

## Church Road, Otham Review

### 1. Introduction

- 1.1. This review was commissioned by the Policy and Resources Committee on the 3<sup>rd</sup> of February 2021:

*"Lessons be learned from the experience of the Church Road application; and that the terms of reference and lines of enquiry be suggested and presented to the Democracy and General Purposes Committee for consideration."*

- 1.2 The scope for the review was developed to explore the concerns of Councillors with a view to any lessons and recommendations for change being applied to improve processes in the future. Care has been taken not to stray outside of the concerns relating to this case into a broad review of the planning process.
- 1.3 The key lines of enquiry and approach to this review were agreed by Democracy and General Purposes Committee as set out below:

#### **Lines of enquiry:**

- Whether Officer advice to Members was appropriate (throughout the process).
  - Whether the Local Plan site criteria were adhered to at all stages of the planning process regarding this site.
  - The understanding and consideration of the objectors concerns.
  - Should consideration have been given to applying 'Grampian conditions' in this case.
  - The significance of Statutory Consultee objections (mainly Highways) and the evidence needed to counteract this.
  - Whether ward member involvement was sufficient and any improvements that need to be made.
  - The transparency of the process.
  - And from the above the lessons learned and what measures are needed to stop a similar situation arising.
- 1.4 As part of the review several Councillors who were involved in making the decisions have been interviewed, a survey was sent to those Councillors still on the Council who were on the Planning Committee, the Planning Referrals Body and the Ward Councillor and interviews were carried out

with Legal and Planning Officers with questions based on the lines of enquiry.

- 1.5 I was also assisted during the course of the review by an independent planning expert Mr Raymond Crawford a Planning Consultant working with the Planning Advisory Service and former Head of Development Management.

## 2 **Timeline**

- The outline application was originally reported to Planning Committee on 24 October 2019 where officers recommended approval as set out in the report.
- Planning Committee deferred consideration of the application for the following reasons:

*1. That consideration of this application be deferred for further discussions to:*

- *Seek to remove the proposed car park for the Church from the scheme;*
- *Seek to (a) amend the Parameter Plan to provide a greater amount of wooded open space at the southern end of the site to protect the Ancient Woodland and create a sustainable open space and (b) to amend conditions 4 and 7 to require woodland planting to restore and protect the Ancient Woodland and enhance the landscaping around the Church;*
- *Seek to resolve the outstanding issues relating to improvements to the Willington Street/Deringwood Drive junction;*
- *Give further consideration to the impact of the development on the Spot Lane junction and possible mitigation;*
- *Investigate the potential widening of Church Road to the south of the site where this would not involve the loss of Ancient Woodland; Seek to optimise the amount of renewable energy generated on site (to avoid use of fossil fuel heating); and*
- *Seek further clarification of the surface water drainage scheme and how it can be satisfactorily accommodated within the development layout.*

*2. That the Ward Member, Downswood and Otham Parish Councils and the Chairman, Vice-Chairman and Political Group Spokespersons of the Planning Committee are to be involved in these discussions.*

- The outline application was reported back to Planning Committee on 28 May 2020 along with the full application. Contrary to the recommendation of the Head of Planning and Development, the Committee voted to refuse both applications for 3 reasons:

**Ground 1 On Both Applications (Severe Traffic Congestion & Air Quality)**

*1. The proposal will result in severe traffic congestion on local road networks (Deringwood Drive, Spot Lane, Mallards Way and Madginford Road) and the increase in traffic will adversely affect residents to the point that air pollution is beyond what is reasonable for the Council to accept contrary to Policies H1(8) criteria 9, DM1 and DM6 of the Maidstone Borough Local Plan 2017.*

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

*2. The proposal will result in worsening safety issues on Church Road to the south of the site which has not been addressed and due to the constraints of the road likely will never be able to be addressed contrary to policy DM1.*

**Ground 3 On Both Applications (Harm to the Setting of Listed Buildings)**

*Outline*

*3. The proposal will adversely affect the settings of the Grade I listed Church and other listed buildings contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 where the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

*Full*

*3. The proposal will adversely affect the settings of the Grade I listed Church and Grade II listed Church House contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 due to the visual effect of the whole development in both long and short-term views and the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

- In the view of the Head of Planning and Development, in consultation with the Legal officer present, those reasons would not be sustainable at appeal and would more likely than not cause significant costs to be incurred. Therefore, in accordance with the constitution, the decisions of the Planning Committee were deferred to its next meeting on 25 June 2020.
- The applicant lodged an appeal for non-determination with the Planning Inspectorate (PINS) on 11 June 2020 for the outline application which means that the decision on the application sat with PINS and not the Council. Any decision made by Members on this application was now to inform PINS what decision the Council would have made.

