

Key Decision Required:	No	In the Forward Plan:	No
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CABINET

1 MARCH 2013

REPORT OF FINANCE AND ASSET MANAGEMENT PORTFOLIO HOLDER

A.4 REVIEW OF DEVELOPMENT OF LAND - HORSLEY CROSS / A120 CORRIDOR

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

1. To present the outcome from the audit of the possible development of land at Horsley Cross or elsewhere along the A120 corridor. This report is reproduced in full below.

2. To respond to requests for further information/guidance requested at the Cabinet meeting held on 12th December 2012.
The Cabinet resolved to note the outcomes of the review and requested that the report comes back to the next meeting with the following information added:
 1. Why the May 2006 planning application was considered by the Development Control Committee in May 2008;
 2. As central government's planning policy has changed with the introduction of the National Planning Policy Framework, Counsel's Advice on the implications of the allocation of land at Horsley Cross which was put forward at full council
 3. Officers' advice (both Planning and Regeneration) on the allocation at Horsley Cross put forward at full council on 11 September 2012

This information is set out in the section titled **UPDATE FOLLOWING 12TH DECEMBER 2012 CABINET**

BACKGROUND

A review has been undertaken regarding a planning application made in 2006 (reference 06/00891/OUT) along with decisions concerning the same site at Horsley Cross that was considered as part of the development of the Local Plan in accordance with the following request by Cabinet (minute 20 Cabinet 13 September 2012 refers):

The minutes of the meeting of the Cabinet held on 22 August 2012 were approved as a correct record and signed by the Chairman, subject to it being included therein, the request received by Councillor Candy when she asked that Officers prepare an audit of the possible development of land at Horsley Cross or elsewhere along the A.120 corridor.

The review has identified that there is a considerable volume of documentation regarding the site in question. This has required a proportionate focus on relevant areas and documentation rather than examining every reference to this site in depth which would require a significant increase in dedicated resources.

It is also important to note that key officers involved at the time are no longer employed by the Council.

EXECUTIVE SUMMARY

Examination of the Development Control records has not identified any planning applications for this site prior to the application (reference 06/00891/OUT) which is recorded as being submitted on 19 May 2006.

As the site in question was subject to the planning application process as well as considered as part of the development of the Local Plan, the outcome from the review has been presented across these two individual strands:

Development of the Local Plan

Documentation indicates that there was support from some members for the site's inclusion in the plan as part of the various elements of discussions and consultations that formed part of the development of the plan and associated inquiry.

The development process that formed part of the review indicates that the feasibility of the site for inclusion as employment land had been looked at and consultants engaged to examine and comment on the site. The review has also identified that the consultants, the highways authority and government agencies that would have been consulted were consistent in their views that this land should not be designated as employment land.

Between the submission of the specific planning application set out below (**May 2006**) and its subsequent consideration by the Development Control Committee on **5 December 2006**, the Planning Inspectorate had commenced the Inquiry phase for the Local Plan and a meeting had been held specifically regarding the site in question on **20 September 2006**. The Council's position at that time continued to be opposition to the use of the site as employment land.

The Local Plan Inquiry remained on-going alongside the consideration of the planning application by the Development Control Committee set out below. The Local Plan Inspector attended the Committee Meeting on **5 December 2006** which dealt with the specific application for the site and wrote to the Council the following day requesting clarification of the Council's position given that the application was being supported but a strong case against the site had been put as part of the Local Plan Inquiry.

The associated response to the Local Plan Inspector confirmed the approach the Council had taken in not allocating the Horsley Cross site as employment land in the Local Plan. However it was also stated that the objections from a Local Plan perspective would not necessarily prevent the Council from concluding that exceptional circumstances justify the grant of planning permission from a Development Control perspective.

The Local Plan Inspector in **November 2007** concluded that no such allocation relating to the site should be made in the Local Plan, in his binding report, and the Council formally adopted the Local Plan on **11 December 2007**.

