

## **PLANNING COMMITTEE**

**10 FEBRUARY 2016**

### **MC/14/3784 LAND NORTH OF MOOR STREET UPDATE REPORT**

Report from: Richard Hicks, Director of Regeneration, Community and Culture

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#### **Summary**

Planning Application MC/14/3784 for residential development at Land North of Moor Street was received by the Council in December 2014. An appeal against the non-determination of the application was subsequently made in April 2015. The appeal will be heard at a Public Inquiry which will commence on Tuesday 23 February.

Notwithstanding the appeal, the application was reported to Planning Committee on 29 April 2015. Members resolved that, had the Council been in a position to determine the application, it would have refused on eight grounds.

Since the April resolution there has been a narrowing of some of the issues and some changes to the LPA's assessment of the scheme. It is the purpose of this report to update Members on these developments prior to the commencement of the Inquiry.

#### **1. Budget and Policy Framework**

- 1.1 The refusal of planning permission was undertaken in accordance with the Medway Local Plan 2003 (the MLP), which forms part of the Council's policy framework. The defence of the appeal will be undertaken on the same basis.
- 1.2 The cost of defending the appeal will be met from the Planning Service budget.

#### **2. Background – Planning History**

- 2.1 Initial Application – MC/14/3784  
The planning application for Land North of Moor Street (reference MC/14/3784) was for:

*Outline application with some matters reserved (Appearance, Landscaping, Layout and Scale) for residential development of up to 200 dwellings (including a minimum of 25% affordable housing), planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from Otterham Quay Lane and associated ancillary works*

2.2 The application was due for determination on 23rd March 2015, however the Council had been unable to reach agreement with applicant in respect of the various requests for Section 106 financial contributions by this date. The applicant was unwilling to enter into a Planning Extension Agreement and decided instead to appeal against non-determination of the application. The application was nevertheless reported to Planning Committee on 29 April 2015. Had the Council been in a position to determine the application it would have been refused on the following grounds:

- 1. The development would result in an inappropriate form of development within a locally valued landscape and Area of Local Landscape Importance, resulting in harm to the landscape and rural character of the area contrary to the provisions of policy BNE34 of the Medway Local Plan 2003 and the Medway Landscape Character Assessment 2011, the Core Principles of the NPPF set out paragraph 17 and the policies set out at Section 11 of the NPPF including paragraph 109 in particular.*
- 2. The development would result in the loss of the best and most versatile agriculture land contrary to the provisions of policy BNE48 of the Medway Local Plan 2003 and the policies of the NPPF specifically Section 11 'Conserving and Enhancing the Natural Environment' including paragraph 112 in particular.*
- 3. The development would adversely affect the character and appearance of the Moor Street Conservation Area and the setting of the Grade II Listed West Moor Farm House and Grade II Listed Westmoor Cottage contrary to the provisions of policy BNE12 and BNE18 of the Medway Local Plan 2003 and the requirements of the NPPF specifically the Core Principles set out paragraph 17 and Section 12 'Conserving and Enhancing the Historic Environment' including paragraph 133 in particular.*
- 4. The application site has poor pedestrian connectivity and poor public transport opportunities and is thereby contrary to Policies T3 and T5 of the Medway Local Plan and the requirements of the NPPF specifically the Core Principles set out paragraph 17 and Section 4 'Promoting Sustainable Travel' including paragraph 30 in particular.*
- 5. The development would have an unacceptable impact upon local services and facilities, as it has not made provision (through appropriate financial contributions) to meet the service demands directly generated by the development contrary to the provisions of Policy S6 of the Medway Local Plan 2003 and the Developers Contribution Guide 2014.*

6. *The development does not comply with the presumption in favour of sustainable development as set out at paragraph 14 of the NPPF since the benefits arising from the delivery of new housing are significantly and demonstrably outweighed by the adverse social and environmental impacts of the development.*
7. *The application includes insufficient information to undertake an appropriate assessment as required by the 2010 Habitat Regulations and therefore there is no evidence to demonstrate that the development will not cause harm to the nearby Special Protection Area of international ecological importance. The proposal is therefore contrary to the provisions of Saved Policy BNE35 of the 2003 Medway Local Plan and the requirements of the NPPF specifically Section 11 including paragraph 109 and 118 in particular.*