- At the Committee meeting on 25 June 2020 Members resolved to refuse (or in the case of the outline indicate it 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.***
- 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 as the Planning Referral Body for determination.
- The Policy and Resources Committee convened as the Planning Referral Body on 13 July 2020 and resolved that permission be refused for the same reasons given at the Planning Committee contrary to the recommendation of the Head of Planning and Development.
- The Inquiry was held by the Planning Inspectorate on 23-27 November 2020 and 30 November 2020. With the Planning Appeal decisions made on 7 January 2021. The Inspector found that:
  - Whilst there would be an impact on congestion that this would not constitute a conflict with Policy DM21 of the Local Plan. Furthermore, the potential congestion that would be caused to Willington Street would not be of an extent that can be considered to constitute a severe residual impact in the context of paragraph 109 of the NPPF.
  - That the proposed developments would not demonstrably cause worsening safety issues on Church Road to the south of the site. Consequently, the proposals would not have a material detrimental effect on the safe and efficient operation of the highway network in the vicinity of the appeal site. As such there would be no conflict with the relevant policies contained within the Local Plan.

The Planning Inspector made the following decisions:

Appeal A

1. The appeal is allowed, and outline planning permission is granted for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping, and open space. Access to be considered in detail and all other matters reserved for future consideration at Land West of Church Road, Otham, Kent ME15 8SB in accordance with the terms of the application, Ref 19/501600/OUT, dated 27 March 2019, subject to the conditions set out in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping at Land West of Church Road, Otham, Kent ME15 8SB in accordance with the terms of the application, Ref 19/506182/FULL dated 6 December 2019, subject to the conditions set out in the attached schedule.

Application for costs

3. At the Inquiry an application for costs was made by Bellway Homes Limited against Maidstone Borough Council in relation to both appeals. That application is the subject of a separate Decision.
- On 7 January 2021 the cost decision was issued allowing for a partial award of costs against the Council.
  - Policy and Resources Committee on 20 January 2021 agreed a motion for a legal opinion to be obtained regarding whether there was a prospect of the Council successfully challenging the Inspector's decision concerning the two planning appeals relating to land west of Church Road, Otham in the High Court.
  - On 3 February 2021 the Policy and Resources Committee met and considered that advice and it was agreed that legal proceedings against the inspector's decisions would not be pursued. The Committee did request a review of the whole process to identify any lessons for the future, resulting in this report.

### **3. Findings based on Key Lines of Enquiry**

#### **Whether Officer advice to Members was appropriate (throughout the process)**

- 3.1 The Member survey and interviews carried out with Councillors has identified that there are mixed views on the role of planning officers with some councillors identifying that planning officers should have given more weight to the objections raised by the highways authority and done more to support the committee in its objections and others stating that the advice was professional and appropriate throughout.
- 3.2 There appears to be some confusion as to the role of planning officers in assisting the Committee when formulating grounds for refusal – which go against their own recommendation and professional judgement. Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, the RTPI code of conduct is clear in respect of this within the section on independent professional judgement that:
- "11. Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding.*
- 12. Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so."*
- 3.3 The Planning Officer was clear on how the highways objections had been considered and set this out verbally and in his reports to the planning committee, see the later section on statutory objections.
- 3.4 The Head of Mid Kent Legal Services Partnership identified that the guidance to Members at committee meetings was that refusal would expose the Council to a high likelihood of legal challenge because the grounds to be relied upon were not as robust as the grounds to be relied upon for the application to be approved. The position of Officers is to ensure that the best interests of the Council are maintained and to ensure that the Council discharges its statutory duties appropriately and lawfully. The Planning Committee indicated that the application be refused based on particular grounds, in particular the highway objections. To protect the Council, the Planning and Legal Officers advised the Planning Committee and assisted with the formulation of grounds of refusal to avoid the Council being exposed to significant risk.
- 3.5 Officers in this case have given correct advice which was later supported by two different external Counsel's advice and ultimately proved to be correct as evidenced by the decision by the Planning Inspector. From the evidence available I believe they acted in accordance with their codes and statutory

