

**PLANNING COMMITTEE**

**15<sup>th</sup> MARCH 2018**

**REPORT OF THE ASSISTANT DIRECTOR OF STRATEGIC PLANNING AND REGULATORY SERVICES**

**PLANNING APPEAL IN RESPECT OF 16/00100/OUT: FIELD NO 3300, OAKHAM ROAD, SOMERBY**

**1. Introduction**

- 1.1 The purpose of this report is to provide an update to the Committee in respect of the above planning appeal.

**2. Background**

- 2.1 Members will recall that the planning application was refused at the meeting of 27<sup>th</sup> April 2017 on the basis of the inadequate explanation of drainage arrangements and assurance regarding the impact of them upon flood risk.
- 2.2 The appeal was heard by Public Inquiry from 27<sup>th</sup> February 2018 – 2<sup>nd</sup> March 2018 with representation for the Council (represented by Counsel and an appointed drainage expert), the appellants, and 2 ‘rule 6’ parties, Somerby Neighbours and Somerby Parish Council.

**3. Update**

- 3.1 The technical expert employed to present the Council’s case pursued the Committee’s reason for refusal through a detailed critique of the appellants proposals and identified several shortcomings in relation to the capacity of the drainage scheme, the ability of it to cope with various water courses in the area and the ability of the receiving watercourse to accept drainage from the site..
- 3.2 However, in exchanges of evidence on 30<sup>th</sup> January 2018 and submissions made on 21<sup>st</sup> February 2018, the appellant provided more material that addresses those shortcomings, with a single exception. This was assessed by Counsel, the appointed expert and officers and it was concluded that the one remaining issue can be dealt with by conditions. Planning Guidance requires that conditions should be used constructively

to overcome issues and that failing to make use of this provision is regarded as unreasonable behaviour. Given this provision, we were provided with clear legal advice to withdraw our opposition or face very substantial costs claim for pursuing an untenable case.

- 3.3 In view of the urgency of the matter and the absence of a scheduled meeting of the Committee at which it could be considered, the decision to adapt our position in light of the revised information was taken under the Chief Executive's 'urgent powers' as set out in the constitution (part 3). This approach was checked with the Solicitor to the Council. The 'urgent measures' referred to above are reproduced in full below. In accordance with the requirements, The Leader and Committee Chair were briefed and agreed to this course of action.

***Extract of the Constitution – Part 3***

***DELEGATION MATTERS SUBJECT TO CONSULTATION WITH CHAIRMAN (OR VICE-CHAIRMAN IN ABSENCE)***

***Power to act out of meeting – General Power***

*Where, in his/her opinion, by reason of limitation of time or urgency a decision is required on any matter, (other than those specifically excluded from delegation) the Chief Executive shall have power to make a decision on that matter, subject to consultation with the Chairman of the appropriate committee and the Political Group Leaders, on the action to be taken.*

*This power shall not apply to:*

- (a) Matters reserved to the Council by statute or common law without power of delegation to a committee.*
- (b) The setting of Council taxes.*
- (c) Incurring of expenditure for which no allowance has been made in the annual budget unless the approval of the Leader, and the Chairman of the Policy, Finance and Administration Committee has been given to such expenditure.*
- (d) Any proposal which involves the formulation of a major new policy or a major variation of an existing major policy.*
- (e) Any matter on which the Council or a policy committee has given a specific direction.*

*Note: At the next ordinary meeting of the appropriate committee a report is to be submitted setting out all relevant information in relation to the action taken and detailing the reasons why it was necessary to deal with the matter out of meeting.*

- 3.3 The decision met with criticism from other parties, particularly residents who had left it to the Council to present their arguments on drainage. It is important that it is understood

that the Council was responding to new information circumstances rather than 'changing its mind'. The new information of course being of great relevance because it directly addressed, and overcame, the Council's reason for refusal. It is possible that other parties misunderstood that the appeal was not a review upon whether the Council's decision on this application in April 2017 in the circumstances that prevailed then, but what the correct decision is now in the current circumstances. It is not unusual that circumstances change between a decision being made and an appeal being heard and parties' positions need to adapt accordingly.

#### **4. Recommendations**

- 4.1 It is recommended that the Committee notes the content of this report.**