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| <b>Subject:</b>          | Withdrawal of reasons for refusal and associated defence of the planning appeal relating to application BH2018/03633 at Toad's Hole Valley, Land at King George VI Avenue. |                                  |                   |
| <b>Date of Meeting:</b>  | 25 May 2022                                                                                                                                                                |                                  |                   |
| <b>Report of:</b>        | Liz Hobden, Head of Planning                                                                                                                                               |                                  |                   |
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| <b>Ward(s) affected:</b> | Hangleton & Knoll (and adjacent wards: Hove Park and Withdean)                                                                                                             |                                  |                   |

## 1. PURPOSE OF THE REPORT

- 1.1 To update members in relation to the current situation in relation to the planning appeal at Toad's Hole Valley and to seek authorisation to withdraw the two suggested reasons for refusal that Planning Committee on 21<sup>st</sup> March 2022 decided to defend the appeal against.

## 2. RECOMMENDATION

- 2.1 That the two reasons for refusal (relating to insufficient information concerning transport and air quality impacts) as set out in the Planning Committee resolution of 21/3/22 be withdrawn and that the council no longer defends the appeal on the basis of these reasons at the forthcoming public inquiry, for reasons outlined in this report.

## 3. BACKGROUND INFORMATION

- 3.1 The Toad's Hole Valley (THV) site, including Court Farm, is a 47 hectare green field located on the northern fringe of Brighton and Hove, between the A27 and King George VI Avenue.
- 3.2 It is allocated for a strategic mixed-use development under Policy DA7 of the Brighton and Hove City Plan Part 1. Policy DA7 states:  
*The strategy for the development of Toad's Hole Valley and Court Farm is to secure a modern, high quality and sustainable mixed use development to help meet the future needs of the city, improve accessibility and provide new community facilities to share with adjacent neighbourhoods.  
Provision will be made for a high standard sustainable, mixed-use development across the site comprising a minimum of 700 residential units, B1 employment space, a new secondary school, a multi-use community facility and ancillary supporting uses.*

- 3.3 An outline planning application was submitted on 12/12/2018 for the following development on the main THV site (excluding Court Farm):  
**BH2018/03633** (*Land at Toad's Hole Valley, King George VI Avenue, Hove*) - *Outline application for a mixed use development comprising residential dwellings (C3 use); land for a 6-form entry secondary school (D1 use)/community sports facilities (D2 use); office/research/light industry floorspace (B1 use); neighbourhood centre including retail outlets (A1-5 uses), a doctors' surgery (D1 use) & community building (D1 use); public open space (including food growing space & children's play space), enhancements and alterations to the Site of Nature Conservation Interest (SNCI); & associated landscaping. Provision of 3no. vehicular accesses onto King George VI Avenue (unreserved) with associated highway alterations.*
- 3.4 The principle of developing the site is accepted given its allocation. The application proposals bring forward all the land uses required within policy DA7 and the application is considered policy compliant in principle. The application remained formally undecided, however, due to a number of outstanding transport/highway matters relating to both the strategic and local highway network.
- 3.5 An appeal against the non-determination of the application was submitted by the applicant on 15th February 2022. The decision on the application therefore now sits with the Planning Inspectorate. A public Inquiry is due to begin on 9<sup>th</sup> June 2022 for up to 6 days.
- 3.6 At Planning Committee on 21<sup>st</sup> March 2022 members were asked to consider the appealed application and explain the decision the Committee would have made, had the decision remained with them. Please see the committee report including Late Representations List and agreed Minutes at Appendix 1.
- 3.7 At that Planning Committee the officer report presented outlined that the development of the site and proposals were accepted in principle, however, the recommendation was that the application could not have been supported, if the appeal had not been lodged due to insufficient transport information. The traffic modelling had not yet gone through its final audit stage so it could not be verified that the traffic predictions in the application were robust, and therefore a final assessment as to their acceptability and that of the mitigation/sustainable transport package could not be reached. In addition, there was no Stage 1 Road Safety audit to accompany the highway designs to demonstrate they were safe. Significant objections were received at that time from the Local Highway Authority and National Highways (in respect of the local and strategic highway networks respectively) on the basis of insufficient information.
- 3.8 The Officer Report recorded (at para 9.120) that *“Unless or until the remaining information is submitted and assessed to be satisfactory, it is recommended*