obligations. The opinions expressed by Councillors demonstrate the challenge of the Planning Officer role when dealing with a contentious site with strong public opposition and objections from the Highways Authority that as found at appeal lacked the evidence to be substantiated.

Recommendation

- a) That external planning training on the officer role and role of statutory consultees is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme

**Whether the Local Plan site criteria were adhered to at all stages of the planning process regarding this site**

- 3.6 Church Road, Otham is one of five sites set out in Strategic Policy 3 of the Local Plan for a south east strategic development location. The specific policy H1(8) allocates the site for 440 homes and requires inter alia strategic highway improvements to the local road network (notably Sutton Road and Willington Street) as well as site specific improvements. Allocation of this site was considered by Maidstone Borough Council through the Local Plan making process including being fully considered at the Examination in public; although not supported by all Councillors it was formally adopted as a site allocation by this council through a decision of Full Council and forms part of the Local Plan adopted in 2017.
- 3.7 The Inspector's decision is clear that the schemes are not in contravention of the Local Plan as taken from the appeal decision report:

"Whilst there would be an impact on congestion that this would not constitute a conflict with Policy DM21 of the Local Plan."

"I do not consider that the proposed developments would demonstrably cause worsening safety issues on Church Road to the south of the site to the extent that both these appeals should be dismissed. In light of this conclusion, I do not consider that there would be conflict with Policy DM1 of the Local Plan."
- 3.8 The reports to the Planning Committee for outline permission and the full application included detail on compliance with the Local Plan.
- 3.9 Feedback from Councillors in interviews and in response to the survey indicated that there appears to be doubt in some Members' minds as to whether this site should ever have been included in the local plan and the implications of that inclusion.
- 3.10 There were also some concerns expressed by Councillors at Committee meetings that the Local Plan was out of date. This also came out in the survey responses:

*"As explained above the Officers appeared to be too committed to decisions taken in the Local Plan which were now five years old"*

The Inspector's appeal decision report at para 16 identifies that:

"In adopting the Plan that provided for the allocation of the appeal site, the Council were aware of the impact of development on the local highway network. No substantive evidence was provided in the Inquiry to identify what is different in terms of envisaged traffic flows in 2020 from when the Council decided that the site was suitable for up to 440 dwellings in 2017."

And at para 28:

"The main parties agree that the Council can demonstrate a 5 year supply of land for housing.<sup>1</sup> This being the case, none of the relevant policies in the recently adopted development plan can be considered as being out-of-date. Paragraph 11 (d) of the NPPF is therefore not engaged."

The Local Plan was adopted in 2017, it is a forward looking document setting out plans for the Borough up to 2031. As the Inspector points out, the policies could not be regarded as out of date at the time of the decision. The plan would only become out of date if there was a significant change in national policy set out in the National Planning Policy Framework or as a new Local Plan neared adoption.

- 3.11 Following the adoption of the last Local Plan and prior to the current Local Plan review starting, a review was undertaken with Councillors on the lessons learnt. These lessons informed the Local Plan Review and has resulted in a different spatial strategy. It is apparent from the member responses and the dialogue at committee meetings further training and involvement of all Councillors in the local plan process would be beneficial.

#### Recommendations

- b) The Member development programme include training on the Local Plan and its significance.
- c) Councillors be encouraged to attend meetings of the SPI Committee on the Local Plan as well as all briefings on the plan and the planning policy team include all political groups in briefings.

### **The understanding and consideration of the objectors' concerns**

- 3.12 At each stage of committee consideration objectors' concerns were reported and considered as evidenced in the reports to Planning Committee. On 24 October 2019 objections were included in the report from:



- Statutory consultees
- Otham Parish Council
- Downswood Parish Council
- Bearsted Parish Council
- Local residents (399 – representations)
- Councillors - the ward councillor Cllr Newton and Councillor McKay.

