Hemmingway and Parish Councillor Gregory had said and hoped that Members would take on board every piece of advice given by Mr Pike, the Parish Council's barrister. This advice was absolutely correct and compelling.

Mr Matthew Green, Appellant's Agents, thanked the Chairman for the opportunity to address the Committee.

Mr Green advised Members that his company's area of specialism was gypsy and traveller appeals and he did not take on an appeal unless he thought there was a realistic prospect of success.

The harms in this case had been fairly appraised by Mr Hughes, but they were all green belt harms such as inappropriateness and openness and he concurred with these.

The Secretary of State, following a court case in 2016, accepted, in writing to the High Court, that green belt harms should be given substantial weight but that, where the best interests of the children were served by granting permission, a similar weight must be given. This meant that the interests of the children alone would balance out the harm in this case.

To win this case it would be necessary to clearly outweigh the harm, but there were other factors such as the general need for Gypsy and Traveller sites, the lack of alternative sites, the inability of the Plan to completely meet the need currently identified and the fact the sites were very likely to be in the green belt, that had to be taken into account when weighing the balance.

Mr Green advised that he had not lost a case that involved children since 2015 and the only cases he had lost that involved sites in the green belt were where children were not involved and therefore he fully expected to win this case,

In respect of costs, it was relatively rare for costs to be awarded against Councils, as these cases were usually matters of very fine balance. He had however recently had full costs awarded in a case where the reason for refusal only involved green belt harms and there were children involved, which was almost identical to this case. In that case the Inspector took the view, in light of current case law, that the Council could not reasonably defend a situation where there was only green belt harm.

Mr Green concluded by stating that he concurred with the advice being given and it was very likely that a grant of permission would result from the inquiry and it was likely, in this case, that costs would be awarded against the Council. This was not in the interest of the Council, nor his clients, who would rather get permission before that happened. It was in everyone's interest for this case not to go to a public inquiry.

In response to the presentations the Development and Conservation Manager informed Members that the legal advice provided by Codicote Parish Council referred extensively to the appeal decision and compared that appeal decision to the current situation but did not contrast.

Mr Hughes was aware that each application should be dealt with on its own merits and it was rarely possible to contrast two decisions, evenly and come to the same conclusions, particularly in regard to personal circumstances, which were rarely the same in two cases.

In the case detailed in the appeal decision the appellant had moved from bricks and mortar, where he had resided with his family and four children who were in education at the time to the site that was subject of the appeal decision. One of the results recorded in the appeal decision was of deterioration in the education of one of the children and that led to the Inspector opining that the best interests of the child may not be served by granting of planning permission at that site. He also commented on the aversion of the appellant and his family to reside in bricks and mortar. There was an adopted strategy dated 2012 and a GTAA dated 2008 in place

In this case the appellants had been roadside prior to occupation of this site and there was a schedule, included in the appeal papers, of 12 roadside sites previously occupied by the appellants where they received notice to vacate land prior to occupying this site.

It was not possible to know the full gamut of evidence that was considered by the Inspector in the Surrey case, but the appeal decision demonstrated clear differences between the two cases.

Mr Hughes cautioned Members that the conclusions of the Inspector of the Surrey decision may not be transferrable to this case. He stated that he had carried out an assessment of this case and, if in his wide experience of over 20 years, he felt that there was a case and it could be defended he would not be advising otherwise.

In response to a comment from a Member, the Chairman acknowledged that, although officers had been assured that the legal opinion and appeal decision supplied by Codicote Parish Council had been circulated to Members, they had not had the benefit of time to read the hard copies tabled at the meeting. He would therefore, following the exclusion of press and public call a 15 minute recess to allow Members time to read the paperwork supplied.

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Members noted that the decision made was based on evidence presented at the time the application was considered and that the Council's expert had advised that the decision was a defensible position at that time. They expressed concern that they were being further advised that, due to new evidence, the position could no longer be defensible and queried why this new evidence had to be considered when Councillors could not have known what evidence may be produced after a decision had been taken.

Mr Hughes acknowledged and confirmed that, based on the circumstances at the time Members made their decision, he was comfortable that it was a defensible decision. However, an appeal had to be based on the evidence available to the Inspector at the date of the inquiry and there was now evidence of changes of circumstances including much more information on the personal circumstances of the appellant as well as the changes in terms of the identified need, which emerged as part of the Local Plan process. The Inspector was duty bound to consider these material circumstances as part of his decision. It was also a duty of Local Authorities to review their decisions should circumstances change.

