

MAIDSTONE BOROUGH COUNCIL

POLICY AND RESOURCES COMMITTEE
(ACTING AS THE PLANNING REFERRAL BODY)

MINUTES OF THE REMOTE MEETING HELD ON 13 JULY 2020

Present: **Councillor Cox (Chairman) and
Councillors Mrs Blackmore, Brice, M Burton,
Chappell-Tay, English, Garten, Mrs Gooch, Harper,
Harvey, Mrs Joy, Mortimer, Powell, Purle and Round**

Also **Councillors Eves, Kimmance and Spooner**
Present:

Note: In accordance with the Council's Constitution, no Member will be able to serve on the Policy and Resources Committee when it is discharging its function as the Planning Referral Body without undertaking training. All Members and Substitute Members of the Committee present at the meeting confirmed that they had undertaken the necessary training.

193. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillors Clark, McKay, Newton, Perry and Springett.

194. **NOTIFICATION OF SUBSTITUTE MEMBERS**

The following Substitute Members were noted:

Councillor Brice for Councillor Perry
Councillor Garten for Councillor Springett
Councillor Harper for Councillor McKay
Councillor Mrs Joy for Councillor Clark
Councillor Powell for Councillor Newton

195. **URGENT ITEMS**

The Chairman said that, in his opinion, the updates to be included in the Officer presentations should be taken as urgent items as they contained further information relating to the applications to be considered at the meeting.

196. **NOTIFICATION OF VISITING MEMBERS**

Councillors Eves, Kimmance and Spooner had given notice of their wish to speak on the report of the Head of Planning and Development relating to planning applications 19/501600/OUT and 19/506182/FULL (Land West of Church Road, Otham, Kent) and were present at the meeting.

197. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

198. DISCLOSURES OF LOBBYING

All Members stated that they had been lobbied on the report of the Head of Planning and Development relating to applications 19/501600/OUT and 19/506182/FULL (Land West of Church Road, Otham, Kent).

199. EXEMPT ITEMS

RESOLVED: That the public be excluded from the meeting in the event of Members wishing to discuss the information contained in the exempt Appendices to the report of the Head of Planning and Development relating to applications 19/501600/OUT and 19/506182/FULL (Land West of Church Road, Otham, Kent) because of the likely disclosure of exempt information pursuant to paragraph 5 of Part I of Schedule 12A to the Local Government Act 1972 (Legal Proceedings), having applied the public interest test.

200. PLANNING APPLICATIONS 19/501600/OUT & 19/506182/FULL - LAND WEST OF CHURCH ROAD, OTHAM, KENT

19/501600/OUT - OUTLINE APPLICATION FOR UP TO 440 RESIDENTIAL DWELLINGS, WITH ASSOCIATED ACCESS, INFRASTRUCTURE, DRAINAGE, LANDSCAPING AND OPEN SPACE (ACCESS BEING SOUGHT WITH ALL OTHER MATTERS RESERVED FOR FUTURE CONSIDERATION) - LAND WEST OF CHURCH ROAD, OTHAM, KENT

19/506182/FULL - RESIDENTIAL DEVELOPMENT FOR 421 DWELLINGS WITH ASSOCIATED ACCESS, INFRASTRUCTURE, DRAINAGE, OPEN SPACE AND LANDSCAPING - LAND WEST OF CHURCH ROAD, OTHAM, KENT

The Committee considered the report of the Head of Planning and Development concerning applications 19/501600/OUT and 19/506182/FULL for 440 or 421 dwellings respectively on land west of Church Road, Otham. These applications had been referred to the Committee for determination pursuant to paragraph 30.3 (b) of Part 3.1 of the Council's Constitution and paragraph 17 (b) of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters (Part 4.4 of the Constitution).

It was noted that:

- The outline application was originally reported to the Planning Committee on 24 October 2019 with an Officer recommendation for approval. The Committee agreed to defer consideration of the application for further negotiations.
- The outline application was reported back to the Planning Committee on 28 May 2020 together with the full application. Contrary to the

recommendation of the Head of Planning and Development, the Committee voted to refuse each application for three reasons.

