

**The Planning Referral Body -
Policy and Resources
Committee**

13th July 2020

Planning Applications 19/501600/OUT & 19/506182/FULL

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

Final Decision-Maker	The Planning Referral Body - Policy and Resources Committee
Lead Head of Service	Rob Jarman (Head of Planning & Development)
Lead Officer and Report Author(s)	Richard Timms (Principal Planning Officer) Patricia Narebor (Head of Legal Partnership)
Classification	<p>Public with Exempt Appendices 6 and 7</p> <p>The information contained within Appendices 6 and 7 are considered exempt under the following paragraph of part 1 of schedule 12A to the Local Government Act 1972:</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>Public Interest Test</p> <p>The Council's interest in defending a legal challenge would be compromised if this information was considered in the public domain. Therefore, the public interest in withholding the information outweighs the public interest in considering the legal guidance in public.</p>
Wards affected	Downswood And Otham

Executive Summary

This report provides advice on the Committee's role in determining the planning applications with background information and a chronology of events. The Planning Committee reports with the considerations and recommendations on the applications and officer advice on the most recent decision of the Planning Committee are attached as **Appendices**.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. For application 19/501600/OUT to determine what decision the Local Planning Authority would have made had the application not been appealed.
2. For application 19/506182/FULL to determine the application.

Timetable

<i>Meeting</i>	<i>Date</i>
Policy and Resources Committee	13 th July 2020

Planning Applications 19/501600/OUT & 19/506182/FULL

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The Four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling • Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations to proceed with decisions would enable the Council to meet its Corporate Priorities.</p>	<p>Director of Regeneration and Place</p>
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>Accepting the recommendations to proceed with decisions would enable the Council to meet its Cross Cutting Objectives.</p>	<p>Director of Regeneration and Place</p>
Risk Management	<p>The Council's Constitution outlines arrangements where planning applications can be referred to the Planning Referral body consisting of the Policy and Resources Committee where the Planning Committee, on the second occasion decides to refuse the application or impose unreasonable condition(s). The referral will be made where these cannot be sustained at appeal and which could have significant cost implications for the Council's budget.</p> <p>The referral has been made to this Committee in light of the significant cost implications.</p>	<p>Head of Mid Kent Legal Partnership</p>
Financial	<p>There is a significant risk of the Council being awarded costs against it at appeal which could amount to £95k for the appellant's costs and £70k for the Council's costs which will have implications for the resources of the Council.</p>	<p>Section 151 Officer</p>

	Other legal challenges such as judicial review may be lodged against the Council with additional costs being incurred.	
Staffing	The Council's functions were exercised appropriately by officers through use of the Scheme of Delegations and other procedures outlined in the Council's Constitution.	Head of Mid Kent Legal Partnership
Legal	<p>The role of the Policy and Resources Committee as the Planning Referral body is outlined under paragraph 2 of this report. Consideration of the planning applications by the Committee is in accordance with the requirements of the Constitution. The referral to the Committee has been made on account of the legal and financial implications, the risk of success at appeal against the Council and the risk of an award of significant legal cost at appeal and/or other legal challenges.</p> <p>The Policy and Referral body has the obligation to consider the application and can resolve to approve or refuse the applications in line with the statutory requirements.</p> <p>The Town and Country Planning Act 1990, section 70(2) requires that in dealing with the applications for planning permission the authority shall inter alia have regard to:</p> <p>(a) the provisions of the development plan, so far as material to the application,</p> <p>(b) a post-examination draft neighbourhood development plan, so far as material to the application,</p> <p>(c) any other material considerations</p>	Head of Mid Kent Legal Partnership
Privacy and Data Protection	Not applicable.	Policy and Information Team
Equalities	Not applicable.	Policy & Information Manager
Public Health	Not applicable	Public Health Officer
Crime and Disorder	Not applicable.	Head of Service or Manager
Procurement	Not applicable.	Head of Service &

		Section 151 Officer
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2. INTRODUCTION AND BACKGROUND

- 2.1 The Council's Constitution outlines the responsibility for functions in line with statutory obligations, to include the requirements of the Local Authorities (Committee System) (England) Regulations 2012. The legislation enables some functions to be delegated to committees and/or officers. The Council's Constitution enables planning applications to be dealt with by the Planning Committee, by officers and by the Planning Referral body formed from the Policy and Resources Committee.
- 2.2 Subject to a number of prescribed conditions, the planning committee functions provide that the Head of Planning and Development has delegated authority to undertake all the functions relating to planning and conservation.
- 2.3 The applications outlined in the recommendations met the prescribed conditions as such were referred to the Planning Committee.

The Role of Policy and Resources Committee as the Planning Referral body

- 2.4 The Constitution provides in various sections that the Head of Planning and Development (with the guidance of the legal officer) where they believe that the Planning Committee's reasons to justify refusal/the imposition of conditions are not sustainable, the decision of the Planning Committee will be deferred to its next meeting. If, at that meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget the Head of Planning and Development will refer the matter to the planning referrals body for consideration.
- 2.5 The Councillor/Officer Code of Conduct specifically provides that there may be occasions when the planning officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable.
- 2.6 The referral arrangement also forms part of the Policy and Resources Committee functions which provide that the Committee should determine planning applications referred to it by the Head of Planning and Development if the officer's opinion is that the decision of the Planning Committee is likely to have significant cost implications.
- 2.7 Although the Policy and Resources Committee also has overall responsibility for the budget and policy matters when discharging the planning referral function planning applications should be considered on planning merits.
- 2.8 The planning referral arrangement has not been utilised since the function was included within the remit of the Policy and Resources Committee.

