

Report of	Meeting	Date	Item No
Director of Development and Regeneration	Development Control Committee	22/08/2006	***

PLANNING APPEAL TALBOT MILL, FROM STREET, CHORLEY.

PURPOSE OF REPORT

- To inform members of a change in circumstances with respect to the above appeal due to be heard at Public Inquiry.

CORPORATE PRIORITIES

- This report does not affect corporate priorities.

RISK ISSUES

- The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation	4	Regulatory/Legal	
Financial	4	Operational	
People		Other	

- Members should be aware that there would be a cost implication for proceeding with the appeal where by the Council would be required to pay its own legal counsel together with any costs from the appellants. There is a risk of the Council's reputation being affected. Local residents may take issue if the Public Inquiry does not take place. However those issues raised by residents were not reflected in the Council's reasons for refusal of the application and would not be defended by the Council.

BACKGROUND

- In June 2005 Development Control Committee considered an application at Talbot Mills ref 05/00344/FULMAJ for the erection of 164 dwellings. The application was subsequently refused for the following reasons:

- The proposal would contribute to an oversupply of housing in the Borough contrary to the provisions of Policy 12 of the Adopted Joint Lancashire Structure Plan.
- The proposal is contrary to Policy HS5 of the Adopted Chorley Borough Local Plan Review in that it does not make adequate provision for affordable housing.

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3. There is still potential for protected species to be affected by the proposed development and insufficient information to confirm the potential impacts or any mitigation needed. The landscaping proposals do not confirm that targets specified in UK and Lancashire Biodiversity Action Plans will be complied with. The development is therefore contrary to Policies EP4 and EP10 of the Adopted Chorley Borough Local Plan Review and Policy ER5 of the North West Regional Planning Guidance/Regional Spatial Strategy.
6. The refused application was subsequently appealed in January 2006 and is due to be heard at Public Inquiry on the 26th September 2006. Since the appeal the appellants have been liaising with your officers to resolve the second and third reasons for refusal which relate to matters of detail before the commencement of the Inquiry. This is good practice and is a situation that is advocated nationally in order to agree certain matters between the parties before the appeal which reduces time and the potential for any award of costs that may result from the Inquiry.

THE CURRENT SITUATION.

7. The appellants have now agreed to pay a commuted sum for the provision of affordable housing within the Borough of £1.1 million. This figure has been arrived at following negotiation on the acceptable mix of dwellings to be used in the assessment of the commuted sums and market valuations. This is in accordance with policy HS5 of the Local Plan. This will be achieved through a Section 106 Agreement.
8. The third reason for refusal related to impact on protected species and landscaping proposals not conforming to targets identified within the Lancashire Biodiversity Action Plan. These issues are currently under discussion but the reality is these matters will be resolved before the Public Inquiry. The appellants and the Council are therefore not intending to provide expert witnesses on these matters but agree them through a Statement of Common Ground. There is now no reason to defend this reason for refusal and to do so when matters have been resolved would result in a costs award against the Council.
9. The outstanding reason for refusal which was fundamental to the Councils considerations related to the development contributing to an oversupply of housing and was contrary to Policy 12 of the Joint Lancashire Structure Plan. Lancashire County Council objected to the application and commented that any recommendation by the Council to permit then the County would seek a call in from the Secretary of State as being contrary to the most up to date Development Plan. The County Council were to provide evidence and stand as expert witness at the Public Inquiry to defend that reason for refusal as it was based on their advice.
10. Following a meeting to discuss the forthcoming Inquiry with your officers, Councils legal counsel and County officers it became clear that as the second reason for refusal relating to the provision of affordable housing had been resolved the County no longer wished to defend the first reason for refusal and withdrew their objection to the development. It would appear that the provision of affordable housing or payment of a commuted sum was seen as an exception to Policy 12 although the County had never raised this as a consideration previously. This has now left the Council in a difficult position as it would not be able to defend the appeal on the basis of a fundamental policy consideration originally put forward by the County. This would leave the Council open to a significant award of costs if it proceeded with the appeal.
11. Advice from legal counsel was for the Council to resolve the situation with the appellants as soon as possible by ensuring that a Section 106 Agreement encompassing those elements of the required commuted sums be signed before Proofs of Evidence are required to be submitted to the Planning Inspectorate, which is the 25th August. This

would reduce the potential for a claim against the Council and would give the Council the appropriate defence against any potential application for award of costs by the appellant.

12. The appellants are in agreement with this action and are preparing a Section 106 Agreement to be signed by both parties. A further update will be provided in the Addendum at the Development Control Committee meeting in August.

COMMENTS OF THE DIRECTOR OF FINANCE

13. Any comments received will be reported on the Addendum.

COMMENTS OF THE HEAD OF HUMAN RESOURCES

14. There are no HR implications associated with this report.

RECOMMENDATION(S)

15. To note the report and agree the course of action as suggested in paragraph 11.

JANE MEEK
DIRECTOR OF DEVELOPMENT AND REGENERATION

Background Papers			
Document	Date	File	Place of Inspection
05/00344/FULMAJ	***	05/00344/FULMAJ	Civic Offices, Union Street

Report Author	Ext	Date	Doc ID
Wendy Gudger	5349	8 th August 2006	NEWREP