An alternative employment site at Frating (referred to as the 'Oasis' site) had also formed part of discussions and considerations undertaken by officers and members as part of the development of the Local Plan. The site was considered during the Local Plan Inquiry and was subsequently rejected by the Inspector.

Planning Process

As previously mentioned the specific planning application relating to the site was considered in parallel with the Local Plan and associated inquiry.

The specific planning application relating to the site was considered by the Development Control Committee on a number of occasions with a summary of the position as follows:

5 December 2006 - Initial consideration of application

- The officer recommendation was for refusal.
- This was supported by recommendations for refusal received from other 'consultees' that formed part of the usual application process.
- Members resolved that they were minded to approve the application on employment considerations against the officer's recommendations for refusal. The Committee recorded this approach and stated that they were attaching very substantial weight to such the employment considerations and which consequently outweighed the policy objections. A further report was requested setting out the proposed planning conditions and other applicable matters to mitigate those less sustainable aspects of the proposed development to enable the application to be referred to GO-East as it would be a significant departure from the existing Development Plan.

6 February 2006 – Consideration of report requested above.

- A summary of Officers' recommendation of refusal was set out as an Appendix to the Report
- A draft statement of material considerations which the authority could consider as an indication that planning permission could be granted as a departure from the development plan was also included as an Appendix to the report.
- Members remained supportive of the application subject to the various conditions set out in the report and resolved to notify the Secretary of State of the planning application.

The Planning application was subsequently 'called in' by the Secretary of State.

30 May 2007 – Report setting out 'Call-in' by the Secretary of State.

- The Committee were advised of the 'call-in' by the Secretary of State for determination following a Public Inquiry which would not be held until the Local Plan had been formally adopted (*Local Plan adopted on 11 December 2007*).

8 May 2008 – Development Control Committee reconsider application taking into account the changes since the application was first considered and the conclusions of the Local Plan Inspector and the adoption of the Local Plan which did not allocate this land for development.

- The view of the Local Plan Inspector was that the need for the scheme and the jobs it would retain and generate, which is a significant material consideration, does not outweigh the significant planning objections.
- Members resolved to continue to support the application because they were still satisfied that there were exceptional circumstances, namely the highly material employment considerations, to which the Committee attaches very substantial weight and which consequently outweigh the policy objections.

The Assistant Chief Executive was also given authority to deal with all matters relating to the application and planning inquiry as he saw fit, but on a basis consistent with Members view of supporting the approval of the application.

18 September 2008 – Outcomes from Planning Inquiry held between 22-30 July 2008 submitted to the Secretary of State

- In accordance with the authority given to the Assistant Chief Executive, the Council's position put forward to the Inquiry reflected the views of Members set out above i.e. special factors justify allowing the application on the basis of exceptional circumstances.
- Essex County Council did not favour the release of the application site for development which were views considered at the Inquiry.
- The Inspector acknowledged that the site was rejected from the Local Plan as part of an earlier inquiry but that additional information was available since that date. The Inquiry reviewed a significant range of issues with a final conclusion that it was recommended that planning permission is refused.

On consideration of the Inspectors report by the Secretary of State, planning permission was refused.

In summary and based on the information reviewed, officers maintained a consistent view that planning approval should be refused, whilst members remained in favour due to the special circumstances that in their view they attached to the application. The Assistant Chief Executive did set out reasons why the granting of planning permission could be justified as part of the Inquiry, which would have been consistent with the instructions given by the Development Control Committee previously highlighted.

As part of this review a significant volume of documentation has been seen that revolves around the key milestones in the process set out above. Neither minutes of meetings or other documents reviewed provide any indication that Members had information not available to officers.

In seeking an individual Member's input as to information or documentation that supported members in the decision making process that had not been disclosed, the subsequent response was that there was no knowledge of any such non-disclosures.

UPDATE FOLLOWING 12TH DECEMBER 2012 CABINET MEETING

Why the May 2006 planning application was considered by the Development Control Committee in May 2008

Officers considered it essential in this case that Members reconsider the issues in light of all material considerations arising since the Development Control Committee initially considered and approved the application.

