

# Arun District Council

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE 29 September 2022</b>
<b>AGENDA ITEM:</b>	
<b>SUBJECT:</b>	<i>Planning Application M/145/21/HH</i>
<b>LEAD OFFICER:</b>	<b>Daniel Bainbridge, Group Head of Law and Governance</b>
<b>LEAD MEMBER:</b>	
<b>WARDS:</b>	<b>Middleton</b>
<b>CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION:</b>  Council scheme of delegation and Planning Protocol as set out in the constitution (Part 7 section 2 Para 2.1.3 and Part 8 section 3 (Planning Protocol) paragraph 6.2 of the constitution	
<b>DEPARTMENTAL POLICY CONTEXT:</b>  N/A	
<b>FINANCIAL SUMMARY:</b>  N/A	

## 1. PURPOSE OF REPORT

The purpose of this report is to explain why a determination of a planning application made by an officer in error should be determined by committee

## 2. RECOMMENDATIONS

To consider the report and recommendations of the Planning Officer

### 1. EXECUTIVE SUMMARY

- 1.1. This application was considered and determine by an officer. It has come to light that the application was a “Member application” and as such could only have been determined by committee. The matter is now brought to committee for a determination.

### 2. DETAIL

- 2.1. The Application was submitted November 2021 by an Architect as agent for the Householder. The house is jointly owned by a District Councillor and therefore, under council procedures, should have been treated as a Member application. However, the applicant failed to expressly indicate on the

application form that it was being made on behalf of joint owners, one of whom is a District Councillor.

2.2. The application was determined by the Group Head of Planning (and Officers acting under their delegated authority) on 21 January 2022. That determination was outside the delegated powers of the officer, as the application should have come before the Planning Committee for determination as this is a 'Councillor application'.

2.3. The applicant sought to vary one of the conditions of the permission and in the course of examining this variation application, Officers discovered that the decision in January 2022 should not have been taken at Officer level. The Officer had been unaware that the site owner was a District Councillor. The matter was referred to the Council's Legal Services team and to the Monitoring Officer (the Group Head of Law and Governance). The legal advice and the advice of the Monitoring Officer is that the decision in January 2022 should be treated as void. The Officer who made the decision did not have the authority to make the decision, though it should be stressed that the determining officer could not have known at the time of determination that the applicant is a Councillor.

2.4. The Committee should treat the application as if the original decision had not been made.

### **3. OPTIONS / ALTERNATIVES CONSIDERED**

3.1. It was considered that to do nothing was not an option as the decision goes to the heart of the Council's planning protocol and standards of conduct. Consideration was given to whether the decision could be revoked. It was decided that as there was no valid decision, there was no lawful decision to revoke.

### **4. CONSULTATION**

4.1. The applicant as joint owners have been consulted and the Councillor householder agrees that the matter should not only be dealt with in accordance with the rules but should be seen to be dealt with in accordance with the rules by being considered by the Planning Committee.

### **5. FINANCIAL CONSIDERATIONS**

5.1. There are no financial implications for the purposes of this report.

### **6. RISK ASSESSMENT CONSIDERATIONS**

6.1. There is a risk that the public may or anyone else might challenge the decision as not being in accordance with the highest standards of propriety as set out in the Council's Constitution.

## **7. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER**

- 7.1. This matter is covered by Part 7 section 2 Para 2.1.3 (Officer scheme of delegation) and Part 8 section 3 paragraph 6.2 (Planning Protocol) of the constitution. There is a conflict between part 7 and part 8. Part 8 says the application will be determined in consultation with the Chair of the Planning Committee, while the Planning Protocol says that a Councillor application should be determined by the Planning Committee. While the decision was taken by an Officer, there is no evidence that the Chair of the committee was consulted – because the determining officer was not aware that the applicant is a Councillor. This conflict will be addressed during the next formal review of the Constitution.
- 7.2. The issue here is that there is no valid planning permission. It is not an otherwise valid permission with an error in it, it is an invalid determination and has no effect.

## **8. HUMAN RESOURCES IMPACT**

None for the purposes of this report.

## **9. HEALTH & SAFETY IMPACT**

None for the purposes of this report.

## **10. PROPERTY & ESTATES IMPACT**

None for the purposes of this report.

## **11. EQUALITIES IMPACT ASSESSMENT (EIA)**

None for the purposes of this report and for the purposes of the determination the relevant considerations are contained in the officer report.

## **12. CLIMATE CHANGE & ENVIRONMENTAL IMPACT**

None for the purposes of this report and for the purposes of the determination the relevant considerations are contained in the officer report.

## **13. CRIME AND DISORDER REDUCTION IMPACT**

None for the purposes of this report and for the purposes of the determination the relevant considerations are contained in the officer report

## **14. HUMAN RIGHTS IMPACT**

None for the purposes of this report and for the purposes of the determination the relevant considerations are contained in the Officer report.

## **15.FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS**

None for the purposes of this report and for the purposes of the determination the relevant considerations are contained in the Officer report.

---

### **CONTACT OFFICER:**

Name: Daniel Bainbridge

Job Title: Group Head of Law and Governance and Monitoring Officer

Contact Number: 01903 737607

**BACKGROUND DOCUMENTS:** *Planning Officer Report January 2022*