*that the Local Planning Authority defend the appeal on these grounds. Should the outstanding information be submitted during the life of the appeal prior to its end, and provided to be satisfactory, it would be recommended that the council withdraw its grounds of appeal.”*

- 3.9 The committee agreed with the officer recommendation and resolved that as the transport issues (and associated air quality issue) were fundamental to the overall outcome of the proposal the application would, at that stage, have been refused on the basis of insufficient information.
- 3.10 Specifically, Committee members resolved to adopt the following 2 putative reasons for refusal:
1. *There is a need for auditing of the latest iteration of the applicant’s highway modelling to be completed, as well as for the Stage 1 Road Safety Audit to be completed and (if necessary) any safety matters resolved. As a result, there is currently insufficient information from which to determine: (a) whether the residual cumulative impacts of the proposal on the strategic and local road network would be acceptable; (b) whether the proposal avoids an unacceptable impact on highway safety; and (c) whether the proposed highway mitigation measures are adequate. As it currently stands, therefore, it has not been demonstrated that the proposal complies with Policies TR7, TR12 and TR15 of the Brighton & Hove Local Plan 2005; Policies DA7, CP7, CP9 and CP13 of the Brighton & Hove City Plan Part One 2016; DM33 and DM35 of the emerging Brighton & Hove City Plan Part Two; the ‘Transport and Travel’ section of THV SPD 15; and paragraphs 104, 105 and 110-113 of the NPPF 2021.*
  2. *On the basis of the information provided within the Environmental Statement (‘ES’), it would appear that the impacts of the proposal on air quality would be acceptable. However, the assessment of the air quality impacts of the operational phase of the proposal are predicated (at least in part) on the applicant’s highway modelling. As this modelling is the subject of technical audit which has not been completed, there is currently insufficient information to determine whether information provided within the ES concerning air quality is robust. Accordingly, as it currently stands, it has not been demonstrated that the proposal complies with Policy SU9 of the Brighton & Hove Local Plan 2005; Policy DA7, CP8, and CP9 of the Brighton & Hove City Plan Part One 2016; DM35 and DM40 of the emerging Brighton & Hove City Plan Part Two; the ‘Transport and Travel’ section of THV SPD 15 and paragraph 4.14 regarding building siting in SPD15; and paragraphs 105, 174 and 186 of the NPPF 2021.*
- 3.11 Since the appeal was first lodged, the Planning Inspector has encouraged the council as Local Highway Authority (LHA), National Highways (NH) and the Appellant to work closely together to seek to resolve the outstanding matters, and the two remaining critical pieces of information – the VISSIM model audit

and the Road Safety Audit Stage 1 – have since been received (on 13/4/22 and 31/3/22 respectively).

