

**PLANNING CONTROL COMMITTEE
12 OCTOBER 2017**

PART 1 – Public Document

AGENDA ITEM No.

6

TITLE OF REPORT: PUBLIC INQUIRY AND PLANNING APPEAL CONCERNING LAND AT DANESBURY PARK ROAD AND JUNCTION WITH POTTERSHEATH ROAD, WELWYN AL6 9SP

REPORT OF THE DEVELOPMENT AND CONSERVATION MANAGER

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

To update Members, in accordance with the Council Constitution, on matters relating to the Public Inquiry scheduled to be held on 5th – 7th December 2017 concerning a planning appeal by Mr J. Connors

Members are requested to consider this report in conjunction with the Part 2 report also concerning the appeal by Mr J. Connors

2. RECOMMENDATIONS

- 2.1 That the Committee authorise officers 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 (LPA) will be inviting the appointed inspector to grant conditional planning permission.
- 2.2 Subject to 2.1 being accepted by the Committee, that the Committee authorise officers to write without delay to all those who submitted representations to the LPA prior to the determination of the planning application of its decision set out in 2.1. In addition, to authorise officers to write without delay to those third parties who have registered to appear at the Public Inquiry of the LPA's decision setting out the reasons for this decision.
- 2.3 Subject to 2.1 being accepted by the Committee that the Committee authorise officers 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 LPA 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).

- 2.4 Subject to 2.1, 2.2 and 2.3 being accepted by the Committee and subject to the receipt of a re-submitted planning application, that the Committee authorise officers 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 LPA'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.

3. REASONS FOR RECOMMENDATIONS

- 3.1 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.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Alternative options to the recommendations above are considered as follows:

- Maintain current position and defend the appeal

Officers recommend against this strategy. The Council currently has no expert professional witnesses that could defend its case and given the weakness of its position would be unlikely to be able to recruit professional expert witnesses. As a result of not being able to present any case to defend the planning decision at the Inquiry there would be a high risk of significant costs being awarded against the Council.

- Members of the Planning Control Committee defend the appeal

Officers recommend against this strategy. With respect to Members, the lack of professional qualifications and experience in this field of planning would be quickly apparent under cross examination and this, together with a weak, unsubstantiated case would result in a high risk of significant costs against the Council.

- Concede a temporary permission but defend against a permanent permission

Officers recommend against this strategy. The GTAA Update 2017 demonstrates increased need that may not be achievable elsewhere in the short term and suggests that the appeal site may be needed in any event to meet demand. The needs of the children living on the site are likely to persist beyond a temporary permission (the youngest child on site being 8 months old). The Council's currently employed professional is unable to professionally represent even this case at an appeal Inquiry and it is therefore likely that Members would need to defend this position also, with all associated risks of costs being awarded against the Council.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The LPA has obtained professional planning consultancy advice and Counsel's Opinion with expertise and experience in this type of appeal.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in advance of the Planning Control Committee of 18th January 2017.

7. BACKGROUND

- 7.1 The Planning Control Committee resolved, at its meeting on 18th January 2017, to refuse a retrospective planning application (ref: 16/02460/1) against the officer recommendation concerning land at Dansebury Park Road and Junction of Pottersheath Road, Welwyn, for the 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) for the following reason:

The development represents inappropriate development in the Green Belt which causes harm to the Green Belt by reason of inappropriateness and harm to openness. In the opinion of the Local Planning Authority the applicant has not demonstrate sufficient very special circumstances to outweigh this harm. The development is therefore contrary to Policy 2 of the North Hertfordshire District Local Plan No. 2 – with Alterations and paragraphs 88-90 of the National Planning Policy Framework (NPPF).