2.3 The following refusal reason was added by committee Members:

8. *The traffic generated by the development would have a detrimental impact on the capacity of the A2/Otterham Quay Lane junction, leading to increased congestion and delays at peak times. The application is therefore contrary to Policy T1 of the Medway Local Plan 2003.*

Appeal for Non-determination of application MC/14/3784

2.4 The appeal for non-determination was accepted as valid by the Planning Inspectorate on 1st June 2015. The appeal will be heard at a Public Inquiry which will commence on Tuesday 23rd February 2016.

Resubmission – MC/15/2731

2.5 On 29 July 2015 the appellant made a resubmission application (Ref: MC/15/2731) for a revised scheme comprising 190 dwellings and an additional 0.67 hectares of open space (all matters reserved save for access) as identified in Development Framework Plan 6364-L-03 Revision F. The resubmission proposals were determined by the Medway Council Planning Committee on 21 October 2015 where the resubmission application was refused. The reasons for refusal are given in the Decision Notice dated 22 October 2015 as follows:

1. *The development would result in an inappropriate form of development within a locally valued landscape and Area of Local Landscape Importance, resulting in harm to the landscape and harm to the rural character of the area. The application is thereby contrary to Saved Policy BNE25 and BNE34 of Medway Local Plan 2003, and the provisions and policies of the NPPF including Core Principles set out at paragraph 17 and the policy at paragraph 109 in particular.*
2. *The development would result in the loss of the best and most versatile agricultural land. The application is thereby contrary to the provisions of the policies of the NPPF including paragraph 112 in particular.*
3. *The development would adversely affect the setting of the Grade II Listed Westmoor Cottage and Grade II Listed West Moor Farmhouse. The application is thereby contrary to the provisions of Section 66 (1)*

*of the (Listed Building and Conservation Areas) Act 1990, policy BNE18 of the Medway Local Plan 2003, and the requirements of the NPPF specifically the Core principles set out at paragraph 17 and Section 12 ‘Conserving and Enhancing the Historic Environment’ including paragraph 134 in particular.*

4. *The development would adversely affect character and appearance of the Moor Street Conservation Area. The application is thereby contrary to the provisions of Section 72 (1) of the (Listed Building and Conservation Areas) Act 1990, policy BNE12 of the Medway Local Plan 2003, and the requirements of the NPPF specifically the Core principles set out at paragraph 17 and Section 12 ‘Conserving and Enhancing the Historic Environment’ including paragraph 134 in particular.*
5. *The traffic generated by the development would have a detrimental impact upon the capacity of the A2/Otterham Quay Lane junction, leading to residual cumulative impacts, congestion and delays, that are severe. The application is thereby contrary to Saved Policy T1 of the Medway Local Plan 2003 and the policies of the NPPF, including paragraph 32 in particular.*

### **3. Update**

- 3.1 Since the April resolution there has been a narrowing of some of the issues and some changes to the LPA’s assessment of the scheme, these are explained below.

#### Withdrawn Refusal Reasons

- 3.2 As per the report and reasons for refusal on the revised scheme (MC/15/2731), subject to a satisfactory planning obligation and conditions reasons 4, 5 and 7 will be withdrawn because the issues raised can be satisfactorily addressed.

#### Substitution of Drawings

- 3.3 The appellant has requested, and Officers have agreed, that the revised scheme drawing (Development Framework Plan 6364-L-03 Revision F), accommodating ten fewer residential units and providing an additional 0.67ha of open space, be substituted at the appeal for the original scheme drawing (Development Framework Plan 6364-L-03 Revision E). This matter will be decided by the Inspector appointed to determine the appeal, but as set out above, Officers are agreed that the changes shown are improvements and that the substitution would comply with the ‘Wheatcroft test’.<sup>1</sup>

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<sup>1</sup> In general if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought. Where, exceptionally, amendments are proposed during the appeals process the Inspector will take account of the Wheatcroft test when deciding if the proposals can be formally amended.