Members commented that they had been told that planning applications apply to a site and not the circumstances of the applicant and queried whether the consideration of personal circumstance only applied to applications relating to Gypsy and Traveller sites. They also queried whether there had been a change in circumstance for the appellant, or whether it was just a case of more information being available.

Mr Hughes advised that the personal circumstances provided with the application were scant with very little information provided by the applicant in support of the application. At that stage the Council undertook a welfare assessment and were able to identify some of the circumstances. The appeal statement, which accompanied the appeal, set out a number of circumstances and, importantly, there were witness statements that detailed the full circumstances of the family including the education needs of the children. There was also the addition of another child since the application was determined as well as the detail regarding the occupation of roadside sites prior to occupation of the appeal site. This in combination with the Council's evolved evidence base that identified a greater level of need and that the Local Plan currently did not plan to meet that level of need created circumstances that, in his view, meant that he could not defend the Council's decision.

In respect of personal circumstances, these were capable of being a material consideration. They were not always relevant, unless those circumstances were such that they tipped the balance. In the case of having or not having a home, then the personal circumstances of that family, Gypsy, Traveller or otherwise, were capable of being material planning considerations, the weight that they attract was a matter for the decision maker.

In response to a question regarding information provided at the time of refusal, the Chairman advised that every consideration was given to the information provided in the report and at the meeting.

Members asked for clarification about where, in the NPPF, consideration of personal circumstances was mentioned.

The Development and Conservation Manager advised that personal circumstances were not referenced in the NPPF, however reference was made, in regard to the green belt, to very special circumstances. Planning permission could only be granted in the green belt when there were very special circumstances and the advice being given was that personal circumstances could contribute to those very special circumstances, however the Gypsy and Traveller Accommodation Assessment did refer to the best interests of the child and personal circumstances, so there was policy guidance for this.

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A Member noted that the Committee had come to a decision based on the evidence at that time and there had been additional work required in order to take account of and assess the evidence that had come to light since that decision and queried whether the Council could claim costs for this extra work.

They also noted that Appellant's Agent had mentioned a letter from the Secretary of State that mentioned that special circumstances in respect of the needs of the child should be considered, yet Mr Hughes had commented that the needs of the child did not outweigh the green belt issues and asked for clarification.

Mr Hughes stated that he was not advising that the information that had come forward as a result of the appeal was enough in itself to change the decision, it was a combination of factors that included the work completed by the Local Authority in respect of assessing need.

In respect of costs against any party at an appeal, one would first have to demonstrate unreasonable behavior and this had to be linked to causation. Given the combination of factors, it was unlikely that the changes amounted to unreasonable behavior.

The best interests of the children must be a primary consideration in any decision made, although this may not be the determining factor.

A Member asked for clarification that, should this Committee decide to go to appeal, officers would not support Members at that appeal.

The Development and Conservation Manager advised that, regardless of any decision made by the Committee, there would still be an appeal. If Members supported the recommendation in the report, Mr Hughes and the Council's barrister would represent the Council at the appeal, however the evidence given would be that, in light of the additional information, the appeal should be granted. The decision regarding the appeal remained with the Inspector. In the event that Members did not agree with the recommendations and go against professional advice, then Members themselves would have to present the evidence at the appeal and be cross examined by the appellant's barrister. Professional planners were not able to give evidence against their professional judgment.

At this point the confidential information was considered by Members (Minutes 75 and 76 refer).

Following consideration of the confidential information, it was proposed, seconded and

RESOLVED:

- (1) That officers be authorised to write, without delay, to the Planning Inspectorate to confirm that, in light of a material change in circumstances, North Hertfordshire District Council as Local Planning Authority would be inviting the appointed inspector to grant conditional planning permission;
- (2) That officers be authorised to write, without delay, to all those who submitted representations to the Local Planning Authority prior to the determination of the planning application and to those third parties who have registered to appear at the Public Inquiry of the Local Planning Authority's decision, setting out the reasons for this decision;
- (3) That officers be authorised to write to the Appellant, without delay, to invite a planning application similar to that originally submitted (planning ref: 16/02460/1) so that the Local Planning Authority can consider such an application in the light of information now available which includes the personal circumstances of the Appellant and occupiers and the Council's interim Gypsy, Traveller and Showperson Accommodation Assessment Update (2017);

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- (4) That, subject to the receipt of a re-submitted planning application, officers be authorised to write to the Planning Inspectorate to suggest that it is no longer necessary to hold a public inquiry and/or to request that the appeal/Public Inquiry is held in abeyance pending the outcome of the Local Planning Authority's decision on the re-submitted planning application. In the circumstances that the appeal is to proceed, officers be authorised to make representations on a change in appeal procedure to a written appeal.

