

PLANNING COMMITTEE

11 JULY 2017

REPORT OF THE HEAD OF PLANNING

A.7 PLANNING APPEAL – 16/00838/OUT – LAND TO SOUTH OF FRINTON ROAD, THORPE-LE-SOKEN, CO16 0LG

1. The Planning Committee will recall the refusal of the following outline planning application for development on land south of Frinton Road, Thorpe-le-Soken: 16/00838/OUT - Outline application for the construction of up to 49 houses together with access roads etc.
2. The application is now the subject of a planning appeal. Officers have received a letter from the Planning Inspectorate to confirm 1) that the appeal will be dealt with by way of an Informal Hearing scheduled to commence on Tuesday 22nd August 2017 and 2) that the Council's statement of case has to be submitted by 12th July 2017.
3. The purpose of this report is to ask the Planning Committee to review the original grounds for refusal in light of the latest available information and to agree the case upon which Officers will defend the appeal.
4. The application was refused on highways, heritage/local character and ecological grounds at a time when the Council was unable to demonstrate a five-year supply of deliverable housing sites. Now the Council can demonstrate a five-year supply and the emerging Local Plan has gained greater weight on reaching publication stage, Officers believe that the Council is in a reasonable position to contest the appeal on the basis that the proposal is contrary to the Local Plan and the adverse impacts on the character of the area, heritage assets and ecology are not justified and will not be outweighed by the benefit of 49 new homes.
5. Officers are concerned however that the Council will find it difficult to reasonably defend the reason for refusal related to highways and are recommending that this is withdrawn from the case to minimise the risk of an award of costs against the Council.
6. The planning application was considered by the Planning Committee on 1st November 2016 and it resolved to refuse planning permission for the following (summarised) reasons:
 1. **Highways:** *"The development would result in increased usage of the B1033 and exacerbate concerns about the capacity of this busy road and the levels of congestion experienced through the centre of Thorpe-le-Soken and associated concerns about pedestrian safety in the High Street and around the local schools. This area suffers with severe transport problems and the increase in vehicular movements generated by this development will add to these problems without mitigation. The development is therefore contrary to paragraph 32 of the NPPF and Policy TR1a of the Local Plan."*
 2. **Heritage/Local Character:** *"The public benefit of contributing towards housing land supply does not outweigh the 'less than substantial' adverse impact on the adjoining grade II listed park and garden and the Conservation Area, irrevocably changing the historic character of the locality. The application is therefore contrary to the NPPF and Policies EN2 and EN17 of the Local Plan."*
 3. **Ecology:** *"It is considered that the proposed development will adversely impact on wildlife and protected species and the proposed mitigation measures are inadequate to address these adverse impacts. The application is therefore contrary to the NPPF and Policies EN6 and EN6a of the Local Plan."*
7. The first reason for refusal runs contrary to the advice of Essex County Council as the Highway Authority and we will not be able to rely on their support at the appeal. It is also inconsistent with the Council's decision to approve a scheme of up to 98 dwellings on land off Landermere Road, Thorpe, where the impact upon the highway network is likely to be

equal, if not greater, than that for the appeal proposal. The appellants have made both points in their appeal submissions and Officers consider it unlikely that the Council can uphold this reason for refusal without incurring an award of costs. Officers therefore recommend that this reason for refusal is withdrawn from the Council's case.

8. For the third reason for refusal on ecology, the appellants undertook a full range of ecological assessments including:
 - Preliminary Ecological Appraisal
 - Bat Scoping and Activity Survey
 - Reptile Survey and Outline Mitigation Strategy
 - Reptile Mitigation Survey; and,
 - Reptile Survey.
9. These have been supplemented by an 'Ecology Summary' that has been submitted by the appellants as part of their appeal documentation which sets out why the appellant disagrees with the Council's position. Whilst the advice in the November Committee report was that the measures set out by the documents should mitigate any negative ecological impacts; Officers are satisfied that it will be possible to contest that the proposal should be refused on ecological grounds as it would adversely impact on wildlife and protected species and the proposed mitigation measures are inadequate to address these adverse impacts.
10. For the second reason for refusal however, Officers are content that negative impacts upon the grade II listed park and garden and the wider Conservation Area can be reasonably argued at appeal – particularly as the Essex County Council Archaeologist and the Essex Gardens Trust also share this view. Both bodies have been asked to assist us with the appeal. Under the National Planning Policy Framework, any harm or loss to heritage assets such as these require 'clear and convincing justification' and now that the Council has a 5 year supply of housing sites and the Local Plan has progressed to the next stage, the justification for the development, in Officers' view, has fallen away.
11. In light of all of the above, Officers consider that the Council's case should focus on:
 - The site being outside of the settlement development of the Local Plan, that the Council can now demonstrate a 5-year supply of deliverable housing sites and that there is no need to apply the government's presumption in favour of sustainable development.
 - The development would harm the listed park and garden and the character of the Conservation Area, for which there is no clear and convincing justification or overriding public benefits.
 - The development would have an adverse impact on ecology adversely impact on wildlife and protected species and the proposed mitigation measures are inadequate to address these adverse impacts.

Recommendation: That the Planning Committee:

1) confirms the withdrawal of reason for refusal 1 in respect of planning application 16/00838/OUT (Outline application for the construction of up to 49 houses together with access roads etc on land south of Frinton Road, Thorpe le Soken) which related to impact on highways; and

2) agrees that the Council's case for the forthcoming appeal should focus on the site's location outside of settlement development boundaries, the achievement of a 5-year supply of deliverable housing sites; the unjustified harm to heritage assets; and adverse impacts on ecology.