- 7.2 Since the refusal of planning application ref: 16/02460/1 at the Planning Control Committee on 18th January 2017 the applicant has submitted an appeal against the decision and a Public Inquiry has been confirmed by the Planning Inspectorate as the appropriate method of determining the appeal. The Inquiry is set for 5th, 6th and 7th December 2017.
- 7.3 In March 2017 the Appellant submitted a full and comprehensive Statement of Need as part of the procedural requirements of the Appeal. This information had not been provided as part of the application and therefore Members were unable to take account of this comprehensive evidence of need when they determined the planning application at the meeting of the Planning Control Committee held on 18 January 2017.
- 7.4 Officers, acting on behalf of the Planning Control Committee, instructed a planning consultant to act as expert witness at the Inquiry to defend the Local Planning Authority's reason for refusing planning permission. On the advice of the planning consultant Counsel's opinion was also sought on the issues concerning the appeal and the merits of the LPA's case. Counsel is an experienced barrister who advises a number of local planning authorities in respect of Gypsy and Traveller matters including appearing at Public Inquiries, prosecuting in the courts and advising and appearing in respect of local plans.
- 7.5 In June 2017 and in response to the Appellant's Statement of Need submission, the Council's planning consultant and Counsel recommended that the LPA seek an update to its Gypsy, Traveller and Show Person Accommodation Assessment (GTAA) of 2014. Opinion Research Services (ORS) were commissioned to undertake this additional update and were also scheduled to provide an expert witness to address need and appear at the Inquiry.
- 7.6 In June 2017 the Council carried out an updated welfare assessment at the appeal site, it recorded *inter alia* an additional child residing at the site. Also health issues were identified relating to a resident currently residing at the site.

- 7.7 In August, the Council received a draft GTAA update from consultants ORS and this was sent to the planning consultant and Counsel for review. This report has now been finalised. The draft report included, in accordance with the guidance for Planning for Traveller Sites, the current and future needs arising from the occupants of the appeal site. Consequently, the revised GTAA identifies a higher need for residential traveller pitches than is presently identified in the Council's Submission Local Plan under Policy HS7. At present the emerging Local Plan only makes provision for all those identified in the 2014 assessment. Furthermore, the expiration of the temporary permission on the Gypsy and Traveller site at Pulmer Water means that the Council cannot presently demonstrate a five-year supply of Gypsy and Traveller pitches.
- 7.8 On 8th September officers received Opinion from Counsel on the merits of the LPA's case at the Public Inquiry scheduled to commence on 5th December 2017. This Opinion is attached in full at Appendix A to the Part 2 report concerning this appeal.

8. RELEVANT CONSIDERATIONS

- 8.1 The Local Planning Authority is currently a main party to a planning appeal to be heard by way of Public Inquiry following the refusal of planning permission by the Council in January 2017. The Public Inquiry is to start on 5th December 2017 and is scheduled to last for three days.
- 8.2 Proofs of Evidence (Written Statements) are required to be submitted to the Planning Inspectorate no later than four weeks prior to the commencement of the Inquiry i.e. 4th November 2017. The council's evidence and evidential approach will need to be settled well in advance of this date.
- 8.3 The Local Planning Authority has received advice from its planning consultant that, having regard to material changes in circumstances since the refusal of planning permission on the information currently available, the Council will struggle to present a credible and defensible case at the Inquiry and that it is likely that the Planning Inspector appointed to deal with this Inquiry will conclude that planning permission should be granted. Moreover, officers have been advised that the Council is at risk of a substantial award of costs against it if it were to proceed to defend its case at Inquiry given the changes in circumstances. The Council now has no expert witnesses to defend its refusal of planning permission. If Members still wish to maintain their refusal of planning permission, proofs of evidence will need to be provided by Members of the Planning Control Committee.
- 8.4 The material changes in circumstances, since the refusal of planning permission in January 2017 are as follows:
- The personal circumstances of the families living on site have changed – there are currently five children all under the age of 13 including an 8 month old. This has been confirmed by a recent welfare assessment undertaken by the Council;
 - A recent review of Gypsy and Traveller accommodation in the District considers the accommodation need to be greater than envisaged in the Proposed Submission Local Plan and at the time the decisions were taken to refuse planning permission and submit the local plan for examination;

