

ARUN DISTRICT COUNCIL

DECISION TAKEN UNDER SCHEME OF DELEGATION

Decision taken in accordance with Part 4, Officer Scheme of Delegation, Section 2, Paragraph 2.23 (Urgent Decisions)

SUBJECT

- 1. SUPPLEMENTARY ESTIMATE TO COVER COSTS AWARDED AGAINST THE COUNCIL IN APPEAL P/58/19/PL**
- 2. SUPPLEMENTARY ESTIMATE TO COVER COSTS FOR DEFENDING APPEAL ON LAND SOUTH OF BARNHAM STATION, BARNHAM - BN/142/20/OUT**

DECISION TAKER: - Nigel Lynn - Chief Executive

EXECUTIVE SUMMARY:

The Full Council meeting 14 July 2021 rose at 10.31 pm without concluding the business on the agenda. The next meeting is on 15 September 2021. Some of the unfinished business identified below cannot wait until 15 September 2021 and is now urgent. Taking into account the Council's public interests, the Chief Executive considers that these decisions cannot reasonably be deferred until the next scheduled meeting of the Full Council.

OPTION:

- (1)** to agree the decisions; or
- (2)** not to agree the decisions

DECISIONS:

SUPPLEMENTARY ESTIMATE TO COVER COSTS AWARDED AGAINST THE COUNCIL IN APPEAL P/58/19/PL

Planning permission for application P/58/19/PL had been refused by the then Development Control Committee contrary to the advice of Officers from this Council, West Sussex County Council and the Council's appointed Highways consultant. On Appeal the Inspector had concluded that the Council had acted unreasonably in refusing planning permission and had awarded costs against the Council. The report to Council sought a supplementary estimate of up to a maximum of £26,000 to settle that award of cost. The Council is legally obliged to meet these costs and the decision allows Council negotiators headroom for negotiation in order to avoid a debt action by the developers.

I AGREE that a maximum of £26,000 be made available in order to facilitate settlement of this claim.

SUPPLEMENTARY ESTIMATE TO COVER COSTS FOR DEFENDING APPEAL ON LAND SOUTH OF BARNHAM STATION, BARNHAM - BN/142/20/OUT.

The Council had refused an application for substantial development south of Barnham railway station based on ten sound reasons for this refusal. As a result, the applicant had appealed against the decision. The appeal is to be heard by way of a Public Inquiry estimated to last eight days later in 2021. The Council now needs to fund its legal representation to include fees for Counsel and costs associated with the appointment of planning consultants and any expert witnesses to assist with defending the appeal. A supplementary estimate of £50,000 is requested in this respect.

The preparation for appeal runs to a fixed timetable. Where the parties incur costs because the Council has failed to comply with the timetable this may be considered unreasonable conduct and the Council may be required to pay the additional costs incurred by Council delay in meeting the hearings timetable . The Council is in danger of non-compliance with the timetable if we cannot appoint the Legal and Planning experts before 15 September 2021 Full Council meeting

I AGREE that a maximum of £50,000 be made available in order to facilitate preparation of the Council's defence of the appeal.

REASON FOR THE DECISIONS: The cost of the Planning Appeal which was lost will eventually become a debt which ADC will have to pay if the developers seek to enforce the judgement in court.

The other appeal cost is defending an ongoing appeal, which is more pressing. The issue is whether ADC should be instructing professional support (planning and legal and other experts) if there is doubt that the invoices will be paid. If they are not instructed there is a danger that the Council will fail to comply with the timetable and may incur a costs penalty and or lose the appeal.

In either case, there is a reputational risk that those professionals may not want to work with the Council again – hence the need for use of urgency powers

SIGNATURE:



DATE: 22 July 2021

CONSULTATION WITH GROUP LEADERS: – 22 July 2021

BACKGROUND PAPERS – The two reports to be attached as e-links