REASON FOR DECISION: To enable the Committee to consider the position of the Local Planning Authority at the Planning Public Inquiry scheduled for 5th – 7th December 2017, having regard to material changes in circumstances since the refusal of planning application ref: 16/02460/1 and the advice received from professional witnesses and Counsel.

The Chairman called a brief recess to enable members of the public to leave the meeting if they wished to do so.

72 17/01406/1 - LAND DEVELOPMENT OFF, STATION ROAD, ASHWELL

Residential development of 46 no. dwellings, children's play area, two new sports pitches, pavilion building and associated infrastructure.

The Senior Planning Officer presented the report of the Development and Conservation Manager supported by a visual presentation consisting of plans, drawings and photographs of the site.

Mr Richard Young, speaking in objection to the application, thanked the Chairman for the opportunity to address the Committee.

Mr Young informed Members that he was not going to speak about the many reasons for refusing the application that were included on the officer's report, but would rather concentrate on a couple of key areas.

There were two main reasons for refusal being the impact on the village and the location of the application site outside of the village.

Ashwell was an historic village with over 1,000 years of history.

The visual approach to the site would have a significantly urbanising effect on the village, not only from Station Road, but also from the Slip End access, which was significantly higher and looked down onto the site.

In terms of the impact on the village, the primary school had no capacity, with several sales of houses in the village not proceeding due to there being no places available.

Clearly 46 additional house, would place a significant demand on the local amenities.

These houses would create significant additional traffic issues both in and out of the village.

In terms of the location of the site, it was right on the very edge of the village and was the furthest away from the centre than any other building in the village.

It was on the absolute limit of where anyone would walk and therefore it was almost certain that anyone travelling to the village from this site would use a car, there were no parking spaces in the middle of the village and the village was already highly congested with traffic, particularly at the weekends and anybody living on this site would need to commute for work

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The journey along Station Road included a very dangerous junction with Lucas Lane, where there had been numerous accidents including one fatality and this development would add to the traffic issues.

The journey in the opposite direction included the junction with the A505 which was an extremely dangerous junction where there had again been numerous accidents and this development would again compound the issues.

The site was outside of the village boundary, and was not included in the Local Plan and was therefore an opportunistic development. This was purely an opportunity for the landowner to make money and there was no support from the village for this development.

Mr Young concluded by stating that the village could not cope with these additional houses, there was already significant development in the village, the location would urbanise a beautiful village and result in a significant increase in traffic using dangerous junctions.

He asked Members to refuse permission.

Mr Stuart Booth, Applicant's Agent, thanked the Chairman for the opportunity to address the Committee.

Mr Booth advised that there had been a significant amount of feedback from officers that had led to the reasons for refusal, these matters could be addressed through negotiation as was normal with applications.

The site was immediately adjacent to existing houses in the village boundary and had access to the road through the village and had direct access onto Station Road which had a petrol station and a shop. Immediately adjacent was the tennis club and cycle club.

There was a good pathway from the site to the village centre and there was access to the station, which was also a bus route demonstrating that this was a sustainable location, in terms of alternative modes of travel, the development would provide improvements to the footway as well as providing a bus stop.

The opportunity to consider this site for inclusion in the Local Plan was missed as the Applicant had not been aware of the site until the Plan was drafted. However the District was not going to have sufficient planning permission to meet the housing need shortfall and therefore the Council needed to balance the potential negatives of development against the sustainable credentials that this scheme provided.

The Applicant had not been given the opportunity to address the objections. The potential negatives of developing this site amounted to landscape impact. The Local Plan included thousands of potential homes on the green belt and the potential benefits of developing this single field, on the edge of Ashwell, in a sustainable location should be considered in this context.

This was an application for mixed house types of varying sizes that were suitable for young families and smaller homes people wishing to downsize, which was an identified local need.

In addition it met the direct need for sport provision by providing the specific sports facilities and changing rooms that had been requested.

Mr Booth acknowledged the objections made by the Parish Council but they had also objected to the previous plan, which was part of the Local Plan.

He reminded the Committee that they had a duty to make decisions to provide new housing

The Local Plan had a provision within it for windfall sites, such as this, to come forward. The number of new houses that currently had permission would not provide even the next two years of need.

This development provided significant social, economic and environmental benefits and the development itself was mitigated by good design with landscape design, sports pitches and facilities.

