

# **Guildford Borough Council**

Report to: Executive

Date: 22 June 2023

Ward(s) affected: Stoke; Send & Lovelace

Report of Director: Executive Head of Planning Development

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Report Status: Open

## **Supplementary Estimate for funds in respect of potential appeal against Member overturned item and appeal against non-determination**

### **1. Executive Summary**

- 1.1 Applicants can appeal against a refusal of planning permission, non-determination of a planning application, planning conditions and Enforcement Notices. Where appeals are lodged there is an expectation that the Council will robustly defend its decision. In cases of non-determination, the Council must set out what decision it would have made including reasons for refusal. Non determination appeals must be reported to Planning Committee to seek its views on the decision it would have made had it been able to determine an application.
- 1.2 Appeals can be considered by written representation, Hearings or Public Inquiry. Matters of complexity will normally be dealt with at Public Inquiry. In the case where an officer recommendation has

been overturned, the decision may be made to appoint an external planning expert to present the Council's case. For Public Inquiries Counsel will be appointed there may also be a need for expert witnesses to be appointed.

- 1.3 The Council currently has an appeal by Taylor Wimpey against the non-determination of the planning application relating to the redevelopment of Wisley Airfield. The Council has also been advised that an appeal will be lodged against the refusal of the North Street application. It is understood that the appeal will be lodged at the end of June and will be dealt with by Public Inquiry with a likely date in early 2024. A revised planning application will be submitted at the end of June. If permission is forthcoming for the revised scheme, the applicants have suggested that the appeal would be withdrawn. Work will need to start on the appeal as soon as the start date is confirmed by the Planning Inspectorate. Therefore, there is a need to fund elements of this work, for example Counsel will need to be appointed to advise the Council as it progresses.
- 1.4 This report seeks supplementary budget for the Wisley appeal and for the North Street appeal. As the Planning Committee is yet to consider the appeal application and there are still some outstanding consultation responses it cannot be confirmed the case the Council will be defending or the expert witnesses that may need to be appointed. There is also a suggestion on the North Street refusal that the appellants will seek to substitute some of the submitted plans which will address some of the reasons for refusal. However, at this stage there is no certainty around this matter.

## **2. Recommendation to Executive**

- 2.1 That the Executive approves an initial supplementary budget of £350,000 to the Wisley Appeal and for the initial work to prepare for the North Street appeal.

### **3. Reason for Recommendation:**

- 3.1. To enable a robust defence of the appeal against non-determination of the Wisley appeal and to do the initial work to prepare for the North Street appeal.

### **4. Exemption from publication**

- 4.1. None.

### **5. Purpose of Report**

- 5.1 The purpose of the report is to seek supplementary budget for the cost of defending the Wisley appeal against non-determination and the North Street appeal. This will result in the appointment of Counsel in both cases together with the appointment of some external consultants. In the case of Wisley, officers will represent the Council as expert planning witnesses. It is likely that an external planning witness will be needed for North Street as there is insufficient internal capacity to deal with the revised application and prepare for the appeal.

### **6. Strategic Priorities**

- 6.1 This proposal supports delivery of the following key aspects of the Council's strategic priorities as follows:
  - Revive Guildford town centre to unlock its full potential
  - Provide and facilitate housing that people can afford
  - Create employment opportunities through regeneration
  - Support high quality development of strategic sites

Approval of the recommendations within this report will enable the funds to be available to appoint appropriate persons to defend the Council's position at appeal. Robust defending of appeal decisions ensures that strategic priorities are met at promoting high quality development.

## **7. Background**

- 7.1 Budget provisions for Development Management include only a very small budget amount for dealing with appeals wrapped up with a 'Consultancy' account code.
- 7.2 The dates for a 24-day Public Inquiry in respect of the Wisley appeal have now been set. Officers have been able to secure an extension of time for the submission of the Statement of Common Ground until 17 July 2023. This will enable a Special Planning Committee to take place on 10 July 2023 to confirm the decision it would have made, if that is one of refusal the Committee will also confirm the grounds on which officers will defer the appeal.
- 7.3 Officers are concerned about the way the applicants have behaved in lodging the appeal. A significant amount of additional information was submitted to the Council days before the appeal was lodged. A number of statutory consultees were reconsulted on the additional information and consultation response are currently being finalised.
- 7.4 Until all the consultation responses are received and the matter has been considered by the Planning Committee it is not possible to confirm the number of expert witnesses needed to present the Council's case at appeal.

## **8. Consultation**

- 8.1 The Planning Committee will be asked to confirm the decision it would have made on the Wisley application had the applicant not appealed against non-determination. It is important to advise that there are matters that would have been discussed and potentially resolved through negotiation between officers and the applicants' team. The appeal against non-determination has truncated this negotiation.
- 8.2 There are currently a number of reasons for refusal relating to the North Street application. As an appeal is yet to be lodged it is unclear at this stage how the applicants will try to address some of the reasons for refusals through the appeal process. The Planning

Committee will be advised of process as the Council's case is prepared. It is common practice in a situation where there is no evidence that can be presented to defend a reason for refusal for the Planning Committee to be advised of this, in closed session.

- 8.3 Officers will follow a procurement procedure for all appointments to ensure that the Council is receiving appropriate value for money.

## **9. Key Risks**

- 9.1. Failure to appropriately resource appeals could be perceived by interested parties as the Council failing in its duty to defend its decisions.
- 9.2. Failure to resource either appeals with the appropriate professional support could lead to the appeal being allowed or the award of costs against the Council for unreasonable behaviour. This is particularly relevant for the North Street appeal where the Planning Committee has gone against expert Professional advice on matters such as viability with no contrary professional evidence.

## **10. Financial Implications**

- 10.1 The cost of defending both appeals will result in cost increase outside existing budget. Officers need to carefully manage each stage of both appeals to ensure that the Council puts the most robust case forward and ensure that it has a robust case to respond to any award of costs application from appellants. Officers also need to ensure that if there is a case to be made for the Council seeking an award of costs against the appellants it has a clear strategy as it moves through the appeal milestones.

## **11. Legal Implications**

- 11.1. There will be a need to secure senior Counsel to support the Council in both appeals.

## **12. Human Resource Implications**

- 12.1 Preparing the case for both appeals together with the length of time already set out for the Wisley appeal will require a considerable commitment from various officers across the Council. This will take a number of officers away from other work over the coming months which will put additional pressures on other parts of the Service.

## **13. Equality and Diversity Implications**

- 13.1. There are no equality and diversity implications as a result of this report.

## **14. Climate Change/Sustainability Implications**

- 14.1 Delivering development that is not sustainable will have implications for the Borough. Defending these appeals in a robust manner will ensure that sustainable development is delivered in the Borough in a way that addresses the Climate Change emergency.

## **15. Summary of Options**

- 15.1 The Council could decide not to defend either appeal. The implications for doing so would potentially result in inappropriate development being delivered in the area or development that is not supported by appropriate infrastructure. This would also give the appellant strong grounds for an award of costs against the Council on the grounds of unreasonable behaviour.
- 15.2 This report is seeking a supplementary budget for £350,000 to cover the appointment of external support to support the Council in defending its position at both appeal Inquiries.

## **16. Conclusion**

- 16.1 The appeals referenced in this report necessitated the appointment of external consultants to represent the Council and robustly defend the reasons for refusal. The supplementary expenditure is considered essential.