- Pursuant to paragraph 30.3 (a) of Part 3.1 of the Council's Constitution and paragraph 17 (a) of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters (Part 4.4 of the Constitution), before the votes were taken, Planning and Legal Officers advised the Committee that they did not consider each reason for refusal to be sustainable and that they could have significant cost implications. The Head of Planning and Development gave a costs warning in respect of each application. Therefore, the decisions of the Committee were deferred to its next meeting on 25 June 2020.
- On 11 June 2020, the applicant lodged an appeal with the Planning Inspectorate (PINS) on the basis of non-determination of the outline application. This meant that the decision on the application would be made by PINS and not the Council. The Committee would now need to inform PINS what decision it would have made and therefore what position the Council would take at the appeal. The appellant had requested a Public Inquiry procedure and the Officers had advised PINS that they considered this to be appropriate. The Council had instructed Counsel and preliminary work was underway for the appeal.
- At its meeting on 25 June 2020, the Planning Committee considered Counsel's advice on the strength of the reasons for refusal and the associated risk of costs at appeal. Contrary to the recommendation of the Head of Planning and Development, the Committee resolved to refuse the full application and to inform the Planning Inspectorate that if the applicant had not lodged an appeal on the basis of non-determination it would have refused the outline application for the following reasons:
 1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to Policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
 2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely to not be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to Policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
- As the Committee had voted to continue with decisions that it was advised could not be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development, on the advice of the Legal Officer present and in consultation with the Chairman, referred both applications to

the Policy and Resources Committee for determination pursuant to paragraph 30.3 (b) of Part 3.1 of the Council's Constitution and paragraph 17 (b) of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters (Part 4.4 of the Constitution).

- Further advice had been sought from Counsel on both the strength of the reasons for refusal and the associated risk of costs at appeal. It had been concluded that reason for refusal 1 on both applications was unreasonable, could not be sustained at appeal and was highly likely to result in a significant costs award against the Council. Reason for refusal 2 was unreasonable, could not be sustained at appeal and there was a risk of a significant costs award against the Council but this risk was considered to be lower.
- Although the Policy and Resources Committee had overall responsibility for the budget and policy matters, when discharging the planning referral function, the Committee should consider planning applications afresh and on their planning merits having regard to the Development Plan and any other material planning considerations.

Application 19/501600/OUT

The Principal Planning Officer introduced this application describing the proposed development and summarising inter alia the policy considerations and the heritage and highway impacts. By way of an update, the Principal Planning Officer advised the Committee that:

- The appeal against non-determination of the application had now started and the statement of case was due on 5 August 2020. The applicant had confirmed that the dedicated Church car park would form part of their proposals at appeal and also the additional widening of Church Road to the south of the site.
- The Affordable Housing Supplementary Planning Document had been adopted by the Council recently and the application was proposing policy compliant affordable housing in accordance with the guidance. Further representations had been received but they did not raise any new material issues.

The Head of Planning and Development advised the Committee that:

- In terms of the strategic policy context, Strategic Policy 3 of the Local Plan related to the south east strategic allocation which was made up of six sites and this site was one of them - Policy H1(8). This Policy required key transport infrastructure improvements including junction capacity improvements along the A274. These strategic improvements were now dealt with via CIL or, if they were site specific, via S106 or S278 agreements.
- Safety was a prime concern so the access to this site, as with all other sites in the Local Plan, had been evaluated at the examination in public of the Local Plan together with the impact on the wider

transport network. The Council provided its own corridor analysis evidence (localised highways modelling) and that was accepted by the independent Inspector at the examination in public. With the mitigation outlined in the criteria in the relevant Policies, it was considered that the A274 and the roads coming off the A274 were able to cope with the increased traffic flows.

- This site with the 440 houses potentially proposed would make a significant contribution both to the twenty year housing trajectory at the year 2031 in the Local Plan and to the Council's five year housing land supply.

The Chairman read out statements which had been submitted by Mr Everett of the Downswood Community Association (an objector), Councillor Gray of Otham Parish Council, Ms Sugden (Clerk to Bearsted Parish Council) and Mr Goodban (agent for the applicant).

Councillor Weeks of Downswood Parish Council addressed the meeting by video link.

Councillors Spooner, Kimmance and Eves (Visiting Members) addressed the meeting.

Contrary to the recommendation of the Head of Planning and Development, it was proposed and seconded that the Planning Inspectorate be informed that if the applicant had not lodged an appeal on the basis of non-determination of the application, the Committee would have refused permission for the following reasons:

1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to Policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely not to be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to Policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
3. In the absence of air quality modelling data in respect of traffic movements generating noxious fumes and particulates due to the stop start and heavy hill climb from stand still at the proposed traffic light solution and in view of the accepted over capacity, this site has not been shown to meet the air quality impact assessment requirements of the Local Plan contrary to Policy DM6 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.