He reminded Members that they had engaged with residents and that there had been very few letters of objection to the scheme

He requested that Members consider the benefits of this scheme that would meet identified need.

The Chairman thanked Mr Booth for his presentation.

The Senior Planning Officer advised that windfall sites would have to be policy compliant in regards to the existing and emerging Local Plan Policy.

Members referred to Paragraphs 3.7 and 4.3.29 of the report regarding Highways and expressed disappointment that the dangers regarding the junctions and traffic were not supported by reasons for refusal. They were surprised that no objections had been raised considering the comments made regarding the suitability of parking on the site and the limits of highway adoption given the road layout and further that they appeared to be agreeing to roads that were unacceptable.

They commented that this was an inappropriate form of development in a village that didn't relate on any way to the village. Expansions to historic villages such as Ashwell had to be sympathetic and bear in mind the existing built environment, rather than an Off-the-shelf bolt on of standard housing.

It was proposed, seconded and

RESOLVED: That, application **17/01406/1** be **REFUSED** planning permission, subject to the conditions and reasons as set out in the report of the Development and Conservation Manager.

73 17/01195/1 - FORMER LANDFILL SITE, BLAKEMORE END ROAD, LITTLE WYMONDLEY

Use of land for gas fired electricity generating station to deliver electricity during times of peak demand of up to 49.99 MW.

The Senior Planning Officer advised that there were some updates to the report.

St Ippolyts Parish Council had submitted the following comment:

It was agreed to object as it was not a special enough case to warrant St Ippolyts Parish Council to support development on green belt land.

The Applicant had submitted a copy of the lease and options agreement with the landowner, which referred to the provision of a sinking fund to provide for the clearing of equipment from the site. The intention of this was to overcome the second objection and showed a clear intention to make provision for the clearance of the site after the 20 year temporary permission.

She therefore recommended withdrawal of the second reason for refusal. If Members were minded to grant the application then there should be a condition to ensure that a bond was in place before work commenced on the site.

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In respect of the first reason for refusal, which stated that the development was contrary to the green belt policy, the Applicant had submitted a table showing 167 sites that had been considered in the eastern and southern region. However, having considered this table, she felt that it was such that it would not amount to very special circumstances and the recommendation for refusal on green belt grounds remained.

The Senior Planning Officer advised that the Applicant was requesting that Members consider deferring a decision, in order to allow for a further amended scheme to be submitted that would reduce the number and height of the chimneys.

The Senior Planning Officer presented the report of the Development and Conservation Manager supported by a visual presentation consisting of plans, drawings and photographs of the site.

Mr Adrian Hawkins, Wymondley Parish Neighbourhood Plan Committee, thanked the Chairman for the opportunity to address the Committee in objection to the application.

Mr Hawkins advised that he wished to draw attention to certain aspects regarding the application and suggest further reasons for refusal.

There was growing concern about air pollution and the residents of Wymondley, in particular Little Wymondley, were particularly concerned about the pollution levels that would emanate from this power station.

North Herts District Council were meticulous in measuring the air quality at the Three Moorhens in Stevenage Road and following extensive dialogue with the Environmental Protection Officer, it was acknowledged that, although there were long term measurements of air quality PM 10 and various other obnoxious air pollutants, particularly those emitted by motor vehicles, there were no long term measurements regarding PM 2.5.

PM 2.5 was recognised by Public Health England as contributing to the premature death of 29,000 people in the UK and the World Health Organisation estimated that this contributed to the premature death of 4.3 million people worldwide.

The residents of Wymondley, who were bordered by the A1M to the west, the A602 to the south and the main railway line to the north, felt that having a power station to the east would be disappointing, particularly as they were already suffering from air pollutants.

It had been established that Defra had an Air Quality Management Area on the A1M that covered Little Wymondley and there were two aspects for the Committee to consider in respect of the air quality, being measured by the Government monitoring station.

PM 2.5 at the Three Moorhens Roundabout was measured at 13, this measurement in London was 12.5 to 15. When looking at the equipment installed on the A1M, this situation also applied to Little Wymondley, which demonstrated that the area was already being subjected to very high levels of pollution and the installation of this power station would only add to this.

Consideration should be given to the provision of alternative methods of power support for the infrastructure of Hertfordshire, such as long term storage facilities such as batteries which would not necessarily accrue pollutants or create noise and vibration issues.

Mr Hawkins concluded by stating that he wished, on behalf of Wymondley Parish Council, to support the officer's recommendation to refuse this application.