The reports submitted to Planning Committee following the deferral from October on 28 May 2020 included further objections from a range of local representatives including parish councils, resident's associations, county councillors, and residents, representations were also read out from various objectors and visiting members also gave their representations.

3.13 It was identified from interviews with Councillors that training for all Councillors not just planning committee members would aid those wishing to object to planning applications and promote a greater understanding of the process for how objectors' concerns are considered. The Planning Officer identified that a large volume of objections does not result in greater weight given and objections are considered based on material planning considerations.

*"A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission).*

*The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations."*<sup>1</sup>

3.14 The planning reports and committee meetings demonstrate that objections were considered. Most Councillors who responded to this matter via a survey or interview confirmed they felt they had been fully considered.

3.15 In this case the role of the Highways Authority and their objection, this has greatly affected the decisions made and this is explored later in the report.

3.16 When considering objections, the former Planning Committee Chairman identified that it would be beneficial if more members beyond those on the planning committee had planning training particularly to aid them in their ward councillor role. It is evident that the Council should provide more information to the public and councillors on the planning process and in particular the consideration and weight given to objections.

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<sup>1</sup> <https://www.gov.uk/guidance/determining-a-planning-application#how-decisions-on-applications>

Recommendations:

- d) More information be provided to the public on the planning process and how objections are considered starting with additional information on the Council's website.
- e) An annual training event be held as part of the Councillor training programme run by an external agency such as PAS on the planning process, objections and how they are weighted and considered to aid councillors in ward work.

**Should consideration have been given to applying 'Grampian conditions' in this case.**

*"This expression derives from the decision in Grampian Regional Council v City of Aberdeen (1984) and in essence it provides that a condition precluding the implementation of development permitted by a planning permission until some step has been taken is valid."<sup>2</sup>*

3.17 The argument for Grampian conditions is closely linked to the reasons for refusal and was suggested to overcome the concerns raised by the Highways Authority. The Planning Officer advised that in this case Councillors may have been seeking to put in place conditions relating to highways improvements that must be in place prior to development commencing, however, Grampian conditions must be reasonable. In the case of this site the highways improvements required were not the responsibility of the developer or in their control so a Grampian condition would not have been reasonable.

3.18 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

3.19 In this case it's a question of what is the absolute minimum that is required that is "relevant to the development to be permitted" and would therefore be considered reasonable. In this instance the Inspector was of the view that the improvements that were included were sufficient to address the issues resulting from the development. A Grampian condition cannot be used to address pre-existing situations or to deal with possible future developments. The Community Infrastructure Levy enables authorities to

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<sup>2</sup> <https://www.planningofficers.org.uk/uploads/news/UseOfGrampianConditions.pdf>

properly develop infrastructure in a planned way, rather than relying on piecemeal site by site works.

3.20 While the Inspector's conclusion was that proposed improvements were sufficient it should be noted that some junction improvements related to the appeal have been made the subject of a Grampian condition.

3.21 I do not believe that the type of Grampian conditions potentially sought in relation to highways improvements would have been reasonable in this case as they are outside of the developers control and include other strategic site improvements which sits with the Highways Authority to deliver.

**The significance of Statutory Consultee objections (mainly Highways) and the evidence needed to counteract this.**

3.22 Councillors identified that they believe planning officers should have given more weight to the Highways Authority's objection see quote from councillor survey below:

*"There was insufficient support from our Officers when it became clear that Members wanted to accept the advice of KCC (Highways) and refuse the application on solely highways grounds rather than accept their advice and grant permission contrary to the advice of KCC (Highways). Our Officers should have been prepared to provide what I would call 'alternative advice' to Members on how they could proceed to refuse the application on highway grounds as recommended by KCC (Highways)."*

3.23 The Planning Officer has identified that they give considerable weight to objections raised by statutory consultees and to depart from that objection would require compelling reasons. They have demonstrated this in their reports to committee. The first report to committee outlined the objections from the Highways authority (KCC) and his professional opinion that whilst objections had been raised these were not supported:

