
West and City Centre Area Planning Sub-Committee

19 October 2006

Report of the Assistant Director (Planning & Sustainable Development)

PLANNING APPEAL AT 26-28 TADCASTER ROAD

Summary

1. At the meeting on 3 October 2006 Members were asked to consider withdrawing a highway reason for refusal, relating to the current planning appeal at 26 Tadcaster Road. An independent traffic consultant's report was presented at the meeting. Members considered this to be inadequate and resolved that the consultants should be retained to undertake further survey and analysis of the highway issue for Members to consider.
2. In view of the likely significant cost involved in retaining the consultants, the Head of Network Management has produced the attached report (at Annex A). This advises Members that it is not considered possible to bring forward viable evidence to defend the highway reason for refusal at the Public Inquiry. The serious risk of costs against the Council remains and Members' further instructions are sought.

Background

3. The planning application in question was submitted by Pilcher Homes for the erection of 4 No 3 storey houses and a 3 storey block of 9 No flats at 26 – 28 Tadcaster Road, together with ancillary garages and cycle/bin stores. Existing dwellings and lock-up garages on the site were to be demolished. (reference 06/00103/FUL).
4. The application was recommended for approval at Committee on 16 March 2006. However, by unanimous decision, Members overturned the recommendation, the application being refused upon design and highway safety reasons.
5. An appeal has been submitted, to be heard at a forthcoming Public Inquiry. Officers will defend the design reason for refusal at the Inquiry. However, because highway issues are more bound by technical considerations, highway officers feel unable to defend the highway reason for refusal. This leaves the Council at serious risk of an award of costs.
6. The report of the independent traffic consultant also concluded that "the likely level of traffic generated by the proposed development would not have a

material impact on the use of the access in either highway capacity or road safety terms". The consultant also stated that in their view a refusal on highway grounds could not be defended at a public inquiry.

7. The attached memo dated 16 October 2006 (at Annex A) from the Head of Network Management advises Members that there are no grounds for sustaining a highway reason for refusal. This is based upon an analysis of estimated existing and proposed traffic flows to and from the site, assessed against the current standards and practice applied to considering the traffic implications of planning applications.
8. Attached at Annex B and C respectively are the pre-Inquiry statements of the Appellant and the Council. These summarise the issues and evidence that each party will bring forward at the Inquiry. Members will note that the appellant will bring forward highway evidence to substantiate their case that the highway reason for refusal is unreasonable. Also Members will note that the Council's statement does refer to defending the highway reason. This is because the statement had to be submitted by 28 September 2006 before the issue was debated by Members. This could be withdrawn if Members are minded to do so, even at this stage.

Consultation

9. There have been no further external consultations. Discussion have been held with the relevant highway and legal officers of the Council.

Options

10. There are two main options at this stage:-
 - (i) For the highway reason to be defended at the Inquiry. However both the Council's own highway officers and the Consultant who was retained, feel unable to bring forward highway evidence to defend the reason.
 - (ii) For Members to agree to withdraw the highway reason for refusal. The design reason for refusal would continue to be defended.

Analysis

11. Members are advised that option (i) above has the disadvantage of leaving the Council seriously exposed, to possibly substantial costs, on the grounds that it has acted unreasonably in not producing tangible highway evidence, through an expert witness. Local residents or individuals could still appear at the Inquiry (that is not representing the Council) and object upon highway grounds.
12. Option (ii) would significantly reduce, but not entirely remove, the risk of costs against the Council. However, any defence of the highway reason would fall upon local residents or individuals, who are unlikely to have highway expertise.

Corporate Priorities

13. Members are referred to the Background and Analysis sections.

Implications

Financial

14. The financial implications are discussed in the Background and Analysis sections.

Human Resources (HR)

15. There are no HR implications.

Equalities

16. There are no equalities implications.

Legal

17. There are no legal implications.

Crime and Disorder

18. There are no crime and disorder implications.

Information Technology (IT)

19. There are no IT implications.

Property

20. There are no property implications.

Other

21. There are no other implications.

Risk Management

22. The main risk is the award of costs against the council and as discussed in the Analysis section.

Recommendations

23. Members are asked to withdraw the highway reason for refusal from the refusal notice dated 20 March 2006 (reference 06/00103/FUL),

Reason: On the basis of the assessment provided by the Head of Network Management.

Contact Details

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Report Approved



Date 16 October 2006

Specialist Implications Officer(s)

There are no specialist implications.

Wards Affected: Dringhouses and Woodthorpe

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex A – Report of Head of Highway Management

Annex B – Pre-Inquiry statement from appellant

Annex C – Pre-Inquiry statement from City of York Council

16 October 2006

cn/lt/comm/area/west/191006 – planning appeal at 26-28 Tadcaster Road