

COMMITTEE: PLANNING

DATE: 15 April 2009

SUBJECT: Appeal by George Wimpey South East Ltd
Land at Kings Drive
Erection of 140 dwellings including 30% affordable housing, associated landscaping, public open space and parking provision, together with a new vehicle and pedestrian access from Kings Drive

REPORT OF: Jefferson Collard, Planning Manager

Ward(s): Upperton

Purpose: To update Members on the ongoing discussions that have been taking place between the Highway Authority and the appellant's transport consultants to overcome the highway objections to the proposed development and to seek delegated authority for the Planning Manager to confirm to the Planning Inspectorate that the highways reason for refusal will not be defended at the Inquiry if agreement is reached between the Highway Authority and the appellants prior to the appeal being heard in June.

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Recommendations: That the Planning Committee gives delegated authority to the Planning Manager to confirm to the Planning Inspectorate that the highways reason for refusal will not be defended at the Inquiry if agreement is reached between the Highway Authority and the appellants prior to the appeal being heard in June.

1.0 Background

1.1 Members will recall that at a meeting of the Planning Committee on 15 July 2008, planning permission was refused for the erection of 140 dwellings including 30% affordable housing, associated landscaping, public open space and parking provision together with new vehicle and pedestrian access from Kings Drive on land at Kings Drive, for the following reasons:

- (1) The proposed development of 140 dwellings would, by reason of its design, form and layout, not make a positive contribution to either the streetscene or surrounding area. As such, the proposal is contrary to Policies UHT1 and UHT4 of the Eastbourne Borough Plan 2001-2011.

- (2) The proposal would lead to additional traffic on the highway network, increasing traffic hazards on Kings Drive and having an unacceptable impact on Rodmill Roundabout to the detriment of highway users conflicting with Policy TR3 in the Structure Plan.

1.2 On 9 January 2009, George Wimpey (South East) Ltd lodged an appeal against the Council's decision to refuse planning permission and the appeal will be heard at an Inquiry on 16, 17 and 18 June.

2.0 Reasons for Refusal

2.1 In respect of the first reason for refusal, the Council has appointed a local architect to be an expert witness at the Inquiry to defend the decision on design grounds and a Senior Planning Officer will give evidence on planning policy.

2.2 With regard to the second reason for refusal, it falls to East Sussex County Council as Highway Authority to provide the evidence and appear as witness on this issue at the Inquiry. The Highway Authority has been in discussions with the appellant's transport consultants since the application was refused in a bid to overcome the highway objections to the proposed development.

2.3 When the County Council were consulted on the original planning application, their Officers raised concerns about the following:

- (1) the trip rates used in the submitted Transport Assessment and the lack of future year assessment;
- (2) the need to mitigate the impact of the development on Rodmill Roundabout; and
- (3) the incomplete Travel Plan.

Prior to determination, the County Council felt that with further work, the above issues could have been resolved. However, this did not happen but the recent ongoing discussions with new transport consultants have resulted in a revised draft Transport Assessment being produced by the appellant's consultants and the Highway Authority has confirmed that the revised Assessment and associated Travel Plan are likely to overcome objections (1) and (3) listed above.

2.4 Therefore, the only remaining objection would relate to point (2) above. The Highway Authority acknowledges that there would be an impact on Rodmill Roundabout as a result of the proposed development. However, the Highway Authority considers that if a significant contribution is secured towards the planned bus priority scheme to encourage more sustainable travel, this would provide increased capacity on the highway network through a modal shift and would enhance the sustainable accessibility of the site, mitigating the impact.

2.5 The Highway Authority has therefore confirmed that if the appellant agrees to the above, the original highway objection to the proposed development would become unsustainable at appeal and they will issue a revised consultation response, formally withdrawing their objection to the development.

2.6 Members are advised that the process of having ongoing discussions with appellants prior to an appeal being heard is not unusual, indeed it is good practice and leads to the preparation of a "Statement of Common Ground" which sets out all of the agreed factual information about the appeal proposal, leading to shorter proofs of evidence and saving time and cost at the Inquiry.

3.0 Request for Delegated Authority to Planning Manager

3.1 This report therefore requests that delegated authority is given to the Planning Manager to confirm to the Planning Inspectorate that the highways reason for refusal will not be defended at the Inquiry if agreement is reached between the Highway Authority and the appellants, prior to the appeal being heard in June.

3.2 However, if Members are minded not to agree to such a request and decide to proceed with defending the highways reason for refusal in part, or in full, at the Inquiry after the Highway Authority withdraw their objection, it must be noted that Officers of both East Sussex County Council and the Borough Council would be unable to give evidence on this issue. In these instances, it is usual for Officers to seek to appoint suitably qualified transport consultants to defend the reason for refusal. However, it is considered that it would be difficult to find a consultant that would be willing to defend the reason bearing in mind that the Highway Authority would have withdrawn their objection. An alternative possibility would be for Members to defend the highways reason. Members also need to be aware of the costs associated with the appointment of a consultant and the further significant costs that potentially could be incurred in the event of a successful claim made by the appellant on the grounds of unreasonable behavior by the local authority. Officer's advice is that in their professional opinion to pursue defence of a highway reason for refusal without the support of the Highway Authority would be unsustainable.

3.3 In addition, Officers are confident that this Council has a sound case for defending the refusal of planning permission on design grounds alone and that to defend an unsustainable highways reason, may serve to undermine rather than strengthen the Council's case.

4.0 Consultations

4.1 Letters were sent to the local residents that were consulted and/or made representations on the original planning application, notifying them of this special Planning Committee and offering them the opportunity to make comment on the content of this report.

5.0 Resource Implications

5.1 As detailed in paragraph 3.2 above, if the Highway Authority withdraws their original objection to the proposed development and Members are minded to proceed with defending the highways reason for refusal, it is considered that there would be significant financial implications for the Council.

6.0 Environmental Implications

- 6.1 If agreement is reached between the Highway Authority and the appellants and the original objection is withdrawn, the proposed bus corridor could provide increased capacity on the highway network and enhance the sustainable accessibility of the site.
- 6.2 In addition, the Council will strongly defend the first reason for refusal and will provide expert evidence at the Inquiry to demonstrate that the proposed development by reason of its design, form and layout, would not make a positive contribution to either the streetscene or the surrounding area and as such the proposal is contrary to Policies UHT1 and UHT4 of the Eastbourne Borough Plan 2001-2011.

7.0 Other Implications

- 7.1 There are no adverse impacts on equalities, human rights, community safety, youth or anti poverty, as a direct result of this report.

8.0 Conclusion

- 8.1 Discussions between the Highway Authority and the appellant's transport consultants have been ongoing since the planning application for the proposed development off Kings Drive was refused, in a bid to overcome the County Council's original highway objections.
- 8.2 The Highway Authority has confirmed that a new draft Transport Assessment and associated Travel Plan is likely to address their concerns and that if agreement is reached regarding the appropriate level of contribution required to bring forward the bus corridor proposals, their original highway objections will be withdrawn.
- 8.3 In light of the above, delegated authority is sought from the Planning Committee to allow the Planning Manager to confirm to the Planning Inspectorate that the highways reason for refusal will not be defended at the Inquiry if agreement is reached between the Highway Authority and the appellants prior to the appeal being heard in June.

**Jefferson Collard
Planning Manager**

Background Papers:

The Background Papers used in compiling this report were as follows:

EB/2008/0253

To inspect or obtain copies of background papers please refer to the contact officer listed above.