

DELEGATED

AGENDA NO

PLANNING COMMITTEE

DATE 5 FEBRUARY 2014

**REPORT OF CORPORATE DIRECTOR,
DEVELOPMENT AND NEIGHBOURHOOD
SERVICES**

13/2568/EIS

Tall Trees Hotel Worsall Road, Kirklevington

Construction of a Housing Development comprising approximately 330 dwellings and associated roads, landscaping and public open space (Demolition of the existing hotel facilities).

Expiry Date: 10 January 2014

SUMMARY

At the 18th December 2013 Planning Committee Members resolved that they were minded to refuse planning permission, contrary to the recommendation of the planning officer, for the above development on two grounds. The first was that the application site was outside the limits of development and therefore the proposal was contrary to saved policy EN13 of the Stockton-on-Tees Local Plan (1997). The second was that the application site was unsustainable due to the lack of public transport serving it contrary to Core Strategy Policy 2 (CS2) – Sustainable Transport and Travel.

The Head of Planning and Principal Solicitor agreed that the Protocol for Decisions Contrary to Officers Recommendation should be invoked due to their concerns that the reasons would not be sustainable at appeal and would place the council at risk of a costs award. The protocol allows a period of more careful consideration of the proposed reasons for refusal by the Head of Planning, Corporate Director of Development and Neighbourhood Services and Director of Law & Democracy. The Protocol provides that in the event that the Head of Planning can support the reasons for refusal the refusal notice would be issued for the reasons given by members without further recourse to committee. If the Head of Planning cannot support the reasons for refusal the protocol provides that the application will be returned to planning committee with a report setting out the concerns regarding the reasons for refusal in full for members to consider before making the final determination of the application.

It must be pointed out that members are free to determine the application in any manner they see fit, including refusal should they still be so minded, remaining bound by planning legislation, national and local policy, as set out in the original report.

Upon returning to planning committee planning and legal advice must be provided to members to ensure they have all relevant information and advice before them before making the final determination. To assist officers with this and to ensure the reasons were not rejected without a full interrogation, independent advice was sought from a specialist planning barrister and this advice is attached as Appendix 1.

A copy of the original Planning Committee report and update report are attached at Appendix 2 and 3.

In summary the independent advice, which should be treated as such, is that the merits of the Council's reasons for refusal are weak and that they would be very unlikely to be defended successfully on appeal. Furthermore the Barrister also considers that the Council is in territory where it would be at significant risk of an award of costs on the basis of unreasonable refusal judged by reference to the relevant policy set out in Circular No. 03/2009 Costs Awards in Appeals and Other Planning Proceedings.

Members are now required to reconsider the application (13/2568/EIS) taking into account the planning policies and material planning considerations set out in the original report (attached) and the advice contained in this addendum report and counsel's opinion,

CONCLUSION

The Head of Planning's recommendation remains as previously set out in the report and update report made to Members at the Planning Committee on 18th December 2013 that the application be granted conditional Approval subject to the applicant entering into a Section 106 Agreement in accordance with the Heads of Terms and the conditions as set out in the report and update report.

Corporate Director of Development and Neighbourhood Services
Contact Officer Mr Gregory Archer Telephone No 01642 526052

WARD AND WARD COUNCILLORS

Ward **Yarm**
Ward Councillor **Councillor A B L Sherris**

Ward **Yarm**
Ward Councillor **Councillor Mark Chatburn**

Ward **Yarm**
Ward Councillor **Councillor Ben Houchen**

IMPLICATIONS

Financial Implications:

As Report

Legal Implications:

Circular 03/2009: Costs Awards in Appeals and other Planning Proceedings recognises that planning authorities are not bound to accept the recommendations of their officers. However if officer's technical or professional advice is not followed authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so costs may be awarded against them.

The circular also provides that reasons for refusal should be complete, precise, specific and related to the application. Planning authorities will be expected to produce substantial evidence at appeal stage to substantiate each reason for refusal. Vague and generalised assertions which are unsupported by objective analysis are likely to be deemed unreasonable behaviour and costs awarded. The Secretary of State requires substantial, realistic and specific evidence to support reasons for refusal.

Should members seek to refuse the application on the concerns outlined on 18 December, sound and substantial evidence as outlined above must be produced to substantiate those grounds.

Environmental Implications:

As Report

Human Rights Implications:

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Community Safety Implications:

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report

Background Papers

The Town and Country Planning Act 1990.

National Planning Policy Framework

Stockton on Tees Local Plan Adopted Version June 1997

Core Strategy Development Plan Document March 2010

Supplementary Planning Document 3: Parking Provision for New Developments

Supplementary Planning Document : Open Space, Recreation and Landscaping

Supplementary Planning Document 6 : Planning Obligations