

**PLANNING COMMITTEE
13 NOVEMBER 2020**

APPEAL - APPLICATION 17/01359/MOUT - OUTLINE FOR THE ERECTION OF 60 DWELLINGS AND CONSTRUCTION OF NEW VEHICULAR ACCESS ONTO HIGHWAY TO THE WEST OF THE SITE - LAND AND BUILDINGS AT NGR 302469 114078, HIGHER TOWN, SAMPFORD PEVERELL (1-57-30), HIGHER TOWN, SAMPFORD PEVERELL

Cabinet Member(s): Cllr Richard Chesterton, Cabinet Member for Planning and Economic Regeneration

Responsible Officer: Kathryn Tebbey, Head of Legal (Monitoring Officer)

Reason for Report and Recommendations: to provide an update and advice to Members with regard to the forthcoming appeal inquiry against refusal of planning permission and to seek further instructions.

RECOMMENDATION: that Members of the Planning Committee –

- (a) consider the summary background and update in this report and the advice set out in the confidential (exempt) appendix 1; and**
- (b) advise officers, in light of that advice, how they wish to proceed**

Financial Implications: These are referred to in Appendix 1.

Legal Implications: These are referred to in Appendix 1.

Risk Assessment: The risks are referred to in Appendix 1.

Equality Impact Assessment: None directly arising.

Relationship to Corporate Plan: Homes: facilitating housing growth and working with developers to ensure that sites in the Local Plan come forward; housing to meet the needs of our population; delivery 360 homes per annum. Environment: protecting the natural environment; ensuring that special landscape assets are considered during the planning process; development which works to enhance the character of the local planning process.

Impact on Climate Change: None directly arising from this report, although the principle of sustainable development is embedded in national and local planning policy.

1.0 Introduction

- 1.1 On 31 July 2019, the Planning Committee adopted the reasons of the previous committee and refused the application. The reasons for refusal were:

Reason 1

The proposed outline application for 60 dwellings on this prominent site will have a significant adverse visual impact on the surrounding landscape character and appearance.

Reason 2

The site is not considered to be a sustainable location for this scale of housing development due to poor pedestrian access. 60 dwellings would be a significant increase in the population of the village, which has little employment and which would result in an unsustainable pattern of car-based commuting.

Reason 3

The introduction of the substandard pedestrian footway at Sampford Peverell and the associated crossing points are considered to be unacceptable and unsafe. The introduction of 60 dwellings on this site will create a substantial increase in the numbers of cars which will need to access Sampford Peverell.

- 1.2 Cllrs Warren, Radford and Mrs Collis were appointed by the Planning Committee to provide support during the course of an appeal – in line with convention, as the decision had been made contrary to officer advice.
- 1.3 In October 2019, the Planning Committee reviewed its position in light of advice and the submitted appeal. It decided not to pursue/defend reason for refusal 2. On 15 July 2020, a further update was provided to the Planning Committee, reflecting on the receipt of the Local Plan Inspector's report and the implications for the appeal in the event that the Local Plan was adopted.
- 1.4 As has been stated previously, in many appeals, particularly those going to public inquiry, there is always a moment when the local planning authority (whether officers for a delegated decision or members for a committee decision) should take the opportunity to reflect, review and confirm its position in light of any change of circumstance or events. This is both good practice and reasonable behaviour.

2.0 Update on events since July 2020 (last report)

- 2.1 On 19 July 2020, the Council adopted the Local Plan Review 2013-2033 (Local Plan). In doing so, it also changed the map for Policy SP2. This resulted in that part of the allocated site set aside for Green Infrastructure being placed outside the settlement limit.
- 2.2 The Council received a pre-action letter on 13 August 2020 setting out the grounds of challenge to the inclusion of Policy SP2 in the adopted Local Plan. A robust and detailed reply was sent and subsequently it was confirmed that the challenge was not going to be made. The period for such challenge then expired in mid-September. There is no underlying doubt, therefore, about the Local Plan and its validity.
- 2.3 The public inquiry had originally been scheduled for April 2020. With lockdown, that had to be cancelled – the Planning Inspectorate had to work up a plan to conduct appeals, including inquiries, virtually and has been catching up since. The re-scheduled virtual public inquiry was due to be conducted by an inspector (the second inspector appointed) in mid-August 2020. Due to illness, that second inspector had to step down the week before the scheduled opening of the Inquiry and a third inspector was appointed. However, that inspector was not able to sit on all of the scheduled dates, with the consequence that there would have been a lengthy gap between opening, sitting for a couple of days and then re-convening later in the year. Joint representations were made that this was not a satisfactory way of proceeding.
- 2.4 The Planning Inspectorate imposed a new inquiry start date of 1 December 2020. It is currently scheduled to last 8 days. Appointed counsel, Melissa Murphy, will now be assisted by Caroline Daly, due to a prior scheduled court appearance which overlaps with the start of the inquiry.

3.0 The Planning Committee to confirm instructions

- 3.1 There is a matter on which all those involved in the Council's case (Counsel, consultants, members and officers) now require further instructions from the Planning Committee. This is set out in the exempt appendix 1. The information in that appendix (and the annex to it) is considered to be exempt for the following reasons:

Paragraph 3 (financial affairs of the Council) and Paragraph 5 (legal professional privilege) of Schedule 12A to the Local Government Act 1972

- 3.2 If Members wish to discuss the contents of appendix 1, they are invited to move into Part 2 in order to do so. Further information about this is given in Appendix 1. Members need to be satisfied that it is in the public interest. Accordingly, the usual proposal paragraph on agendas is as follows:

Members to consider whether to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Planning Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

Members then need to proceed to vote on the following recommendation:

Recommended that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 5, information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Contact for more Information: Kathryn Tebbey, Head of Legal (Monitoring Officer) ktebbey@middevon.gov.uk

Circulation of the Report: Cabinet Member – Cllr Richard Chesterton, Leadership Team – but circulated shortly before publication due to urgency

List of Background Papers:

Part 2 report – Planning Committee 15 July 2020

Part 2 report - Planning Committee 23 October 2019

Implications Report to meeting on 31 July 2019

Committee Report to meeting on 11 July 2018