

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 8</b>
<b>DATE OF MEETING:</b>	<b>22<sup>nd</sup> SEPTEMBER 2020</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>CHRIS NASH</b> <a href="mailto:CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK">CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>LAND AT SK2531 3702, LUCAS LANE, HILTON, DERBY</b>	<b>REF: DMPA/2019/1143</b>
<b>WARD(S) AFFECTED:</b>	<b>HILTON</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

1.1 That the Committee ratifies its previous resolution on this application, made at the meeting on 1 July 2020, and endorses the issuing of planning permission as per that resolution.

## **2.0 Purpose of Report**

2.1 To appraise the Committee of the latest circumstances relating to an application for outline permission on land at Lucas Lane, Hilton – the Committee having previously resolved to approve permission subject to conditions and a section 106 legal agreement (s106).

2.2 To also seek the Committee's confirmation that its previous resolution stands.

## **3.0 Background**

3.1 Members will recall resolving to approve outline planning permission for the site off Lucas Lane in Hilton at the meeting on 1 July 2020. The resolution was made subject to the prior completion of a s106 to secure planning obligations, with delegated powers given to the Strategic Director (Service Delivery) to agree the content of that s106. Accordingly, permission has not yet been issued due to the time required to negotiate the terms of the agreement and secure its signing and completion. The s106 has, however, now been completed.

3.2 In the meantime, the Council has been put on notice by Hilton Parish Council of their intent to seek a judicial review of the decision on the basis that officer advice in respect of the weight which could be afforded to the Hilton Neighbourhood Development Plan (NDP) was incorrect.

## 4.0 Discussion

- 4.1 It is a well-established principle that a planning decision is both not 'made' until the decision notice itself is issued, and that the decision made must be based on the most up-to-date policy position. Where material changes occur in respect of planning policy, the decision maker should review the circumstances surrounding the original recommendation made and determine whether any resolution still stands or whether it should be reviewed.
- 4.2 At the meeting in July, a representative of the Parish Council addressed the Committee and suggested that the emerging NDP could be afforded full weight. Officer advice at the meeting was that it could not be afforded weight due to it not yet reaching its Regulation 16 consultation. The report, originally written and published for the meeting in March (which was cancelled due to the COVID-19 pandemic) stated:
- "The emerging NDP is yet to be subjected to a formal public consultation through the Regulation 16 'publication stage'. Neither the draft NDP nor the consultation statement have been formally submitted to the Council and, as such, the extent of unresolved objections is unknown. As set out in the PPG, "the consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals". For these reasons, it is too early in the NDP's preparation to afford it any weight".*
- 4.3 The officer updated the committee to confirm that, by the date of the July meeting, the draft NDP and consultation statement had since been received.
- 4.4 The officer also referred to the Planning Practice Guidance (PPG) and quoted paragraph 41-007:
- "...An emerging neighbourhood plan is likely to be a material consideration in many cases. Paragraph 48 of the revised National Planning Policy Framework sets out that weight may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies. A referendum ensures that the community has the final say on whether the neighbourhood plan comes into force as part of the development plan. Where the local planning authority publishes notice of a referendum, the emerging neighbourhood plan should be given more weight, while also taking account of the extent of unresolved objections to the plan and its degree of consistency with NPPF. The consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals. All representations on the proposals should have been submitted to the local planning authority by the close of the local planning authority's publicity period..."*
- 4.5 The publicity period referred to here is the Regulation 16 consultation which commenced on 7 September and will close at 5pm on Monday 19 October 2020. Thereafter, responses will be compiled, and an examiner appointed who will consider fully the representations made and the compliance of the NDP with the 'basic conditions'. Only if this stage is passed can the Council organise a referendum, and if proceeding to this stage it must issue a Regulation 18 decision statement.

- 4.6 Normally, this action would allow a decision maker to begin affording some weight to an emerging NDP, with a referendum allowing this weight to elevate further. The obvious corollary is that if an emerging NDP, such as the Hilton NDP, has not yet completed the Regulation 16 consultation, then it cannot carry sufficient weight to override prevailing policies of the Local Plan.
- 4.7 The PPG has also been updated recently in light of the COVID-19 pandemic. It states that *“where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to the application”* (paragraph 41-107). Again, this step is some way off yet – likely a number of months given the closing date of the current consultation and the time then necessary to undertake an examination of the NDP.
- 4.8 Accordingly, it remains the professional opinion of officers that the NDP cannot be afforded meaningful weight which might alter the recommendation previously presented to the Committee. It is therefore recommended that the Committee’s resolution remains unchanged from that made on 1 July, and that given the s106 is now complete and there are no other reasons to withhold the grant of permission; the decision notice be issued without delay.

## **5.0 Financial Implications**

- 5.1 There are no financial implications associated with the issuing of the decision notice. The financial risk associated with a judicial review is no greater with this decision than any other decision made, with it possible for the Council to seek that its legal fees are paid in the event of an unsuccessful challenge.

## **6.0 Corporate Implications**

- 6.1 The delivery of housing would be secured in line with growth aspirations for the District, whilst a permission would assist in securing a 5-year housing land supply.

## **7.0 Community Implications**

- 7.1 Aspirations for the Lucas Lane site under the emerging NDP would be diminished by this decision. However, the decision would be in line with prevailing planning policies applicable to the site, of which the community was consulted upon during the creation of the Local Plan Parts 1 and 2.

## **8.0 Background Information**

- a. Committee agenda for 1 July 2020:

[https://south-derbys.cmis.uk.com/southderbyshire/Committees/tabid/62/ctl/ViewCMIS\\_CommiteeDetails/mid/489/id/499/Default.aspx](https://south-derbys.cmis.uk.com/southderbyshire/Committees/tabid/62/ctl/ViewCMIS_CommiteeDetails/mid/489/id/499/Default.aspx)