

THURSDAY, 15 JUNE 2017

REPORT OF THE PORTFOLIO HOLDER FOR REGENERATION**PARTICIPATION IN PUBLIC INQUIRY****EXEMPT INFORMATION**

None

PURPOSE

To inform Cabinet of an Executive decision and to confirm the actions taken, including acknowledgement of contingency expenditure.

RECOMMENDATIONS

- 1. Acknowledge the Executive Decision taken by the Leader and Mayor on 16th May 2017.**
- 2. The Corporate Director Growth, Assets & Environment is given authority in consultation with the Portfolio Holder for Regeneration to agree the Council's submissions to the Inquiry.**
- 3. Approve the release of £50k from the specific contingency budget for 2017/18 to support the Council's involvement in the Public Inquiry.**

EXECUTIVE SUMMARY

A planning application for up to 1,000 homes at Arkall Farm in Lichfield District was submitted in May 2014. The site is located to the north of Ashby Road, bordering Tamworth Borough Council. The application (14/00516/OUTMEI) is for the construction of up to 1000 homes, primary school, local centre, public open space, landscaping and associated infrastructure for Barwood Strategic Land II.

The Borough Council has submitted a number of representations during the course of the application (representations attached in Appendix A dated 4th July 2014, 28th July 2016, and 12th January 2017) raising a number of concerns which can be summarised as follows:

1. Concern that there is a lack of highway capacity on the Gungate corridor to support the full 1000 units without causing severe impact to the highway network;
2. The 'monitor and manage' approach to highways, and the proposed pre-commencement conditions do not give sufficient clarity or certainty that the full 1000 units scheme could ever be delivered;
3. Due to the proposed monitor and manage approach it is unlikely that the required school would ever be delivered and the non-delivery of the school in terms of additional trips to the network and pedestrian access to other schools has not be fully considered;
4. The development will clearly meet the housing needs of Tamworth but there is no mechanism proposed to enable Tamworth residents to access the affordable housing;
5. There is no mitigation proposed for the impact on sports provision within Tamworth.

Lichfield District Councils Planning Committee considered the application in February 2017 and resolved to approve the application. In response the leader of Tamworth Borough Council wrote to the Planning Minister stating his concerns about the application and on 20th April 2017 the Secretary of State advised Lichfield District Council that he has decided to call in the application for his determination.

In that letter, addressed to the Principal Planning Officer of Lichfield District Council, the Secretary of State confirms that he has decided to call in the application and has set in motion the appointment of an Inspector to open an inquiry and to report to the Secretary of State on those matters set out in the Secretary of State's statement under Rule 6(12) of the 2000 Rules. In this instance, the Rule 6 statement from the Secretary of State is short and comprises only the following (albeit that it is open ended):

- i) Policies in the National Planning Policy Framework on delivering a wide choice of high quality homes;
- ii) Policies in the National Planning Policy Framework on promoting sustainable transport; and
- iii) Any other matters the Inspector considers relevant.

The Borough Council had the option to request to be a 'Rule 6 party'. A Rule 6 party has the benefit of greater involvement in the Public Inquiry than if it were not. It will be required to prepare and circulate a statement of case which explains the detailed nature of the case which is to be relied upon at the inquiry and indicating the nature of the evidence upon which it will rely. A Rule 6 party will also prepare written proofs of evidence. At the Inquiry oral evidence can be given and witnesses called. The alternative is to provide a written statement. The opportunity to participate at the Inquiry is more limited with no witnesses able to be called and less weight will be attached to the statement. Other parties will be able to test and challenge the Council's representations as the Council will theirs.

The Council has sought legal advice on this matter and the view expressed is that it would be preferable for the Borough Council to participate as a Rule 6 party. It is consistent with the extent of participation which it has shown in respect of the application and the strength of the views which it has expressed. However, it will be important to make a clear decision as to the particular issues upon which the Borough Council wants to participate. As a Rule 6 party the Council could be subject of the award of costs against it if it behaves unreasonably. This would be on the basis that the behaviour had directly caused another party to incur expenses that would not otherwise have been necessary. Costs may be awarded in response to an application for costs by one of the parties. Also costs may be awarded at the initiative of the Inspector.

Secretary of State call-ins are very rare, less than 10 a year on average, and this may indicate that there is something which really does need to be properly considered and has not, to date, received adequate consideration via the determination made by Lichfield District Council.

The Planning Inspectorate advised the Council that if it wished to be a Rule 6 party then it should notify the Inspectorate by 17th May 2017 to enable the Council to have greater involvement in agreeing the timetable for the Inquiry.

The Leader felt that it was important for the Council to be involved in setting the timetable. Officers briefed the Leader on the implications of being a Rule 6 party as described above and the likely incurrance of significant cost and lack of identified budget. The costs that will be incurred relate to the appointment of a technical specialist team, a Solicitor and Counsel. After consideration of this information the Leader made an Executive decision under The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 Paragraph 9 and Paragraph 10. This was published on our website on the 16th May 2017.

OPTIONS CONSIDERED

The Council could have chosen not to be a Rule 6 party and would only have had a 'light touch' participation at the Public Inquiry.

The Council could have waited until Cabinet on 15 June 2017 to make a decision about involvement but this would have been too late to fit in with the Planning Inspectorate timetable for involvement in establishing the timetable for the Inquiry, and could have resulted in a unreasonable timeframe for collation of full information and the statement of case

RESOURCE IMPLICATIONS

There will be the cost of officer time and the diversion away from planned activity. This could be mitigated by employing a planning consultant to lead the involvement on the Council's behalf. This would incur revenue budget costs but would enable officers to continue to focus on planned activity.

There will be significant legal costs incurred. Firstly in terms of a Solicitor to act on the Council's behalf, to prepare the necessary papers and to instruct Counsel. Secondly, there will be a cost in instructing Counsel.

There may be further costs incurred in bringing in technical experts, for example on highways, dependant on the position that the County Council adopts.

There is no identified budget at this time to meet these costs and all costs arising will be met from contingency budgets – it has been requested that £50k be released from the Specific Contingency budget in 2017/18 to support the Council's involvement in the Public Enquiry.

It should be noted that the total expenditure incurred could exceed £50,000.

LEGAL/RISK IMPLICATIONS BACKGROUND

There is a risk that the expenditure could exceed the estimate dependant on how long the Inquiry lasts and the Borough Councils involvement.

There is a risk that the Planning Inspector could award costs against the Borough Council if it acts unreasonably. This is mitigated by employing an experienced legal team and specialist support.

SUSTAINABILITY IMPLICATIONS

The Borough Council's concerns about the lack of mitigating infrastructure in relation to this application leads to a form of unsustainable development.

BACKGROUND INFORMATION

None

REPORT AUTHOR

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LIST OF BACKGROUND PAPERS

Planning Application to Lichfield District Council 14/00516/OUTMEI

Report to Cabinet, "ARKALL FARM PLANNING CONSULTATION RESPONSE", 28th July 2016

Report to Cabinet, "TAMWORTH FUTURE DEVELOPMENT AND INFRASTRUCTURE", 27th April 2017

APPENDICES

A – Representations to planning application at Arkall Farm