

# PLANNING COMMITTEE



Report subject	<b>Update to members in relation to application APP/22/01455/F Land South of Gillett Road, Talbot Village, Poole, BH3 7AH</b>
Meeting date	18 <sup>th</sup> January 2024
Status	Public
Executive summary	<p>On 2<sup>nd</sup> October 2023 councillors determined to refuse a planning application, against officer recommendation, as identified below. As part of the recommendation, power was delegated to Head of Planning to sort out final wording.</p> <p>The Applicant has now appealed the planning application on the grounds of non-determination before the Local Planning Authority issued the decision notice. This report updates Members on the current position and seeks confirmation from councillors as to how they wish the Council to proceed in relation to the appeal.</p>
Recommendations	<b>That members determine how they wish the Council to proceed in relation to the appeal.</b>
Reason for recommendations	To provide clarification as to the approach that the Council will adopt in relation to the appeal

Portfolio Holder(s):	Councillor Millie Earl
Corporate Director	Wendy Lane
Report Authors	Wendy Lane/ Simon Gould /Rob Firth
Wards	Talbot and Branksome Woods: Councillor Philip Broadhead, Councillor Matthew Gillett and Councillor Karen Rampton
Classification	For update and decision

## Background

- On 2<sup>nd</sup> October 2023 Planning Committee considered a planning application:  
*“Major hybrid application for: Full application for the construction of a new 11,606 sq. metre Nuffield Health Hospital with provision of access, servicing and car parking, cycle and pedestrian provision and landscaping, Outline planning application for the provision of 13,394 sq. metre of employment, healthcare and university-related floorspace, including ancillary uses and a Growing Hub, and Change of Use of 12 hectares of grazing land to create a Heathland Support Area for the lifetime of the Innovation Quarter.in relation to the above planning application where it was resolved to refuse planning permission and delegate the final wording for the reason for refusal to Officers.”*
- Contrary to the officer recommendation, members resolved to refuse the application. The minuted reasons were as follows:  
*“RESOLVED that planning permission be REFUSED contrary to the Officer’s recommendation for the following reasons (final wording of reasons to be delegated to the Head of Planning to agree in consultation with the Chair):*  
**Contrary to the following Policies of the Poole Local Plan (2018):**  
**PP32 Poole’s nationally, European and internationally important sites** which states that ‘Development will only be permitted where it would not lead to an adverse effect upon the integrity, either alone or in combination, directly or indirectly, on nationally, European and internationally important sites’.  
*The Committee was concerned that the development could attract new people to/within close range of the protected heathland.*  
**PP35 A safe, connected and accessible transport network**  
*There is an overprovision of car parking to that stated in the current adopted BCP Parking Standards Supplementary Planning Document (SPD) and thereby the development is not in accordance with Policy PP35 which requires that developments accord with the Parking & Highway Layout in New Development SPD. The Parking SPD is a material consideration and a departure needs to be justified.*

*The Committee did not find that there was adequate justification for departing from the SPD in relation to this application.*

**PP24 (2) (b) and (c) Green infrastructure**

*‘(2) New development New development should protect and strengthen the green infrastructure network by:*

*(b) connecting together and enrich biodiversity and wildlife habitats;*

*(c) improving connections, green corridors and links between different components of the green infrastructure network;’*

*The Committee agreed that the development did not sufficiently protect green infrastructure in relation to the above sections of the Policy.*

**PP21 3(c) Talbot Village**

**3) Transport**

*Development at Talbot Village will help to deliver significant improvement of transport and movement to the area by, where appropriate:*

*c) providing a level of car parking designed to encourage access to the campus by walking, cycling and public transport*

*The Committee agreed that the development did not encourage this section of the policy*

***The Committee agreed that there should also be included reasons for refusal to address the absence of any s106 agreement to secure the planning obligations identified as necessary in the report.”***

3. Following that resolution and whilst officers were in the process of considering issues relating to the final wording of the reasons identified, on 4<sup>th</sup> December 2023, the Council’s Overview and Scrutiny Board considered the Council’s emerging draft local plan as a preliminary to its subsequent consideration by Cabinet and Full Council. The draft local plan proposes a material change to the size of the current allocation to which this application relates. Prior to this date, the applicant had indicated a potential intention to appeal the application. By way of an appeal form dated 5<sup>th</sup> December 2023, the applicant (now appellant) lodged an appeal for non-determination.
4. The consequence of the lodging of an appeal against non-determination is that jurisdiction for the determination of the application has now passed to the Secretary of State who has appointed an inspector to deal with the matter. Had the Council issued a decision notice, that could have also been appealed in a similar way.
5. As part of the procedural process relating to appeals, the Planning Inspectorate (“PINS”), determines the format that the appeal will take and issue a formal start date. The start date has been confirmed as 8<sup>th</sup> January 2024 and PINS have currently determined that the appeal should be heard by way of a public inquiry which is presently programmed to start on 30<sup>th</sup> April 2024 and last for 4 days. The Council will need to progress arrangements for a venue. The timetable within the start date letter identifies that the Council must produce full details of its case by 12<sup>th</sup> February 2024 and within the same timeframe seek to agree a Statement of Common Ground. This deadline is also relevant to interested parties who wish to submit additional representations to PINS in relation to the

appeal. For the main parties to the appeal, witness statements are currently timetabled to be produced by 2<sup>nd</sup> April 2024.

