



WEST OXFORDSHIRE
DISTRICT COUNCIL

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Name and date of Committee	CHIEF EXECUTIVE DELEGATED DECISION – 7 MAY 2024
Subject	SUGGESTED NON-DEFENCE OF REFUSAL REASONS IN RESPECT OF IMPENDING APPEAL FOR THE EAST WITNEY ALLOCATION IN THE LOCAL PLAN
Wards affected	Witney wards, South Leigh
Accountable member	Andy Graham, Leader of the Council Email: andy.graham@westoxon.gov.uk
Accountable officer	Charlie Jackson, Assistant Director Planning and Sustainability Email: democratic.services@westoxon.gov.uk
Report author	Phil Shaw, Business Manager Development and Sustainability Email: democratic.services@westoxon.gov.uk
Summary/Purpose	All evidence for the Witney East Public Inquiry must be submitted by 21 May 2024, yet the Council will only re-establish itself following the local elections after that that. However, given the changes made by the developer to the scheme in preparing for the upcoming Public Inquiry, that WODC join OCC in deciding to no longer defend the refusal reasons that were applied when the application was determined by committee
Annexes	None
Recommendation(s)	That the Chief Executive utilising the powers contained in the Urgency and Emergency Decisions element of the Constitution decides to authorise the relevant planning officers to continue negotiations with the applicant and PINS with a view to establishing a common position to put to the Inspectorate at the Inquiry and in so doing confirms that the LPA does not seek to defend the refusal reasons that led to the application being refused at Lowlands Sub Committee
Corporate priorities	<ul style="list-style-type: none">• Putting Residents First• A Good Quality of Life for All• A Better Environment for People and Wildlife

	<ul style="list-style-type: none"> • Responding to the Climate and Ecological Emergency • Working Together for West Oxfordshire
Key Decision	The course of action is predicated upon an agreement with the agent acting for the developer to not seek costs for the late withdrawal of the appeal, the totality of which could well exceed 150K.
Exempt	NO
Consultees/ Consultation	The Executive Member for Planning and Sustainable Development has been encouraging officers to seek a negotiated solution to Witney East, thereby potentially saving costs and time. Subsequently the planning appeal team, the KC appointed to support them, the Business Manager, The Chief Executive and the Planning Policy Manager along with other statutory officers have been exploring options for resolving Witney East

1. EXECUTIVE SUMMARY

- 1.1 When the application was determined it had followed a long period of pre application and application negotiation where officers had been seeking compliance with the policies of the approved plan and the developer had not been prepared to deliver upon those requirements. Oxfordshire County Council (OCC) had also refused consent on highways/technical grounds. In preparing for the Inquiry the developer had adjusted his position on a number of matters and had amended the scheme to address the refusal reasons that WODC would be tabling. Separately negotiations with OCC had progressed such that they have indicated they will not be defending their refusal reason. As such the position now is very different to that which pertained at the time the application was determined such that a review of the expediency of continuing with the appeal was logical- particularly as the weakening of the LPA position alongside the recent loss of the 5 year housing land supply had substantially increased the likelihood of an adverse award of costs should we continue to seek to defend a weakened case
- 1.2 A without prejudice meeting between the Chief Executive, Business Manager for Development and Sustainability and the applicants agent was undertaken to explore the position and on the planning merits it was concluded that withdrawal was the correct course of action. This potential decision was complicated in that the ability to withdraw from the appeal is time limited and the Council was effectively in limbo pending the election on 2/5/24. In discussion with the Leader it was decided that the decision would need to be taken under delegated powers in order to meet the timeframes but that it be postponed until after the election in order to enable the new administration to be briefed before it was made. This report represents that briefing document/framework for making the decision.

2. BACKGROUND

- 2.1 Land at East Witney is allocated for development in the adopted Local Plan ((Policy Wit 1 pages 148-150) This policy includes a series of criteria that would need to be met if the policy is to be fully complied with (points a-o). Discussions were undertaken with the developer before an application was tabled and at numerous points during the processing of the application seeking to secure policy compliance. However the landowner was unwilling to compromise on a number of key policy provisions and as such, with some reluctance, the application was presented to committee with a recommendation for refusal and was refused. That refusal is the subject of an appeal to PINS
- 2.2 The Executive Member for Planning and Sustainable Development has been encouraging Planning Officers to seek a negotiated solution thereby saving time and money. The developer had made a number of concessions in preparing for the appeal that had potentially narrowed the gap between the parties but had additionally substantially weakened the position of the LPA as to the deficiencies of the scheme. It was decided that the best way to explore matters was for the Chief Executive and Business Manager to meet the developer on a without prejudice basis to see whether a compromise could be reached

