

## **RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY**

### **PART 1 – PUBLIC DOCUMENT**

Any interest to declare/ or conflict and any dispensation granted [*if applicable*]

**DIRECTORATE:** Regulatory

#### **1. DECISION TAKEN**

To agree to meet an appellant's costs application in full following an allowed appeal and full award of costs decision made against the Council.

#### **2. DECISION TAKER**

Ian Fullstone Service Director - Regulatory

#### **3. DATE DECISION TAKEN:**

12 October 2018

#### **4. REASON FOR DECISION**

- 4.1 The Council's Planning Control Committee refused permission in relation to two applications relating to the discharge of a condition of an outline planning permission for residential development at Pirton. The conditions related to a proposal for a Construction and Environmental Management Plan (CEMP) which included a construction traffic management route.
- 4.2 The applicant lodged an appeal against the decisions to refuse permission to discharge the requirements of the condition. The appeal was allowed and a full award of costs was awarded against the Council by the Planning Inspector. The award of costs was two fold; firstly that the substantive reason for refusal was not supported by clear evidence and secondly that as the condition as worded was largely unenforceable the Council acted unreasonably in refusing to discharge its requirements.
- 4.3 The Development and Conservation Manager (DCM) and the Council's Planning Solicitor have reviewed the guidance on costs associated with planning appeals in the National Planning Practice Guidance and concluded that there is no reasonable prospect of successfully arguing against the claim or succeeding at arbitration and that on this basis there is no option other than to pay the claim applied for by the appellant. However, it was noted by the Council's Planning Solicitor that some if not all the associated legal costs were derived from advice sought by the appellant before the appeals were lodged. On this basis the appellant has submitted a revised offer, excluding most of these costs, which DCM and the Council's Planning Solicitor consider to be reasonable and accurate.

#### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The only other option is to dispute the costs application which can be referred to an arbitration panel. If the Council is unsuccessful in this process there is a realistic prospect that not only would the Council be liable to pay the appellant's costs claim

it may also have to meet the appellant's additional costs of defending their claim at arbitration. Given the weak position the Council finds itself such a course of action has an inherent risk of increasing the costs risks still further in this instance.

## **6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)**

6.1 No public consultation required.

## **7. RELEVANT CONSIDERATIONS**

7.1 Outline planning permission was granted for a residential development of up to 82 dwellings on land adjacent to Elm Tree Farm, Pirton (ref. 15/01618/1) following a Committee resolution at the meeting of the Planning Control Committee held on 17 December 2015.

7.2 Condition 6 of this planning permission was imposed at the request of Hertfordshire County Council (Highways). It reads as follows:

**Prior to the commencement of the development full details of a Construction Management Plan shall be submitted to the Local Planning Authority for approval in writing. The Construction Management Plan shall contain the program of works on site, area of construction vehicle parking, storage and delivery of materials within the development site, construction vehicles wheel washing facilities, and details construction vehicle routing to and from the site.**

**Reason: In the interests of maintaining highway efficiency and safety.**

7.3 Following the approval of reserved matters for the development of 78 dwellings at the meeting of the Planning Control Committee held on 25 May 2016 (ref. 16/02256/1) the applicant and developer (CALA Homes) submitted two applications for the discharge of this condition 6 of the outline planning permission (no. 15/01618/1).

7.4 The DCM presented both applications for the discharge of the condition to the Planning Control Committee for determination. There were two combined appeals against the Planning Control Committee's decision to refuse application ref. 17/02023/1DOC (Construction route through Holwell with mitigation) and against the decision of the Committee to refuse the Holwell route scheme without any mitigation (ref. 17/02807/1DOC).

7.5 The Inspector allowed both appeals and granted a full award of costs against the Council. The appeal and costs decisions are attached as **appendix 1 and 2**.

7.6 The initial costs claim amounted to over £78,000. It was noted by the Planning Solicitor that part of this claim included a £28,000 claim for QC advice that was sought before the appeals were lodged. The DCM therefore advised the appellant that the Council need only accept costs claims associated with the appeal and not costs resulting from work undertaken before the appeal.

7.7 Following this advice the appellant submitted a revised claim of £55,179.41 which excluded legal fees associated with advice given before the appeals were lodged.

7.8 It is the conclusion of the Council's Development and Conservation Manager and the Planning Solicitor that the Council pay this revised costs application, £55,179.41, in full.

**8. LEGAL IMPLICATIONS**

- 8.1 All matters associated with decisions relating to the Planning Acts save for those specifically referred to the Planning Control Committee are delegated to the Service Director (Regulatory), sub delegated to the Development and Conservation Manager.
- 8.2 Relevant legislation is the Town and Country Planning Act 1990 (as amended), S78 appeals. Costs implications are set out in the National Planning Practice Guidance.

**9. FINANCIAL IMPLICATIONS**

- 9.1 The Council has a financial risk to cover costs associated with its role as Local Planning Authority.

**10. RISK IMPLICATIONS**

- 10.1 The Council in its role as Local Planning Authority needs to ensure that planning decisions are made on a sound planning basis, supported by evidence. The Planning Inspector was of the opinion that this decision fell short of this requirement and the Council was unable to substantiate the Committee’s decision at the appeal. Appeals decisions such as these are used as case studies in Planning Committee Member training sessions
- 10.2 The risk in not agreeing these costs and seeking arbitration are that the Council could incur additional costs following an unsuccessful arbitration.

**11. EQUALITIES IMPLICATIONS**

- 11.1 None

**12. SOCIAL VALUE IMPLICATIONS**

- 12.1 None

**13. HUMAN RESOURCE IMPLICATIONS**

- 13.1 No impact

**14. BACKGROUND PAPERS**

Appendix 1 = appeal decision  
 Appendix 2 = costs decision

**15. NOTIFICATION DATE**

Signature of Executive Member Consulted .....  .....

Date ...15.10.18.....

Signature of Decision Taker  .....

**Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.**

**Call-in does not apply to NON-EXECUTIVE DECISIONS**