- 2.9 At the Planning Committee meeting on 25th June, Committee Members resolved to refuse (or in the case of the outline would have refused) both applications for the two reasons outlined in paragraph 2.19 of this report.

Reason for referring the application to the Policy and Resources Committee as the Planning Referral body

- 2.10 The applications have been referred to the Planning Referral body because there is a significant cost implication should the Court grant permission on appeal and/or through other legal challenge.

Planning Applications Background

- 2.11 The applicant (Bellway Homes) has submitted two planning applications at the site. An outline application was submitted in March 2019 and a full application was submitted in January 2020.
- 2.12 This report provides information on both planning applications in order to avoid repetition but separate consideration and decisions will need to take place on each application.
- 2.13 The previous committee reports outline the proposed developments, representations received on the applications, the relevant planning considerations, and the assessment and recommendations. All reports are attached at the **Appendices 1-4** and it is recommended they are read in numerical order.

Chronology of Events

- 2.14 The outline application was originally reported to Planning Committee on 24th October 2019 where officers recommended approval as set out in the report at **Appendix 1**. Planning Committee deferred consideration of the application for a number of reasons which are set out in the report at **Appendix 2**.
- 2.15 The outline application was reported back to Planning Committee on 28th May 2020 along with the full application with the recommendations set out in the reports at **Appendices 2 and 3**. Contrary to the recommendation of the Head of Planning and Development, the Committee voted to refuse both applications for 3 reasons.
- 2.16 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), planning and legal officers advised the Committee that they did not consider each reason for refusal was sustainable and they could have significant cost implications before a vote was taken. Therefore, the decisions of the Planning Committee were deferred to its next meeting on 25th June.
- 2.17 The applicant lodged an appeal with the Planning Inspectorate (PINS) on 11th June for the outline application which means that the decision on this application now lies with PINS and not the Council. Any decision now made by Members on this application will be in order to inform PINS what decision the Council would have made. This remains important as it informs the

position MBC will take at the appeal. The appellant has requested a Public Inquiry procedure which officers have advised PINS they consider is appropriate. No start date has been given for the appeal yet but preliminary work is underway.

2.18 Officers sought Counsel's advice on both the relative strengths of the putative grounds of refusal and the associated risk of costs at appeal and advised Members in a report to Planning Committee on 25th June which is attached at **Appendix 4**. Members also received a copy of Counsel's full advice a copy of which is attached at **Exempt Appendix 6**.

2.19 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 two 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.

2.20 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.

2.21 Further advice has been sought from Counsel on both the relative strengths of the two grounds of refusal and the associated risk of costs at appeal and officers have provided advice on these grounds in the report at **Appendix 5**. Counsel's full advice is attached at **Exempt Appendix 7**.

3. AVAILABLE OPTIONS

3.1 OPTION 1

That the Policy and Resources Committee makes decisions on both applications. For the outline application this is important as it informs the position MBC will take at the Public Inquiry appeal. For the full application it is the statutory duty of the Council to reach a decision on the application.

3.2 **OPTION 2**

The Policy and Resources Committee does not make decisions on both applications. For the outline application this is not recommended as officers would not be clear on what position MBC should take at the Public Inquiry appeal. For the full application this is not recommended as it is the statutory duty of the Council to reach a decision on the application. Without a decision it is highly likely the applicant would appeal and so officers would not be clear on what position MBC should take at any appeal.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 That the Policy and Resources Committee makes decisions on both applications in line with Option 1.

5. RISK

5.1 The Council's Constitution outlines arrangements where planning applications can be referred to the Planning Referral body consisting of the Policy and Resources Committee where the Planning Committee, on the second occasion decides to refuse the application or impose unreasonable condition(s). The referral will be made where these cannot be sustained at appeal and which could have significant cost implications for the Council's budget.

5.2 The referral has been made to this Committee in light of the significant cost implications.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 Matters relating to consultation are detailed in the reports relating to each application.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 Communication regarding the decision of the Committee will be in accordance with the Town and Country Planning Act 1990 and related regulations. Decision notices will be issued to the applicant, published on the Council's website and statutory consultees will be notified.

8. REPORT APPENDICES

Appendix 1 19/501600/OUT Committee Report 24th October 2019

Appendix 2 19/501600/OUT Committee Report 28th May 2020

Appendix 3 19/506182/FULL Committee Report 28th May 2020

Appendix 4 19/501600 & 19/506182 Committee Report 25th June 2020

Appendix 5 Officer advice on two most recent grounds of refusal

Exempt Appendix 6 Counsel's Advice on the Planning Committee's grounds of refusal and the risk of costs at appeal – 11 June 2020

Exempt Appendix 7 Counsel's Advice on the Planning Committee's further reasons for refusal and the risk of costs at appeal – 1 July 2020.

9. BACKGROUND PAPERS

See Appendices