It is also relevant contextually that since the refusal the Council can no longer demonstrate a 5 year housing land supply (which weakens the extent to which policy can be relied upon) and that following the changes that had been made by the developer the KC acting for the developer now considered that the LPA continuing to run the appeal would be considered unreasonable behaviour (in that our requests had largely been met) such that they would be in a position to seek full costs against the LPA- in that the elements behind the refusal reasons had been largely addressed. These costs, which would be on top of the LPAs own legal costs would be for a KC plus multiple witnesses. The agent agreed as part of any deal that were a compromise to be reached costs would not be sought.

3. MAIN POINTS

- 3.1 Looking in detail at the refusal reasons :
- 3.2 OCC has withdrawn all its objections in light of the changes and is moving to a conditioned/H of T based response. The substantially improved position vis a vis the improvements to pedestrian and cycle accessibility now on offer is a game changer compared to when the application was determined. We can ensure that new/improved routes are either provided (where the land is held or has landowner consent) or that funding is provided to secure improvements where the agreements are not yet in place.
- 3.3 The lack of a master plan refusal reason was primarily based at securing an acceptable scheme. As one has/is emerging this has now reduced the weight that can be attached to that refusal reason and it is no longer considered a reason to withhold consent
- 3.4 As regards the design/view cone refusal reason this is only an outline and details could be agreed at Reserved Matters stage. The lack of an agreed masterplan and parameter plans that go beyond what the illustrative plan show would weaken our position in seeking to negotiate at that point. However two alternative mechanisms exist to protect our position. Firstly revised parameter plans could be prepared that more closely align to what we anticipate from the revised illustrative layout will be delivered in terms of built form heights, proximity to the view cone to the church, landscape mitigation on the higher land and in the Windrush Valley etc. Alternatively notes could be appended to the existing plans reflecting that there are key sensitivities at these points that will need to be picked up in response to whatever detailed scheme is eventually tabled ie reserves both parties positions to the RM stage. This could be the subject of some discussion in front of the inspector and conditioned accordingly and has been agreed in principle by the agent acting for the landowner.
- 3.5 The BNG/environmental mitigation package can be locked in/ dealt with by condition/106
- 3.6 The developer will be tabling a Unilateral Undertaking/106 to address the lack of one and this could potentially be turned into a formal 106 agreement very easily and so address the refusal reason

4. ASSESSMENT

It is the opinion of the BM Development and Sustainability that the clear balance of advantage now that the developer has moved towards our position is to jointly agree that the Inquiry should be directed at resolving the conditions/Heads of Terms but not the

principle of development. This will save us costs, negate the risk of an award of costs and slightly improve our 5 year land supply position.

5. TIMING/PROCESS

- 5.1 Timing has proven particularly problematic in that all the evidence needed to support the Public Inquiry has to be with PINS by 21/5 and yet the Council will not have re-established itself in terms of committees etc until after that date and certainly well after all the expenses that we are seeking to avoid in terms of witness statements etc have been incurred. The Chief Executive enjoys a power to make “urgent” decisions when they need to be taken in advance of the ability to refer the matter back to Members. It has been informally discussed with key Members and decided that the decision should be made in the period immediately post the 2/5/24 election. The developer has been advised accordingly.

6. ALTERNATIVE OPTIONS

- 6.1 The Council could decide to continue with the appeal. However the reputational and financial consequences of fighting a much weakened case when we have now largely secured the key elements we were looking for mean this is not recommended

7. CONCLUSIONS

- 7.1 A decision needs to be made very quickly to lock in the financial and other benefits of not taking the case through appeal. A delegated power to do this exists and if it is exercised post the election it will enable briefing with whomever forms the new administration before the decision is made
- 7.2 The clear balance of advantage lies with withdrawing from the appeal and securing the benefits now on offer by way of conditions and the section 106 agreement

8. FINANCIAL IMPLICATIONS

- 8.1 None directly from this report but potentially 150 – 200k savings from avoiding an award of costs to the appellants plus the 40K seeking to support our own case

9. LEGAL IMPLICATIONS

- 10. Addressed in above report.

11. RISK ASSESSMENT

- 12. Addressed in above report.

13. EQUALITIES IMPACT

- 14. Not applicable

15. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

- 15.1 The scheme secures substantial ecological and landscape mitigation which has been enhanced post the refusal and can be locked in by way of the legal agreement and conditions. (END)