*"Essentially, the Highways Authority does not consider that the junction and public transport improvements outlined in the Local Plan, and to which monies have been secured, are sufficient to mitigate the impact of the development. This is the same position that was taken under the previous planning applications and at the Local Plan Inquiry by the Highways Authority. So this argument has been tested through planning applications and importantly through an Examination in Public... the mitigation measures are considered sound and are within the adopted Local Plan. On this basis, it is considered that the Highway Authorities objection is not reasonable grounds to refuse planning permission and could not be defended at appeal."*

3.24 This advice was correct as independently corroborated and confirmed by the Inspector's decisions.

3.25 In the interviews with Councillors and Officers a view has been expressed that it is unusual for the Highways Authority to raise objections and this added additional weight to the objections for Councillors. From reviewing the webcast for planning committee meetings, it is clear some Councillors present identified that as a statutory consultee the objections from KCC must be upheld going against the officer advice. The Planning Officer in his introduction on the outline planning application report in reference to the reasons for deferral stated: "I would reiterate refusal on grounds of congestion on the A229 and A274 and Willington street would be unreasonable and inconsistent as the impact on the south east local plan Maidstone sites including this site has recently been deemed acceptable by the council subject to monies towards mitigation under other planning applications where we assessed cumulative impacts and importantly also by the local planning inspector." Then in response to a question from a planning committee member on overriding a statutory consultee's objection, the officer responded: "in terms of statutory consultees we must give their objections or their views considerable weight but that doesn't mean you can't come to a different view as long as you give clear reasons for doing that." And further "our view is that with a roughly 14% over capacity junction, that is not severe impact and I think that the main point is this goes back to the south east sites, where we accepted, planning committee accepted, officers accepted less than two years ago that sites were granted along the Sutton road within those traffic assessments this site was included so we accepted the cumulative impact of all those sites on the A274, A229 and Willington street was acceptable so we're advising it would be unreasonable now to reach a different view. Councillor Eves referred to that being a number of years ago, well the traffic assessments actually look forward, they go up to 2029 in this application, so it does go into the future, we're basically saying we do not consider it to be severe it is the same position we have consistently taken, and we think there is sufficient grounds for that and to disagree with Highways as the statutory consultee in this case."

3.26 The highways objections eventually formed the basis of the decisions for refusal that were considered at Appeal. The Planning Committee Chairman identified that in his opinion the objection from KCC was worth testing as new local issues were raised. However, KCC failed to provide the local evidence needed to substantiate their objections as evidenced in the report and decision of the planning inspector. The Council should reflect on the position it was placed in

*"The appeal schemes do not propose anything different to the form of development required by Policy H1(8) of the Local Plan in respect of the location, quantum or the position of the access. Other than the effect on traffic flows that was predicted to occur as a consequence of the development of the SEMSDL sites, no evidence was presented by the Council (i.e. KCC) to suggest that there has been a fundamental change in the traffic data or highway conditions in the Borough since the Local Plan was adopted only three years ago when the traffic implications of the SEMSDL for the plan period to 2031 were comprehensively assessed."*

Revised highways modelling was provided for the appeals, however Kent County Council did not quantify or identify a threshold at which impact was severe.

3.27 In considering the lessons learnt from this aspect of the case it is worth referencing the RTPI code again. I have reached the conclusion that there needs to be training on this aspect of the code and also the role of statutory consultees:

*“11. Members must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding.*

*12. Members must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so.”*

Recommendation

- a) That external planning training on the officer role and role of statutory consultees is provided to Councillors appointed to Planning Committee and the Planning Referral body as part of the annual Councillor development programme

**Whether ward member involvement was sufficient and any improvements that need to be made.**

3.28 Having considered the evidence and spoken to planning officers the usual processes were followed in respect of this. The ward member has taken every opportunity available to present and make known their concerns with the application, including at the appeal stage. Having been contacted by Cllr Newton as part of this review he continues to express concerns particularly about the heritage aspects of the site.

3.29 In the planning application process the roles of Ward Councillors and Committee Members are quite distinct. A Ward Member is free to advocate on behalf of the views of their residents, whatever they may be. When determining an application, Committee Members are bound by planning law, and can only consider material planning considerations, and adopted policy. The same applies to a Planning Inspector at appeal. In this instance it seems to me that Committee Members and the Inspector considered the representations made by the Ward Member as far as they were able.

