

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 11 JULY 2017

Title:

**SPRINGBOK PLANNING APPLICATION, PUBLIC INQUIRY – REQUEST FOR A
SUPPLEMENTARY ESTIMATE**

[Portfolio Holder: Cllr Chris Storey]

[Wards Affected: Alfold, Cranleigh Rural and Ellens Green]

Summary and purpose:

On 30 June 2016, the Council, under delegated powers, refused the planning application WA/2015/1381, which related to land at Springbok Estate, Sachel Court Drive, Alfold proposing the construction of up to 400 homes, shop, café, 60 unit independent living care facility and 20 associated bungalows.

The Council has since received an appeal against the refusal of this application, which is to be heard by way of Local Inquiry.

The purpose of this report is, therefore, to request approval for a Supplementary Estimate of £100,000 to pay for legal representation, including Counsel and planning and / or technical consultants, required in order to defend the Council's reasons for refusal.

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

Community Wellbeing

The Council's priority is to secure the wellbeing of its communities through the provision of affordable housing, leisure and recreational facilities, support for older people and vulnerable families as well as support for local businesses.

Environment

Through the planning service, the Council can influence and support the aspirations to protect the character of its towns and villages.

Resource/Value for Money Implications:

The cost to the Council in defending its position to the Secretary of State is expected to be up to £100,000. There is no budget provision for this work and so a supplementary estimate of up to £100,000 is requested.

The cost of defending the Council's position is not recoverable, unless the appellants were to act unreasonably in their approach and actions during the appeal so as to warrant unreasonable costs being incurred by the Council.

In accordance with National Planning Practice Guidance, in refusing an application, a Council must be willing to justify and defend its reasons for refusal in the event a decision is appealed. The Council is, therefore, expected to robustly defend its reasons for refusal at appeal.

The Council would be at risk of costs being awarded against it in the event that it either decided not to defend its decision or failed to provide appropriate evidence to justify the reasons for refusal. This is one of a number of matters that can be considered unreasonable behaviour. The reason being is that this is likely to result in significant wasted cost by an appellant. Inspectors residing over an appeal can, as a result, use their legal powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application for an award of costs has been made by another party. Notwithstanding cost, this could also have a significant detrimental impact upon the reputation of the Council.

So as to avoid the above situation arising, it is important that the Council puts forward its strongest possible case to defend the reasons for refusal and to avoid costs being awarded against the Council.

Legal Implications:

An Inquiry is open to the public and provides for the investigation into, and formal testing of, evidence, usually through the questioning (“cross examination) of expert and other witnesses.. The refused application for planning permission will be scrutinised before an independent Inspector at a Public Inquiry, who will then determine the application.

A bespoke timetable for the Inquiry has been agreed by all parties, and failure to keep to this timetable which has caused another party unnecessary or wasted expense, could result in a claim for costs against the party being upheld.

Considering the scale and importance of the site, experienced counsel and consultants are therefore recommended.

Introduction/Background

1. On 30 June 2016, officers refused the planning application WA/2015/1381, which related to land at Springbok Estate, Sachel Court Drive, Alfold. The applications comprised a part full/ part outline application. The full application sought permission for the erection of a building to provide a 60 unit independent living care facility with 20 associated bungalows following demolition of part of existing care home; erection of 125 dwellings including a shop and café; all with community facilities including sports pitches, public open space and associated works; the provision of 2 new accesses, one on the Dunsfold Road and one on the Loxwood Road. Outline application for the erection of up to 275 dwellings, care home and primary school with associated open space.
2. On 27 September 2016, the Council received notification of the appeal and confirmation was provided by the Planning Inspectorate that the appeal would be heard by way of Local Inquiry.

3. It is acknowledged that this report is being presented to Members a significant amount of time after receipt of the appeal. It was initially proposed that funding for this appeal would be taken from the agreed appeal budget. However, in light of the length of the Inquiry, coupled with the legal costs and the need for two expert planning witnesses, there is not sufficient budget to accommodate this. The agreed budget is also required to fund other public Inquiries that are to be considered throughout the year. As such, Members' agreement to Supplementary Estimate is sought.
4. The application was refused for 11 reasons, as set out in the decision notice dated 30 June 2016. The applicants are appealing against these reasons, although some of the decisions may not be pursued in the event that an appropriate legal agreement is secured to secure proposed infrastructure and affordable housing. Nevertheless, the substantive principal matters remain, which the Council must now defend.
5. In defending its position at the Inquiry, the Council will require Counsel for advice during the preparation of the case and to represent the Council throughout the course of the Inquiry. Clearly, the Council will be in the strongest possible position with the benefit of a highly qualified and experienced planning barrister in place to robustly defend the Council's decision to refuse planning permission. It is likely that the Inquiry will last up to 8 days.
6. As well as requiring a barrister, officers are proposing to employ the services of a private planning consultant to represent the Council throughout the inquiry in order to support the demand on staffing capacity that this major Public Inquiry will cause. In addition, it is considered that securing the services of a consultant with experience of high level and complex planning inquiries will be beneficial and appropriate to defend the Council's reasons for refusal.

Recommendation

It is recommended that a supplementary estimate of £100,000 be approved to meet the costs of the Council defending its decision to refuse the planning application at the Springbok Estate, Sachel Court Drive, Alfold, to be met from the Revenue Reserve Fund.

Background Papers

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

CONTACT OFFICER:

Name: Peter Cleveland

Telephone: 01483 523362

Email: peter.cleveland@waverley.gov.uk