

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF CABINET ON 20 JULY 2020

SUBJECT: Supplementary Estimate to defend planning appeals at Middleton Poultry Farm (M/80/19/PL), Inglenook Hotel, Pagham (P/58/19/PL) and Land east of Shripney Road, Shripney (BE/109/19/OUT)

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DATE: June 2020
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PORTFOLIO AREA: Planning

EXECUTIVE SUMMARY:

There are three planning appeals for major development where planning permission has been refused by the Council. All of these decisions were made at the Development Control Committee (DCC) contrary to the Officer recommendation. A Supplementary Estimate is sought to be able to present a case to these appeals because Officers are unable to fully articulate the case for the Council.

RECOMMENDATIONS:

That Cabinet recommends to Full Council that a Supplementary Estimate of £40,000 is agreed in order to defend decisions taken on planning applications M/80/19/PL, P/58/19/PL and BE/109/19/OUT at planning appeal.

The Band D equivalent for £40k supplementary estimate is £0.64.

1. BACKGROUND:

1.1 A Supplementary Estimate is sought for decisions on planning applications to be defended at forthcoming appeals. These appeals relate to the following applications and are all applications that were refused planning permission, contrary to officers' recommendation, at Development Control Committee (DCC);

- Middleton Poultry Farm (M/80/19/PL). Refused February 2020.
- Inglenook Hotel, Pagham (P/58/19/PL). Refused March 2020.
- Shripney Road, Shripney (BE/109/19/OUT). Refused June 2020.

An appeal against M/80/19/PL has been submitted with appeals against the other decisions expected in the coming weeks.

1.2 The reasons for seeking a Supplementary Estimate are:

1. Officers are currently dealing with a significant number of appeals. There are 34 current appeals with the Council (10 of which are decisions made by DCC contrary to officer recommendations). In the calendar year 2019, there were a total of 42 appeal decisions. In 2020 there has been an increase in cases and consequential workloads. There have already been 24 decisions received from The Planning Inspectorate in addition to the 34 current appeals.
2. There has been some DCC Member criticism around the quality of some appeal submissions made by Officers.
3. Officers are unable to fully articulate the reasons for the refusal and provide required evidence to support these. Officers also have limited time in which to try and present such cases on decisions taken at the Development Control Committee.

1.3 It is estimated that up to £40,000 would be required to instruct consultants to present a case on behalf of the Council at these appeals. The Council will be required to prepare and submit technical evidence on highways and trees as well as a planning policy case on overdevelopment, character and sustainability in order to address its reason for refusal on these applications (see para 1.8).

1.4 Supplementary Estimates for this type of work have previously been secured for appeals/judicial reviews at Summer Lane, Pagham (March 2019), and Horsemere Green Lane, Climping (CM/1/17/OUT) (February 2018).

Resources & Capacity

1.5 In the municipal year May 2018 – May 2019, 6 out of 88 applications that went to DCC that were overturned and refused planning permission (7%). This resulted in only one appeal for officers to defend. There has been a substantial increase in appeals workload since the local elections in May 2019. In the municipal year May 2019 – May 2020, 16 out of 81 applications that went to DCC were overturned and refused planning permission (20%). This has resulted in 14 appeals to defend (10 current appeals and 4 already decided).

1.6 The department has a very limited budget for this work and officers will carry out appeals work on virtually all appeals as part of their day to day functions. However, this level of increase in workload cannot be sustained by existing resources and additional resources are required in order to defend these decisions. These three appeals are for 'major' development proposals and there are therefore more significant issues to address as well as there being an increased exposure to costs awards against the Council.

1.7 All of the above are reasons why a Supplementary Estimate is sought. However, there have been previous cases where the department has sought to instruct consultants but have been unable to find one willing to defend the decision taken because they were too concerned about the merits of those decisions. If that is the case, those members who proposed and seconded the refusals will be asked to provide a statement to expand and evidence the reasons for refusal. In the case of the Inglenook appeal (P/58/19/PL), members have already been approached.

1.8 I will set out below the background to these decisions.

Middleton (M/80/19/PL)

This is an application for a 66 bed Nursing Home. It followed planning permission for 13 dwellings (M/49/17/PL) on the site (granted at DCC in February 2017). Consequently, the site is within the defined Built Up Area Boundaries where there is a presumption in favour of development. The proposed access to the site was as per the arrangements approved under M/49/17/PL and the Council's Tree Officer raised no objections. The application was recommended for approval by officers but refused for the following reason;

- 1. The proposals are considered to be an over development and adversely affect the visual amenities of the locality by virtue of them being out of character in scale and density in conflict with policies D DM1 and D SP1 of the Arun Local Plan and policies in the National Planning Policy Framework.*
- 2. The use of the proposed access will result in damage to the protected Ash Trees by virtue of the proximity of vehicle movements to them, leading to their loss contrary to policy ENV DM4 of the Arun Local Plan.*

Inglenook Hotel, Pagham (P/58/19/PL)

A proposed residential development of 13 dwellings. This application was considered by West Sussex County Council as Highway Authority who raised no objections. DCC deferred the application in order to obtain an independent assessment of the highway's safety issues. This cost £1,200 to complete (which was paid for out of the department's budget) and the summary findings supported those previously made by WSCC. The application was recommended for approval by officers. Following the deferral, DCC chose not to accept both sets of technical advice and refused the application refused for the following reasons.