**The Transparency of the Process**

*"Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and land and property*

*interests, particularly the financial value of landholdings, and the quality of their settings. Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group, or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.”<sup>3</sup>*

3.30 I cannot identify any inappropriate conduct in respect of transparency. Increased training and public information about planning would help promote transparency in a very technical legislatively bound process. The Planning Advisory Service have developed advice for Councillors and Officers making planning decisions which is quoted above, it would be beneficial to include this in the training given to members and a link in guidance for new councillors.

#### **4. Lessons Learnt**

##### **Statutory Objectors**

4.1 The views submitted by the Highways Authority were accepted despite officers’ advice that the conclusions reached by the Highways authority were unreasonable. Several factors influenced this including the weight of public objection and the rare instances where the Highways Authority object on planning applications. It should also be noted that the risk and cost of agreeing with the objections sat with Maidstone Borough Council not Kent County Council.

##### **Planning Officer and Planning Committee Roles**

4.2 During this process there were misplaced expectations in relation to the Planning Officer’s role and that of the Committee when making planning decisions that are against the recommended action.

4.3 Greater understanding of the planning system for all councillors would be beneficial.

##### **Local Plan**

4.4 From reviewing the evidence, meetings, and the comments on the survey there was a lack of understanding of the Local Plan, this can be seen in the assertion that the traffic modelling must be out of date as it was completed for the Local Plan agreed in 2017. Coupled with the lack of understanding is a lack of involvement by all Councillors in the development of the Local Plan.

*“It is vital that sufficient care is taken with selecting sites for the Local plan, that officers work as closely and as openly as possible with members, KCC and other consultees including parishes, to make sure*

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<sup>3</sup> <https://local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

*everyone understands their obligations and legal requirements”*

*“Members have to fully understand and accept the legal status of the local plan: it is the basis upon which we consider applications. You can't just change the goal posts after a couple of years. If a site is in the Plan, that is it, there is no going back. This is fundamental to planning training and is the simple principle that was ignored in consideration of this application.”*

-As taken from the Member survey

### **Quality of Advice and Support**

- 4.5 Events have shown that the officer and external counsel advice was sound in relation to this decision. For the officers concerned this involved giving professional advice which contradicted the wishes of some Councillors and the importance of speaking truth to power should not be underestimated.
- 4.6 It is also worth referencing again the requirement for both Planning and Legal Officers' to comply with codes of practice and professional standards. This case led to some behaviours that directly challenged those officers outside of the standards expected. The constitution in Part 4.3 Protocol on Councillor/Officer Relationships sets out within the Officer role at 4.4 “officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs and managing other officers.” Furthermore at 4.9 “As well as following the officers' code of conduct at part 4.6 of the constitution, an officer may also be subject to the rules and codes of conduct of her/her own particular profession.” The Council also has in place a code of conduct for Councillors which states a number of general obligations expected of Councillors in relation to behaviour when in office.
- 4.7 In summary the Councillor / Officer Protocol requires officers to provide technical guidance to Members and for Members to make decisions on an informed basis to avoid compromising the Council's position. On occasions the technical/legal guidance may be contrary to the councillor desired outcome. However, the Council is obliged to comply with legal requirements, failing which significant costs will be incurred in responding to Legal challenges.

## **5 Conclusions**

- 5.1 The overriding conclusion I have drawn is that there is clear scope for a more comprehensive programme of training for all Councillors on matters relating to planning and planning applications. This extends to include matters of individual roles and responsibilities, as well as the statutory and regulatory frameworks within which the system operates.
- 5.2 Councillor and public engagement at all stages of the planning process could potentially be strengthened, and more information made available on the Council website, particularly in matters which are high-profile or locally contentious.

- 5.3 Officers, and the role they play in advising Committee, are regulated by their codes of conduct. They have a very limited ability to 'assist' Councillors in formulating reasons which go against their professional judgment or opinion.
- 5.4 The recommendations proposed in the main body of the report should assist in providing a greater understanding of the planning system and in how applications should be considered.