The *Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]* judgement established that “*the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*”. In this instance it is noted that the revised drawing is reduction in units but also, importantly, has already been subject to public consultation.

3.4 Whilst Officers acknowledge that the changes shown on the revised drawing are an improvement over the originally submitted scheme, they are not considered to be significant and thereby do not change the Council's case in respect of the remaining objections identified.

3.5 Further, Officers consider that reasons for refusal 1, 2, 3, 4 and 5 on the revised scheme better reflect the issues between the parties than putative reasons 1, 2, 3 and 8 on the appeal application. In particular:

Putative Refusal Reason 1

3.6 Putative Refusal Reason 1 does not refer to conflict with policy BNE25. As the appeal site is situated in the countryside and none of the exceptions apply, the policy should have been referred to. This is reflected in reason 1 of the decision on the revised scheme.

Putative Refusal Reason 2

3.7 Putative refusal reason 2 erroneously referred to Policy BNE 48, as this is not a saved policy of the 2003 Local Plan. The reference to policy BNE48 should thereby be deleted from putative refusal reason 2. This is reflected in reason 2 of the decision on the revised scheme.

Putative Refusal Reason 3

3.8 Following further consideration of the heritage issues and heritage advice, the degree of harm caused to the Moor Street Conservation Area, Grade II Listed West Moor Farmhouse and Westmoor Cottage is considered to be "less than substantial" per NPPF paragraph 134, and not "substantial" per NPPF paragraph 133. This is reflected in reasons 3 and 4 of the decision on the revised scheme.

3.9 By way of information Paragraph 134 reads as follows:

*"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."*

Putative Refusal Reason 8

3.10 Putative Refusal Reason 8 omitted reference to paragraph 32 of the NPPF. This is reflected in reason 5 of the decision on the revised scheme.

Housing Land Supply & Planning Balance

3.11 The 2 April committee report explained that the Council may not be able (at that time) to demonstrate a 5 years housing land supply and advice was provided as to the position that arose in such circumstances. Since then (and as per the revised application report), the Council now accepts it cannot demonstrate a 5 year housing land supply.

3.12 Given the housing land supply shortfall it is acknowledged that the proposed development would, through the delivery of market and affordable housing, contribute to achieving material social and economic benefits.

3.13 However Officers' advice remains that the scheme should be refused due to the inappropriate form of development within a locally valued landscape and

Area of Local Landscape Importance, resulting in harm to the landscape and the rural character of the area, the “less than substantial” harm to designated heritage assets, the loss of the best and most versatile agricultural land and the severe residual cumulative impact to the highway network. Officers consider that the adverse effects identified in the reasons for refusal mean that the appeal scheme is not sustainable development as defined by the NPPF. Further, Officers consider that the proposed development conflicts with the development plan and there are no material considerations that justify the grant of planning permission.

- 3.14 Proofs of Evidence from expert witnesses addressing the remaining material issues between the parties have been prepared to support the Council’s case as to why the scheme should be refused planning permission.

#### **4. Financial implications**

- 4.1 The cost associated with defending the appeal will be met from existing budgets.

#### **5. Legal implications**

- 5.1 There are no legal implications.

#### **6. Recommendation**

That the committee note the content of this report, and confirm that they still wish the Appeal to be defended on the basis of the update provided above, specifically:

- i. The withdrawal of putative reasons for refusal nos. 4, 5 and 7, subject to a satisfactory planning obligation and conditions.
- ii. The substitution of scheme drawings as specified in paragraph 3.3 above.
- iii. Update to Putative Refusal Reasons 1, 2, 3 and 8.
- iv. Update regarding housing land supply and the planning balance.

#### **Appendices**

None

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#### **Background papers**

None