The Principal Planning Officer said that, as advised previously, to pursue the first two reasons as originally agreed by the Planning Committee would be unreasonable and there was a risk of significant costs being awarded against the Council at appeal. With regard to the third reason relating to air quality, evidence had been submitted that there would be a negligible impact on air quality and this was agreed by Maidstone Borough Council Environmental Health. To pursue this reason would be unreasonable and put the Council at risk of significant costs being awarded against it at appeal.

An amendment was moved and seconded that the third proposed reason for refusal relating to air quality should be deleted as to pursue it would be unreasonable and put the Council at risk of significant costs being awarded against it at appeal. The mover and the seconder of the original motion indicated that they accepted this amendment.

During the discussion, a Member asked the Committee to consider adding the following either as an amendment to condition 6 (Pedestrian and Cycle Links) or as an additional reason for refusal:

- That all pedestrian/cycle routes to be provided should be no less than 3m wide, have no steps and be compliant with Policy SEM3.

The Principal Planning Officer advised the Committee that in the event of the application being refused there would be a discussion at the appeal regarding the conditions to be attached to any planning permission. He did not envisage any problems regarding the minimum width of the pedestrian/cycle routes but requiring the steps in the northwest corner of the site to be removed and replaced by a ramp would entail significant works involving land outside the ownership of the applicant. However the applicant was willing to provide rails on the steps to assist cyclists.

RESOLVED: That the Planning Inspectorate be informed that if the applicant had not lodged an appeal on the basis of non-determination of this application, the Committee would have refused permission for the following reasons:

1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to Policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely not to be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to Policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.

Voting: 11 – For 4 – Against 0 – Abstentions

In making this decision contrary to the recommendation of the Head of Planning and Development, Members took into account the views expressed by KCC Highways regarding the severe traffic impact on the local highway network and the worsening safety issues on Church Road.

Application 19/506182/FULL

The Principal Planning Officer introduced this application describing, inter alia, the proposed layout, character areas, street scenes, materials and landscaping having regard also to the policy considerations. By way of an update, the Principal Planning Officer advised the Committee that:

- The Affordable Housing Supplementary Planning Document had been adopted by the Council recently and the application was proposing policy compliant affordable housing in accordance with the guidance. Further representations had been received but they did not raise any new material issues.

Mr Hatcher of the Chapman Avenue Area Residents' Association (an objector) addressed the meeting by video link.

Representations had already been received from Councillor Gray of Otham Parish Council, Councillor Weeks of Downswood Parish Council, Ms Sugden (Clerk to Bearsted Parish Council) and Mr Goodban (agent for the applicant).

Councillor Spooner (Visiting Member) indicated that he had nothing further to add.

During the discussion, the Committee considered the Council's position in the event of an appeal and, specifically, conditions to be attached to any planning permission. It was suggested that the Officers should seek to ensure that all pedestrian/cycle routes are a minimum of 3m in width in accordance with Sustrans and national standards and that improvements to cycle links to the northwest and northeast should be sought.

Contrary to the recommendation of the Head of Planning and Development, it was proposed and seconded that permission be refused for the following reasons:

1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to Policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely not to be addressed by the

application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to Policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.

Prior to the vote being taken, the Principal Planning Officer advised the Committee that the proposed reasons for refusal were unreasonable and there was a risk of significant costs being awarded against the Council at any appeal. He was therefore giving a costs warning.

RESOLVED:

1. That permission be refused for the following reasons:
 1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to Policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
 2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely not to be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to Policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.
2. That in the event of an appeal, the Officers be requested to seek to include the Committee's suggestions regarding the minimum width of pedestrian/cycle routes and improvements to cycle links to the northwest and northeast when consideration is given to the conditions to be attached to any planning permission.

Voting: 11 – For 4 – Against 0 – Abstentions

In making this decision contrary to the recommendation of the Head of Planning and Development, Members took into account the views expressed by KCC Highways regarding the severe traffic impact on the local highway network and the worsening safety issues on Church Road which it was considered cannot be addressed.

201. DURATION OF MEETING

6.30 p.m. to 9.45 p.m.