- A temporary planning permission determined by the Planning Inspectorate for six traveller pitches at Pulmore Water in Codicote has expired and no further planning permission has been granted at this site;
 - The Local Planning Authority has received unequivocal professional and legal advice that its case at the Public Inquiry is not defensible.
- 8.5 In order to reduce the risk of costs and also to reduce the scale of any costs award the Council needs to consider its position now new information has come to light. An early resolution not to contest the appeal and invite the Appellant to submit a revised or duplicate application will show reasonable conduct on behalf of the Council and offset any accusation of unreasonable behaviour from the Appellant. If the appeal was to be commuted to a different procedure it would also assist in containing the scale of costs both expended in terms of representations at the appeal and potential costs awarded against the Council in the event unreasonable behaviour was found to have occurred.
- 8.6 As Members will be aware costs can only be awarded in planning appeal proceedings when a party has acted unreasonably and that unreasonable behaviour has led to another party incurring unnecessary costs. The Council refused planning permission on the basis of the information provided with that application and also in respect of its own investigations; Officers consider that position at that time was not unreasonable albeit they had recommended that permission be granted for a temporary 3 year period.
- 8.7 However, since the refusal of planning permission there have been a number of changes in circumstances as detailed elsewhere and including a statement of need submitted by the Appellant, details of the personal circumstances of the Appellant and occupiers, a re assessment of need undertaken on behalf of the Council in support the local plan in light of changes on the ground and in the approach of Government policy as well as a re-assessment of the needs of the occupiers of the appeal site.
- 8.8 These changes all weigh in favour of the grant of planning permission and thus materially influence the planning balance and decision making process and it would be unreasonable for the Council not to reassess its position in light of these material changes in circumstances. Moreover, in light of this new evidence I am of the opinion that Members must be given an opportunity to review their earlier decision as they had not taken it into account when that decision was made.
- 8.9 It is considered that the only reasonable outcome would be for the Council to inform the parties that they will be inviting the Inspector to grant conditional planning permission.
- 8.10 In the event that the Council seek to defend its position as of January 2017 it is likely to be found to have acted unreasonably and that action to have directly led to wasted costs i.e. the full cost incurred by the Appellant pursuing this appeal.

The following documents are attached as appendices to this report:

- Appendix A - A copy of the Officers Committee report to Committee 18th January 2017
- Appendix B - The Minutes of the Planning Control Committee meeting of 18th January 2017

- Appendix C - Planning Decision notice dated 19th January 2017
- Appendix D – Opinion Research Services (ORS) Gypsy and Traveller Accommodation Assessment (GTAA) Update August 2017

9. LEGAL IMPLICATIONS

- 9.1 The Council Constitution Section 8 (paragraph 8.4.5 (j)) allows for the Planning Control Committee 'to receive updates on planning appeals lodged and appeal decisions made'

10. FINANCIAL IMPLICATIONS

- 10.1 If the Local Planning Authority continues to defend the refusal of planning permission at Inquiry legal advice is that the Local Planning Authority is at risk of a substantial award of costs being made against it by the Planning Inspectorate under Communities and Local Government Circular 03/2009 (Costs Awards in Appeals and other Planning Proceedings).

11. RISK IMPLICATIONS

- 11.1 NHDC's Corporate Business Planning process is key to managing the Council's top risk of "Managing the Council's Finances".

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The appellants meet the definition of "gypsies and travellers" as set out in Annex 1 of Planning Policy for Travellers sites 2015 (PPTS) and as such regard has to be given to their protected characteristic as a racial group forming part of the local community.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no additional significant human resource requirements arising from this report.

15. APPENDICES

- 15.1 Appendix A - A copy of the Officers Committee report to Committee 18th January 2017
- 15.2 Appendix B - The Minutes of the Planning Control Committee meeting of 18th January 2017
- 15.3 Appendix C - Planning Decision notice dated 19th January 2017
- 15.4 Appendix D – Opinion Research Services (ORS) Gypsy and Traveller Accommodation Assessment (GTAA) Update August 2017

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

None