- 1. The proposals will introduce a form of development that will result in significant conflicts between highway users to the detriment of highway safety. It will result in an unacceptable impact on highway safety, not result in pedestrian priority or a safe and secure development contrary to policies T SP1, D DM1 and Q SP1 of the Arun Local Plan and policies within the NPPF.*

Shripney Road, Shripney (BE/109/19/OUT)

An application for 46 dwellings. This followed consideration of proposals for residential development on a site approximately 30m to the north of this site. DCC granted permission for 20 dwellings (BE/63/17/OUT) in January 2018. However, DCC subsequently refused permission for 31 dwellings (BE/69/19/OUT) on that site, contrary to the officer recommendation of approval, in October 2019. This decision was appealed, and the appeal decision was received on 14 May 2020. The Inspector allowed the appeal and awarded costs against the Council because the Inspector concluded that the decision made by the Council was unreasonable.

At the DCC meeting on 3 June (following this appeal decision), BE/109/19/OUT was also resolved to be refused planning permission, contrary to the officer recommendation of approval. The reasons for refusal that are required to be defended are;

1. *The proposals have limited economic, social and environmental benefits and result in clear harm to the village of Shripney. The site lacks access to high quality public transport, is outside of the built-up area and the benefits of the proposals do not outweigh the harm. The proposals are contrary to policies T SP1, T DM1, C SP1 and SD SP1 of the Arun Local Plan, Policy ES7 of the Bersted Neighbourhood Plan and paras 110 and 122 of the NPPF.*
2. *The proposed development fails to address the flood risk requirements associated with future climate change in the longer term and is contrary to paragraphs 155, 157, 158, 160 and 161 of the NPPF.*
3. *The proposed development is on land defined as the best and most versatile agricultural land (Grade 2). As the benefits of the proposals do not outweigh and the applicant has not submitted the Sustainability & Options Appraisals required within policy SO DM1 of the Arun Local Plan, the proposals are therefore contrary to this policy.*

Costs Awards Against the Council

- 1.9 The Supplementary Estimate sought is only in respect of presenting the Council's case at these appeals. It **does not** include factoring in the potential for an award of costs against the Council. Advice was given to DCC on this issue and risks prior to making these decisions.
- 1.10 Officers considered that all three of these appeals represents a significant risk for the Council in respect of potential costs awards against the Council for unreasonable decisions. Officer advice to DCC at the time of making these decisions was on the basis that the decision at Inglenook is contrary to two sets of expert technical advice, the decision at Middleton was contradictory to the previous decision and there were no stated or demonstrable reasons that could justify a decision contrary to the very recent appeal decision at Shripney.
- 1.11. For reference, the recent decision in Shripney against a decision made by DCC contrary to the officer recommendation resulted in a costs claim of £11,500 against the Council for an unreasonable refusal. There is a risk of similar awards for each of these three appeals.

Future Appeals

- 1.12 There may need to be requests for further Supplementary Estimates over the coming months should appeals such as The Ship Inn, Aldwick (AW/237/19/PL) be submitted (the applicant has indicated that an appeal will be submitted) and if costs are awarded against the Council in the appeals referred to in this report (and potentially Yapton Crematorium) because the limited budgets of the Department are not able to accommodate multiple costs awards and/or significant further appeals work.

2. PROPOSAL(S):

For Cabinet to recommend that a Supplementary Estimate is agreed if these appeal decisions are to be defended at appeal.

3. OPTIONS:

The Council could choose to not agree to the Supplementary Estimate and not defend the appeals. If they chose to do this, it would mean that the Council would confirm that it would offer no defence and the appeals would almost inevitably be allowed. This option would significantly reduce the risk of costs against the Council as it would substantially reduce the amount of work the appellants would have to do.

They could also choose to defend the appeals by way of Councillors presenting the cases. However, as many of the reasons for refusal relate to technical matters where a degree of technical expertise is required, this may expose the Council to a greater risk of costs.

4. CONSULTATION:

| Has consultation been undertaken with: | YES | NO |
|--|-----|----|
| Relevant Town/Parish Council | | x |
| Relevant District Ward Councillors | | x |
| Other groups/persons (please specify) | | x |

| 5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below) | YES | NO |
|---|-----|----|
| Financial | x | |
| Legal | x | |
| Human Rights/Equality Impact Assessment | | x |
| Community Safety including Section 17 of Crime & Disorder Act | | x |
| Sustainability | | x |
| Asset Management/Property/Land | | x |
| Technology | | x |
| Other (please explain) | | |

6. IMPLICATIONS:

There are significant financial implications for the Council, especially at a time when finances are so stretched and reduced. This expenditure is required to defend the decisions taken by the Council, but those costs could potentially be (at least) doubled if the risk of costs awards against the Council materialises.

7. REASON FOR THE DECISION:

Having taken the decision to refuse permission for these planning applications, the Council is duty bound to defend this decision at an appeal.

8. EFFECTIVE DATE OF THE DECISION: 29 July 2020**9. BACKGROUND PAPERS:**

[Costs Decision BE.69.19.pdf \[pdf\] 101KB](#)

[Appeal Decision BE.69.19.pdf \[pdf\] 165KB](#)