A Member asked for clarification regarding the type of batteries referred to in the presentation.

Mr Hawkins advised that he was referring to the fact that this was near to the sub-station and the power was drawn from the National Grid and some for peaking power support could be investigated for the infrastructure of Hertfordshire through batteries rather than a gas fired generator.

The Chairman thanked Mr Hawkins for his presentation.

Mr Andrew Troup, the applicant, thanked the Chairman for the opportunity to address the Committee.

In respect of air quality PM 4, 5, 10 and 2.5, Mr Troup advised that he had worked with officers to get to a position where they agreed on need.

He had looked at 166 facilities and in the south these facilities, that had to be next to the sub-station, were inevitably in urban locations and on green belt as that was where the demand and the electrical interface was.

There were currently three other proposals which were all in the green belt being Newcastle, Tilbury and Rayleigh, this is because these locations were where support was needed and there were no alternatives.

Officers agreed that there would be no material noise impact and that air quality was not a problem.

In respect of the suggestion regarding batteries as an option, they currently are unable to do the job that this facility could in particular it could not provide voltage control.

This development was completely unsubsidised as it was predicated on the contracts with the National Grid.

Once built, the development would not generate any traffic and the Environment Agency were positively in favour of the development stating that ultimately they were strongly in favour of this development.

It was necessary to consider the planning balance between harm and need

In respect of the landscape, Officers recognised that the chimneys were an artificial element in the landscape, however there were relatively few footpaths in the area and it was likely that this development would not be visible, particularly from longer distances and there was a backdrop of nearby pylons and, subject to a condition regarding landscaping, raised no objection regarding the visual aspect.

Mr Troup informed Members that he could see both sides and had agreed a change of design reducing the number of chimneys from 11 at 15 metres to 4 at 7 metres.

He asked Members to defer the application in order to give officers the opportunity for the amended plans, submitted 10 days previously, to be considered.

Members asked for clarification regarding the need for demand.

Mr Troup advised that the primary driver was a change to the method of delivery system. Currently more than a quarter of power was from wind or solar energy. In winter, when solar power was much reduced, the winter margin meant that we were getting close to running out of power.

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This Council previously agreed to a 20 megawatt gas-fired power system in the green belt in Letchworth, this was more of the same. There was a need for 2 or 3 gigawatts of fast reacting power and this facility also did inertia and therefore could provide more stability to the grid system than other forms of renewables.

The Chairman thanked Mr Troup for his presentation.

Members asked for clarification regarding pollution

The Senior Planning Officer advised that the applicant had submitted an air quality report as part of the application and the Environmental Services had concluded they had no objection with regard to air quality subject to two conditions that the flue stacks should be a minimum of 15 meters high and that there was a written guarantee relating to the make and model of the gas engine.

Members acknowledged the need for more power, particularly with the proposed number of new houses but commented that the site was raised and the chimneys were some 50ft high. They recognised that the chimneys needed to be that high in order to address air quality but commented that this was not acceptable in the green belt.

It was proposed, seconded and

RESOLVED: That application **17/01195/1** be **REFUSED** planning permission, subject to condition 1 and the reasons as set out in the report of the Development and Conservation Manager.

74 PLANNING APPEALS

The Development and Conservation Manager presented the report entitled Planning Appeals. He advised that, since the last meeting of the Committee, two planning appeals had been lodged and one planning appeal decision had been received, all as detailed in the report.

RESOLVED: That the report entitled Planning Appeals be noted.

75 EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A of the said Act.

[Note: The definition of Paragraph 5 referred to above is as follows:

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.]

76 16/02460/1 - LAND AT JUNCTION OF POTTERSHEATH ROAD AND, DANESBURY PARK ROAD, WELWYN

Retrospective application for change of use of land to use as a residential caravan site for two gypsy families, each with two caravans including no more than one static mobile home, erection of two utility buildings, additional hardstanding, associated parking spaces, erection of entrance gates, timber fence and ancillary works (as amended by plan no. 3 and site layout plan received 7/12/16).

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This item was discussed prior to a decision being made in the public item on this subject (Minute 71 refers).

The Chairman allowed 15 minutes for Members to read the legal advice and appeal decision presented by Codicote Parish Council.

The Development and Conservation Manager presented the report and following a detailed discussion, including many questions posed by Members to the Officers it was:

RESOLVED: That the report regarding application 16/02460/1 - Land at Junction of Pottersheath Road and Danesbury Park Road, Welwyn be noted.

The meeting closed at 9.54 pm

Chairman