The main issue related to the Local Plan Inspectors Binding Report. In their report they stated amongst other issues that *"The Council's stance is plainly self-contradictory (in that it opposed the employment land allocation to Horsley Cross at the Local Plan Inquiry but supported the application)"*

The reason for the report that went back to the Development Control Committee on the 8 May 2008 therefore revolved around this issue with Members asked to:

- *Resolve what the inspector described as the Council's self-contradictory stance to the application site.*

- *Reconsider the application taking into account the conclusions of the Local Plan Inspector and the adoption of the Local Plan which does not allocate the site for development.*
- *Determine whether the Committee wishes to reach the same decision (i.e. support the proposals) or whether it considers the Council's case should be modified or changed to one of objection.*

As central government's planning policy has changed with the introduction of the National Planning Policy Framework, Counsel's Advice on the implications of the allocation of land at Horsley Cross which was put forward at full council

Counsel's advice has been obtained and his conclusion was that:

In my view, unless the economic case can be considerably bolstered from that presented in 2007/2008, the problems of the environmental impact and unsustainable transport mean that the proposed allocation is unlikely to meet Central Government's requirement that development should be sustainable. In those circumstances, the presumption in favour of sustainable development¹ would not apply. In short, the adverse impacts of the Horsley Cross allocation are likely significantly and demonstrably to outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

Officers' advice (both Planning and Regeneration) on the allocation at Horsley Cross put forward at full council on 11 September 2012

Planning Advice:

The new National Planning Policy Framework is, in principle, supportive of economic growth and a flexible approach to considering proposals that will deliver jobs. However, there is still an expectation for Councils, in their Local Plans, to allocate sites in sustainable locations and promote sustainable patterns of growth. Some key statements in the national framework include paragraph 17 which sets out 12 core principles of the planning system, of which one is "*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.*" Paragraph 30 states that "*encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. In preparing Local Plans, local planning authorities should therefore support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport*".

Technical work to inform development of the submission draft of the Local Plan is underway. This includes an objective assessment of potential employment sites in the context of the current policy and economic environment. It will provide evidence to address the issue of whether land at Horsley Cross or some other land is appropriate for allocation for employment development.

Regeneration Advice:

Regeneration Service had for some considerable time been aware of the needs of the 6 individual companies forming the original Horsley Cross Partnership (HCP) with whom officers had been closely working with both individually and collectively. The application sought to safeguard 140 current jobs with an additional 175 to be created plus potentially those relating to a possible hotel development.

The needs of these companies, particularly in respect of ready access to the A120 corridor for logistical and operational reasons, their strong desire to remain within the Tendring District coupled with their inability to access readily available development land/premises in this area led them to this site. Therefore on the basis of a strong economic case, the

¹ Paragraph 14.

Regeneration Service fully supported the 2006 planning application.

This demand led approach, has subsequently been the basis for support of an additional employment land allocation, albeit considerably smaller, on the Gorse Lane industrial estate.

The Regeneration Service understands that at least two of the original companies involved in the HCP remain actively seeking land for their business interests. The Service is however not in a position to confirm any additional expressions of interest received by Tendring Council for land in this area, although the new promoters of the Horsley Cross site have been in active discussions with Planning, Regeneration has not been approached by the new promoters regarding interest or requirement from identified end users for this site. In addition Invest Essex advise that they would *'not expect to receive formal enquiries for Tendring Euro Park'*.

The Economic Development commission, currently out to tender, will require consultants to review the suitability and availability of commercial land and premises in the area.

RECOMMENDATION

That Cabinet notes the outcome of the review and the further information provided.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

There are no direct implications associated with the review.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are no direct implications associated with the review.

Risk

There are no direct implications associated with the review.

LEGAL

There are no direct implications associated with the review.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

There are no direct implications associated with the review.

BACKGROUND PAPERS FOR THE DECISION

File papers held by Planning Services

APPENDICES

None