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Subject to approval at the next Planning Committee meeting

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## PLANNING COMMITTEE

15 December 2021 at 2.00 pm

Present: Councillors Chapman (Chair), Lury (Vice-Chair), Blanchard-Cooper, Bower, Coster, Edwards, Goodheart, Kelly and Tilbrook

Councillor Chace was also in attendance for all or part of the meeting.

Apologies: Councillors Charles and Thurston

### 527. DECLARATIONS OF INTEREST

No Declarations of Interest were made.

### 528. MINUTES

The Minutes of the meeting held on 24 November 2021 were approved by the Committee and signed by the Chair.

### 529. ITEMS NOT ON THE AGENDA WHICH THE CHAIRMAN OF THE MEETING IS OF THE OPINION SHOULD BE CONSIDERED AS A MATTER OF URGENCY BY REASON OF SPECIAL CIRCUMSTANCES

The Chair confirmed that there were no urgent items.

### 530. FITZALAN LINK ROAD, LITTLEHAMPTON

#### 4 Public Speakers

Cllr Jill Long – Littlehampton Town Council  
West Sussex County Council  
Tracy Lynch – Objector  
David Willis – Objector

The Chair began the item by drawing Members' attention to particular paragraphs in the Advice Note from Town Legal – 3.33 ['ADC would need to be very careful to ensure that it did not fetter its discretion in terms of its responsibility for independent decision-making as local planning authority.'] and 3.34 ['ADC must ensure that the decision-making is legally robust.']. – and asked Members that whatever decision was reached, given the money already spent, to consider whether it would be a reasonable and proportionate response in addressing the issues before the Committee.

Upon the invitation of the Chair, the Group Head of Planning presented his report which invited the Committee to consider whether they wished to investigate options around amending and/or withdrawing the permissions granted at Development Control Committee on 18 October 2017 (LU/234/16/RES) for the acoustic fence on the Fitzalan Link Road in Littlehampton, following the decision of Planning Committee on 18 May

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2021 [Minute 577] to commission an independent report to undertake a review of previous decisions and provide advice on possible actions available to the Council. The report and accompanying advice confirmed that there was a legal process that could be followed as well as a technical alternative if an alternative was sought by the Committee, and that a difference in surface material or speed limit would not result in any significant difference in noise from the road. The longer term options in paragraph 1.15 of the report were further outlined, as were the needs for more information on the potential operational costs for the works and further details around legal processes, compensation, indemnities and warranties before any works could be started.

This was followed by 4 Public Speakers. In response to these statements, the Group Head of Planning clarified that adoption and transfer of the road to West Sussex County Council would be 12 months from the date of the road opening, that West Sussex County Council had an agreement with Persimmon Homes for a seven-year period after adoption to cover any indemnity that might arise from compensation claims and any changes to the barrier would require that Arun District Council entered into a similar agreement with West Sussex County Council, the speed limit and the possibility of it being reduced being an issue for West Sussex County Council as the Highways Authority, and the requirement for a future planning application in order to regularise whatever course of action was decided upon by Members.

After the Chair had outlined the four recommendations of the report, Members took part in a full debate on the item where a number of points were raised, including:

- the height of the barrier being reduced to 2.5m, and support for this in principle but also a need to ensure residents were in support of the Council taking that position when balanced with the costs to residents as Council Tax payers
- support for the recommendations but the need for Members to have significantly more information, especially an indication of costs as dealing with public money
- uncertainty over compensation issues that might occur from the Land Compensation Act and the potential costs, if some residents had concerns about increased road noise should the barrier be reduced in height
- the need to transparently consult the public to establish levels of support and concern of all affected residents for the different courses of action
- the visual impact of the barrier from both the road and residential sides
- the desire to move the discussion forward but the need for much stronger advice in order to do so
- concerns over the open-endedness of potential legal action from both existing and future residents
- whether the consultation was overly restrictive by limiting itself to 'properties on the eastern side of Highdown Drive' [Recommendation 2] and whether this should be expanded to include other properties in Amberley Close impacted by this particular planning permission

The properties to the north east of the roundabout on the A259 and in particular Toddington Park were also put forward for inclusion in the consultation. The Chair ruled

that the addition of this was beyond the scope of the application under discussion. As such it did not find favour with him and the matter was ruled out of order.

The Group Head of Planning and the Council's Lawyer provided Members with responses to all points raised during the debate. They highlighted:

- that West Sussex County Council would take ownership in 12 months' time and any negotiations after this point would be between Arun District Council and West Sussex County Council; Persimmon Homes would not be involved
- a further agreement would be needed between Arun District Council and West Sussex County Council if the scope of what was adopted was changed
- regarding consultation, Amberley Close being added to Recommendation 2
- further advice being needed regarding potential compensation but that there was a seven-year period in which claims could be made, which was currently covered by an indemnity agreement between West Sussex County Council and Persimmon Homes, and the need for similar agreements with Arun
- north of the roundabout with the A259 not being considered at this meeting as it did not form part of this planning application and permission
- there being many legal issues involved that were currently hypothetical and it therefore being difficult to give clear answers until it was known how Members wished to proceed
- if the Council wanted to identify a number of legal routes, then legal advice could be taken on the probable actions
- there being a range of actions available without seeking legal advice being necessary
- Arun District Council being the local planning authority and not the owner of the barrier, which was currently Persimmon Homes and in 12 months' time West Sussex County Council, and the need for concerns to be directed to the owners of the fence and not the local planning authority
- residents having a number of different concerns (noise, amenity, visual impact etc) and consultation being necessary to establish these issues
- that Members were not taking a decision on the barrier at this meeting but were being asked to support the principle of a process that explored potential changes to the barrier

The recommendations were then proposed and seconded, with the inclusion of Amberley Close added to Recommendation 2.

The Committee

RESOLVED - That

1. The principle of reducing the height of the acoustic barrier to 2.5m be supported subject to further work being undertaken regarding the quantification of the costs that the Council would be liable for the physical works, potential scale of any future compensation claims, and the likely costs associated with pursuing a formal modification of the planning permission through Section 102 & 103.

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2. A focused consultation take place for properties on Amberley Close and the eastern side of Highdown Drive to gauge public opinion.
3. Discussions continue with West Sussex County Council and Persimmon Homes to seek an agreed solution seeking to negate the need for any formal legal process.
4. A further report to be provided to the Committee on progress on these matters.

After the process of adjournment for a Special meeting of the Planning Committee was clarified by the Council's Lawyer, the Chair adjourned the meeting until such a time as the reports were able to be brought forward to continue to focus on the issues associated with the Fitzalan Link Road as in the original planning application in the most appropriate manner. Whether Officer or Member representation from West Sussex County Council should be present at this future meeting was briefly discussed and it was agreed that consultation would be better served by a Member briefing with other stakeholders present ahead of a future meeting.

(The meeting concluded at 2.48 pm)