6. Irrespective of whether an appeal results from an appeal against a formal refusal of planning permission or an appeal against non-determination it is a sensible part of an appeal process for the Council to review its position in relation to it, including reasons as to why the Council considers an appeal should be dismissed. In the case of a non-determination appeal, the starting assumption is that the local planning authority decided to refuse the application; however, for the purposes of preparing its statement of case and for presenting its case at inquiry, the Council needs to be as clear as possible regarding its position.
7. As a basic matter of fact, the Council can have an award of costs made against it in relation to an appeal should the Secretary of State's appointed inspector consider that the Council has acted unreasonably. This includes defending reasons that could not be reasonably justified. However, it can also relate to procedural conduct. As such, both from the point of view of appeal preparation and also generally seeking to act reasonably, it is important that the Council seeks to clarify its position relating to the appeal as soon as is reasonably practicable.

### **The Council's appeal position and reasons for refusal**

8. Since members resolved to refuse the application, first in accordance with the resolution and now as a result of the lodging of the appeal, officers have been considering the reasons for refusal initially identified by members on 2<sup>nd</sup> October and potential final wording in relation to them. This has been on the assumption that, for the purposes of the appeal, members may wish to maintain the majority position as indicated at the October Planning Committee.
9. In considering how they wish to approach the appeal, it would assist if members could reflect on the reasons as originally identified, including from the point of view of giving any further clarification as to their extent, reasons for concern and if they remain reasons on which members will wish to rely. This, in particular, is one area that officers anticipate will be a subject on which they will seek to provide further clarification at the meeting.

### **Options Appraisal**

10. As highlighted above, the resolution of members did not ultimately result in a decision notice being issued. A range of options are potentially now available to members having regard to the appeal for non-determination. These include:
  - 10.1 maintaining the position as currently appears i.e. that the appeal should be dismissed for the reasons as identified at the October 2023 Planning Committee meeting (albeit possibly with certain clarification relating to the reasons);
  - 10.2 identifying different / reducing the number of reasons in respect of which it is considered the appeal should be dismissed; and
  - 10.3 revising their position in opposing the application.
11. However, in this respect, it is important to stress that any position that members may adopt will give rise to risks, in particular in relation to cost implications for the Council, especially if those actions cannot be reasonably justified.

### **Summary of financial implications**

12. In dealing with an appeal of this nature, the Council will inevitably incur costs in relation to related administrative activities and for the purposes of presenting its case to the Secretary of State or their appointed inspector. The extent of such costs will be impacted depending on the position that the Council adopts.
13. As has already been identified, an award of costs can also be made a party at appeal in the event that they are considered to have acted unreasonably.
14. At this stage, it is a matter of speculation as to the total costs that might be incurred by the Council in relation to this appeal but it is likely to be significant and could be very substantial if it included an award of costs against Council (multiple six figures).

### **Summary of legal implications**

15. As a result of an appeal being lodged, the Council is in a position where it will need to clarify its position to the Secretary of State's appointed inspector.
16. An award of costs can be made against any party at an appeal should it be considered to have acted unreasonably.
17. It is important to stress that the fact an application has gone to appeal and might incur expenditure is not in itself a good planning reason as to whether the application should be granted or refused. Nevertheless, as has already been identified, an award of costs can be made against the Council if it is considered it has acted unreasonably. This includes being unable to reasonably support any one or more reasons as to why it considers an appeal should be dismissed. Equally, it can apply to other behaviour as well if that was considered to be unreasonable under the circumstances. The amount of any costs that might ultimately be incurred will also likely be impacted by the approach that the Council adopts.
18. Any decision by the Council is potentially at risk of a legal challenge. Whether such a challenge is taken and the likelihood of its success would very much depend on the basis of challenge and the decision made. Any such challenge might itself give rise to cost issues.

### **Summary of human resources implications**

19. Any appeal will inevitably have an appreciable resource impact on officers though the extent of impact will vary depending on the format of the appeal and the position the Council adopts. The Council will be responsible for making arrangements for a suitable venue for any appeal.

### **Summary of sustainability impact**

20. Sustainability issues are relevant to the planning appeal to which this report relates and any appeal /legal challenge that might arise in relation to it. As previously indicated, the jurisdiction for determining the application to which this appeal relates now rests with the Secretary of State via their appointed inspector. At its most general, decisions relating to this report might have implications on general funding available to the Council for other purposes.

### **Summary of public health implications**

21. No specific public health impacts have been identified with this report. However, public health are relevant to the planning appeal to which this report relates and any appeal / legal challenge that might arise in relation to it. At its most general, decisions relating to this report might have implications on general funding available to the Council for other purposes.

### **Summary of equality implications**

22. No specific equality impact issues have been identified as directly associated with this report. However, it should be noted that equality impact issues are relevant to the planning appeal to which this report relates and any appeal / legal challenge that might arise in relation to it. At its most general, decisions relating to this report might have implications on general funding available to the Council for other purposes.

### **Summary of risk assessment**

23. As identified in this report there are a variety of clear risks associated with the decision of members in relation to this report.

### **Background papers**

Original committee report and published minutes