- 3.12 This additional information has been reviewed and considered in detail by the LHA and NH. They consider that the information available is now sufficient in order to determine the application and, having considered that information, have both confirmed that they no longer formally object to the development.
- 3.13 In terms of highway capacity, both LHA and NH consider the independently verified VISSIM model audit to be robust and fit for purpose and that it confirms the modelling accurately reflects the projected transport impacts of the development.
- 3.14 As a substantial new development, the proposal will have impacts on the highway network and the modelling shows this. NH consider the impacts the modelling predicts on strategic highway network (ie the A27 junction) to be acceptable, subject to mitigation. The LHA consider the impact to the local network to be, overall, acceptable subject to mitigation.
- 3.15 Both the LHA and NH agree that the impact to the highway network will not be 'severe', which is a key test of acceptability of a proposed development as set out in the National Planning Policy Framework (NPPF). They confirm the proposals would accord with national and local policies and guidance. The proposal would satisfactorily meet the demand for travel it creates and would promote use of sustainable modes of transport. The proposals are considered to be compliant with the City Plan allocation for the site as set out in Policy DA7 (Toad's Hole Valley) and other relevant policies including CP9 (Sustainable Transport). The proposal also accords with the supplementary planning document for the site SPD15: Toad's Hole Valley.
- 3.16 A finalised Stage 1 Road Safety Audit (RSA) has been signed off by NH and the LHA and it is agreed the highway designs are safe and in accordance with national and local policy and guidance. The highway designs have been revised slightly where required and any outstanding matters are not considered significant and can be dealt with at later RSA stages of detailed engineering design.
- 3.17 NH and the LHA confirm that the package of sustainable transport proposals and overall mitigation package of highway works is acceptable and policy-compliant, and these can be secured by condition/s106 agreement.
- 3.18 Furthermore, given the modelling is deemed robust, the air quality assessment is in turn deemed robust given the transport case on which it is partly predicated is now accepted. This is confirmed by the council's Air Quality officer.

3.19 It should be noted that a duplicate (identical) application was submitted alongside the appeal (ref BH2022/00203) and this is subject to separate consideration.

#### **4. RECOMMENDATION**

4.1 Given the above, it can be seen that the objections previously raised to this appeal on the basis of insufficient information relating to transport and air quality impacts have been resolved and the suggested reasons for refusal have been overcome.

4.2 Given this updated position, and the withdrawal of objections from LHA and NH, whose expert views must be given significant weight, officers consider that there is no proper basis on which to continue to defend the reasons for refusal at the appeal. Therefore, authority is now sought to withdraw the reasons for refusal.

4.3 This recommendation is consistent with the officer's advice to the March committee (set out above) that such a recommendation would be made if the relevant information was received and proved to be satisfactory.

4.4 As to the wider considerations, these were summarised in section 11 of the 21<sup>st</sup> March committee report. In summary, it is considered that this is a policy-compliant proposal, on a strategic allocation in the City Plan One, which meets the aspirations of Policy DA7 and which would make a substantial contribution to the Council's 5 year housing land supply position (currently there is a significant shortfall – only 2.1 years supply).

4.5 In the March committee members followed the advice of officers and confined the putative reasons for refusal to those concerning the inadequate information relating to highways and air quality, and accepted that, but for these issues, the development was acceptable. There has been no change which would justify departing from this view

4.6 It is therefore recommended that the council withdraw the putative reasons for refusal and cease to defend the appeal.

##### Next Steps:

4.7 Should members agree with the recommendation of this report the council will update the Planning Inspectorate. The Statement of Common Ground between the parties is to be submitted on 27<sup>th</sup> May and this can set out the latest position.

4.8 If members agree to withdraw the reasons for refusal the appeal could still continue towards a final decision to be made by the inspector appointed to determine the appeal. This will be a matter for the Appellant. If it continues, the

council's case at the inquiry would be that the proposal is considered acceptable and policy-compliant. Members of the public, and any other interested parties, would be able to make representations to the Inspector determining the appeal.

- 4.9 Members should be aware that if the council continues to defend the appeal without any reasonable grounds for doing so then there is a significant risk that an award of costs would be made against the council in respect of the appeal.
- 4.10 The Appellant may wish to formally withdraw the appeal, depending on how the duplicate application proceeds.
- 4.11 There are also matters of Section 106 legal obligations and conditions to agree as part of the appeal (note: authorisation to proceed on the basis of the draft Heads of Term and conditions set out in the committee report were delegated to the Head of Planning at the Planning Committee meeting of 21/3/22).

## **5. BACKGROUND DOCUMENTS**

- Planning Application BH2018/03633 (all associated documents including final updated comments from the council as Local Highway Authority, National Highways and the council's Air Quality Officer on Planning Register on council's website).
- **Appendix 1:** Planning Committee report 21/3/22 (and Late Representations List and agreed Minutes)