

REFERENCE NOS - 19/501600/OUT & 19/506182/FULL

APPLICATION PROPOSAL

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)

19/506182/FULL: Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.

ADDRESS Land West of Church Road, Otham, Kent, ME15 8SB

WARD Downswood And
Otham

PARISH/TOWN
COUNCIL Otham &
Downswood

APPLICANT Bellway
Homes Limited
AGENT DHA Planning

1.0 **BACKGROUND**

1.01 At the Committee meeting on 25th June Members resolved to refuse (or in the case of the outline would have refused) both applications 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.

1.02 As the Planning Committee voted to continue with a decision 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.

2.0 **ADVICE**

2.01 Officers have also sought further advice from Counsel on both the relative strengths of the grounds of refusal and the associated risk of costs at appeal and Counsel's full advice is attached at **Exempt Appendix 7**. Officer's advice on these grounds is set out below.

- 2.02 Members attention is drawn to the principles relating to decision-making and the guidance on costs risk as set out at the start of Section 3.0 of the report at **Appendix 4**.

Ground 1 On Both Applications (Severe Traffic Congestion on Willington Street)

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.

- 2.03 It is advised that this ground is unreasonable, cannot be sustained at appeal, and costs are highly likely to be awarded against the Council if pursued for the following reasons.
- 2.04 As background, the applicant is proposing improvements in the form of traffic lights at the Deringwood Drive (DD) and Willington Street (WS) junction in order to mitigate traffic flows from the development on DD. The signalisation of the junction significantly reduces the potential maximum queuing length from 288 vehicles down to a maximum of 39 vehicles in the AM peak hour, which is a clear and significant improvement. Indeed, even without this development the predicted number of vehicles that will occur in 2029 would be 173 so again this illustrates the proposed mitigation will result in a significant improvement. However, Planning Committee considered the improvements would result in severe traffic congestion on WS which is based upon the objection from KCC Highways.
- 2.05 This matter is discussed at the 'Local Junctions' section of the Committee Reports and it is advised that the evidence does not support the case for a severe impact as required by the NPPF. As outlined in these reports, two arms of the proposed junction would be up to 14% over theoretical capacity if all pedestrian crossings were operated (so a worst-case scenario). If all crossing were not operated the junction would be within capacity. It is also the case that new traffic signals are unlikely to result in any significant change in traffic conditions on WS or to a degree that would be severe because extensive queueing already occurs along the WS corridor and past this junction. The applicants evidence also shows that when the WS/A20 junction (as to be improved by KCC), WS/Madginford Road junction and proposed traffic lights are modelled together, the delay that would be experienced along this part of WS would actually be reduced.
- 2.06 In addition, the cumulative traffic impacts of all the South East Maidstone strategic sites including the application site have been comprehensively modelled and no severe impacts were predicted once the mitigation measures are in place and this was examined through the Local Plan process.
- 2.07 The NPPF at paragraph 38 requires that local planning authorities should approach decisions on proposed development in a positive and creative way. The proposed junction improvements would serve to significantly lower

predicted queuing on DD, would better manage traffic and provide safer opportunities for DD traffic to exit the junction, and improve pedestrian crossing facilities. As the impact on WS is not severe the ground of refusal is not considered to represent a positive or balanced approach to the consideration of traffic mitigation on the local road network for this development.

- 2.08 In terms of consistency in decision-making, the site is allocated under policy H1(8) for up to 440 dwellings and Full Council previously voted for the policy to be adopted in the Local Plan. In doing so they have found it to be sound and the Local Plan Inspector has also found the policy to be sound through an Examination in Public. There needs to be a strong reason why the proposal is now unacceptable when it was acceptable in 2017. The grounds put forward by Planning Committee do not explain what is different in 2020 from when the Council decided the site was suitable for 440 dwellings in 2017, and it is advised that there is not a defensible reason for reaching a different decision on traffic congestion. Therefore, a ground relating to severe traffic congestion on WS would also be unreasonable on the basis of inconsistent decision-making.
- 2.09 It is advised that this potential reason for refusal is weakened by the fact that Planning Committee did not raise the impact on WS as harmful or of concern when it first formulated reasons for refusal on 28th May 2020 and this adds to the argument that there has been inconsistency in the decision-making process.
- 2.10 For these reasons it is advised that a ground relating to severe traffic congestion on WS could not be reasonably defended at appeal and costs are highly likely to be awarded against the Council for unreasonable behaviour.

Ground 2 On Both Applications (Highway Safety on Church Road to the South of the Site)

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.

- 2.11 It is advised that this ground is unreasonable, cannot be sustained at appeal, and that there is a risk of costs being awarded against the Council if this ground is pursued but that the risk is lower for the following reasons.
- 2.12 The substance of this ground remains the same as that made on 28th May but with clarification that the applicant's proposed mitigation measures are not considered to overcome the objection. Although this provides clarification it does not make the reason for refusal any more robust.
- 2.13 This ground is considered to be unreasonable for the same reasons outlined previously in the report at **Appendix 4**, namely - it is difficult to maintain a

robust objection on highway safety grounds relating to Church Road south of the site; Policy H1(8) and the site allocation, which was examined by the Local Plan Inspector, does not require the widening of any part of Church Road; and there is no sound reason for Committee to reach a different view from when Full Council agreed to adopt the site policy in 2017.

2.14 As previously advised, the risk of costs is considered to be lower for this ground because as a matter of fact Church Road is narrow in places to the south of the site so the substance of the ground is not unfounded. However, it is still advised that to pursue this ground would be unreasonable and so there is a risk of costs. As a matter of planning judgement, it is considered that an Inspector is unlikely to support the reason for refusal and will find highway safety conditions to the south of the site, as proposed to be mitigated, acceptable.

3.0 CONCLUSION

3.01 Reasons for refusal 1 on both applications is unreasonable, cannot be sustained at appeal, and is highly likely to result in significant costs awards against the Council. Reason for refusal 2 is unreasonable, cannot be sustained at appeal, and there is a risk of a significant costs award against the Council but this is considered to be lower.

3.02 It is difficult to advise the precise level of costs, however, the appeal already lodged will be carried out under the Public Inquiry procedure where legal representation and expert witnesses (planning and highways) will be required by all parties and this process is already underway. Counsel has advised that a costs award against the Council could be in the region of £95,000 which is considered to be a reasonable estimate. This excludes the Council's usual liability to bear its own costs associated with defending any appeal which is estimated at around £70,000.

3.03 For the outline application, it is recommended that Committee decides to advise PINS that the Council 'would have' approved planning permission subject to the conditions and legal agreement as set out in the committee reports.

3.04 For the full application, it is recommended that planning permission is granted for the development subject to the recommendation, conditions and legal agreement as set out in the committee report.