

# APPENDIX M

## WAVERLEY BOROUGH COUNCIL

### EXECUTIVE – 29 NOVEMBER 2011

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#### Title:

**5-21 WEYHILL, HASLEMERE – PLANNING APPEAL DECISION AND COSTS APPLICATION**

**[Portfolio Holder: Cllr Adam Taylor-Smith]**

**[Wards Affected: Haslemere Critchmere and Shottermill]**

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#### Summary and purpose:

This report details the decision of the Planning Inspector regarding the appeal against Waverley's refusal of planning application WA/2010/1568 at 5-21 Weyhill, Haslemere; and in particular the decision to award partial costs against the Council. Approval of a Supplementary Estimate is sought together with authority to make payment of the costs determined.

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#### How this report relates to the Council's Corporate Priorities:

The decision of the Planning Inspector in awarding planning permission was contrary to the view of Waverley's Southern Area Planning Committee and therefore may be regarded as detrimental to the local area. The award of partial costs against the Council will result in less money being available to deliver the Council's Corporate Priorities.

#### Equality and Diversity Implications:

This report does not have any equality and diversity implications.

#### Resource/Value for Money implications:

The decision of the Inspector to award partial costs against the Council clearly has a financial implication as detailed in the report. There is no specific budget provision to cover these costs and therefore it is necessary to seek approval of a supplementary estimate.

#### Legal Implications:

The Council is required to comply with the decision of the Inspector including the partial award of costs.

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## Introduction

### WA/2010/1568

**Erection of 25 one bedroom apartments, 14 two bedroom apartments (including affordable housing) and 683sqm of B1 (Office) commercial floorspace with associated access, basement parking, cycle stores, amenity space and landscaping.**

1. The planning application for the above development was determined by the Area Planning Committee (Southern) in December 2010. The Officer recommendation was that permission be granted subject to the receipt of suitable, completed legal agreements relating to the Planning Infrastructure Contribution and Affordable Housing by 11/12/2010 and subject to the consideration of the comments of the Council's financial advisors, the Tree and Landscape Officer and the Housing Strategy and Enabling Manager. The Committee, however, disagreed and resolved to refuse permission for the following reasons:-
  1. Reason  
The proposal would by virtue of the increase in traffic movements and inadequate servicing arrangements be detrimental to neighbourhood amenity and therefore harmful to the amenities of the area and contrary to Policies D1, D4, M2 and M17 of the Waverley Borough Local Plan 2002.
  2. Reason  
The proposal would by virtue of its scale, massing, height and form be detrimental to the character of the area and therefore harmful to the amenities of the area and contrary to Policies D1 and D4 of the Waverley Borough Local Plan 2002.
  3. Reason  
The development does not make adequate provision for affordable housing in accordance with Government Guidance and Policy H5 of the Waverley Borough Local Plan 2002.
  4. Reason  
No adequate provision is included in the proposals for the satisfactory parking of vehicles clear of the highway and the proposal is therefore contrary to Policy M14 of the Waverley Borough Local Plan 2002.
  5. Reason  
The applicant has failed to comply with the Waverley Borough Council Infrastructure Contribution SPD (April 2008) and therefore the proposal conflicts with Policies D13 and D14 of the Waverley Borough Council Local Plan 2002.
2. The Applicants lodged an appeal against this decision that was heard at a hearing on 17 and 18 May 2011. The Inspector in his decision letter dated 20 July 2011 allowed the appeal and granted planning permission.

3. At the hearing a costs application was made by the appellants. The Inspector granted the application limited to those costs incurred in respect of reasons for refusal 1,2 and 4 (except for reason 2 – form).

### **Costs application**

4. The application for costs was made on the basis that:
  - a) The Council failed to show reasonable grounds why the professional advice of its officers was rejected.
  - b) The Council has failed to provide evidence to show clearly why the development cannot be permitted.
  - c) The Council has introduced fresh reasons for refusal at a late stage in the proceedings.
  - d) The Appellant has incurred significant costs as a result.
5. In amplification, the Appellants argued that the Council did not give proper evidence to justify its position that the development was too big; they argued that there was unreasonable delay and cost in respect of handling the s106 undertaking; further, that sufficient parking spaces were provided with the development.

### **Planning Authority Response**

6. In response, the Council accepted the Appellant's traffic and flow data and therefore did not need to provide other data. These data in the Council's view caused harm. The Council maintained that the assessment of visual amenity is qualitative and included in its evidence.
7. The Council also defended its position on relation to a lack of affordable housing and the inclusion of a claw back clause, should the development become more viable. The Council maintained that it was necessary to include the lack of infrastructure contributions as a reason for refusal as no completed s106 had been submitted.
8. The Council also defended the claim that it had introduced a new reason for refusal. The need to negotiate a claw back clause on the legal agreement would have taken place outside of the hearing and did not include unnecessary costs.
9. In summary, the Council said it had made a local decision which had taken account of local traffic conditions and the character of the area and was based on the local knowledge of Councillors.

## **Inspector's Conclusion**

10. The Inspector said that the Council had not behaved unreasonably in relation to its decision on affordable housing, or the proposed inclusion of a claw back mechanism.
11. The Inspector found that the Council failed to provide adequate evidence to assess the extent of any harm if parking space shortfall is diverted to local car parks or to street parking. In addition, the Council did not adequately explain how the building would be unacceptable in terms of size and prominence.
12. The formal decision of the Inspector was:

“In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Waverley Borough Council shall pay to Brettenwood Investment (Holdings) Ltd, the costs of the appeal proceedings limited to those costs incurred in respect of reasons for refusal 1,2 and 4 (except for reason 2 – form), such costs to be assessed in the Supreme Court Costs Office is not agreed.”

## **The Amount of Costs**

13. The appellants have submitted a claim for costs in the sum of £49,626.44. This figure has now been scrutinised and a reduced figure of £34,750.00 agreed in settlement by the Independent Costs Assessment Service.

## **Conclusion**

14. Waverley does not budget for potential award of costs against the Council. It will therefore be necessary for a supplementary estimate to be approved to cover this expenditure. In the past the Council has regarded such expenditure as an appropriate use of balances. However, as shown in the Budget Monitoring Reports, the balance of the Inflation Provision remaining is currently £136,000. It is therefore suggested that in this case the supplementary estimate is covered by an allocation of £35,000 from this provision, pending further savings being identified through the monthly Budget Monitoring reports. This should avoid use of Balances.

## **Recommendation**

The Executive is requested to recommend to Council that:

1. a Supplementary Estimate of £35,000 be approved to cover the award of costs against the Council arising from Planning Application WA/2010/1568, with the cost being met initially by an allocation from the Inflation Provision within the 2011/12 Budget; and

2. the Chief Executive be authorised to make final settlement of the amount due on behalf of the Council.

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### Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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