

PDC829  
FOR DECISION  
WARD(S): ST BARTHOLOMEW

PLANNING DEVELOPMENT CONTROL COMMITTEE

29 OCTOBER 2009

PLANNING APPEAL AT LAND OFF FRANCIS GARDENS, WINCHESTER

REPORT OF HEAD OF PLANNING MANAGEMENT

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RECENT REFERENCES:

CAB1901 – Strategic Housing Land Availability Assessment (SHLAA) – Results of consultation – 14 October 2009

CAB1902 - Assessment of Need to Release Local Reserve Sites – 14 October 2009

EXECUTIVE SUMMARY:

Planning application ref: 08/01937/FUL, to develop land off Francis Gardens for residential purposes, was considered by the Planning Development Control Committee (PDCC) on 23 April 2009. This land is identified in the Winchester District Local Plan Review as a Local Reserve Site. PDCC resolved to refuse permission for 7 reasons, including that the proposal was contrary to Local Plan Policy H.2 in that there was not, at that time, a shortfall, or predicted shortfall, in housing supply to justify the release of this site, and that to develop the land would have been premature and prejudicial to the housing strategy and countryside policies of the plan.

The application is now the subject of an appeal, with a public inquiry commencing on 1 December this year.

Since PDCC made the decision to refuse permission, the Council has completed its consultation and updating of the draft SHLAA and reported this to Cabinet on 14 October 2009, in conjunction with a report relating to the release of local reserve sites (please see Recent References, above). In summary, the position regarding housing land supply within the District has changed materially since April, in that the

up to date evidence, interpreted in accordance with Government guidance, shows an identifiable shortfall. Although Cabinet on 14 October 2009 resolved not to release the Local Reserve Sites and instead to seek a meeting with the relevant Government Minister to discuss its concerns about the effect of Government requirements, it will not be possible to do this in advance of the various deadlines for the forthcoming appeal. Given the evidence on the scale of the expected shortfall, it would be inconsistent with national and development plan policies to continue to resist the development at Francis Gardens on the grounds of prematurity.

Consequently, and in consultation with the Chairman of PDCC and the Mayor, the Chief Executive has exercised his emergency powers to amend the Council's position on the appeal, by effectively withdrawing the refusal reason relating to prematurity, in the light of the new evidence presented at Cabinet - notwithstanding the Cabinet decision to seek a change in the Government rules on the interpretation of the evidence. This was necessary, given the timescales of the appeal process, and, in particular, the need for the Council to submit a Statement of Common Ground.

**RECOMMENDATION:**

That the Committee notes the Council's change of position relating to the appeal at Francis Gardens and its decision to effectively withdraw refusal reason 1, which states that the development of the local reserve site would be unjustified on the basis of housing land supply and, therefore, premature.

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#### REPORT OF HEAD OF PLANNING MANAGEMENT

Contact Officer: Simon Finch 01962 848271 sfinch@winchester.gov.uk

#### DETAIL:

##### 1 Introduction

1.1 Members will recall that they considered a planning application to develop the local reserve housing site at Francis Gardens for residential development comprising of 90 dwellings (including affordable housing) associated garaging and car parking, new vehicular/pedestrian accesses to Worthy Road and Francis Gardens and pedestrian footpath from Nuns Walk, landscaping, play area and open space.

1.2 PDCC resolved to refuse permission for the scheme on 23 April 2009 for 7 reasons including that the release of the land for housing would be premature, as set out below:

*1. The proposed development is contrary to the provisions of Policy H.2 of the Winchester District Local Plan Review, in that there is not a current or predicted shortfall in housing supply such as would justify the release of this site. Furthermore, the development of this land, in the absence of a clearly demonstrable need for its release to meet a shortfall of house building land, would be premature and prejudicial to the housing strategy and countryside policies of the Local Plan.*

1.3 The application is now at appeal, with a public inquiry due to start on 1 December 2009. However, since the date of the Committee's decision the position regarding the supply of land for housing within the District has materially changed and so it has been necessary for the Council to change its position in relation to this refusal reason. The basis for this is set out below:

##### 2 The Council's Amended Position

2.1 Officers have recently completed consultation on the draft SHLAA as well as work to update the document and reported this to Cabinet on 14 October 2009, in conjunction with a report relating to the release of local reserve sites, which include Francis Gardens. The evidence now available indicates that there is an identifiable shortfall in housing land supply which means that it is appropriate for Local Reserve Sites to be released for development. This was not the Council's position when the planning application was determined earlier this year.

- 2.2 Cabinet accepted the evidence presented by officers, which demonstrated a shortfall of housing land supply, but rejected the recommendation to release the Local Reserve Sites, due to concerns about the way in which Government guidance requires 5-year land availability to be calculated. The Council's Leader will be seeking a meeting with the Planning Minister to address these concerns.
- 2.3 Nevertheless, such a meeting will not take place before key deadlines for the Inquiry have to be met. In order to reduce the threat of an adverse award of costs against the Council it is important that its position is clarified and communicated to the appellant urgently. Therefore it must be accepted, based on Government advice on the assessment of land availability in relation to the Francis Gardens site, that there is a shortfall of provision. Therefore, having recently completed an updated and detailed review of land supply, and in view of the evidence that the scale of the expected shortfall substantially exceeds the capacity of this site, the Council cannot now dispute the appellant's argument in relation to the release of this site (although there may remain some differences over the precise scale of the shortfall). Given the current land supply evidence, this would be consistent with the advice in PPS3, South East Plan policies, and saved Local Plan Policy H2 and the accompanying SPD. The reason for refusal No. 1 should therefore be in effect, withdrawn.
- 2.4 Given the timescales involved in the appeal process, and the impending public inquiry on 1 December, it was necessary for the Council to confirm, as quickly as possible, that it acknowledged that the position regarding housing land supply has changed significantly since the application was refused in April. This was explained in the Statement of Common Ground agreed between the Council and the appellant as any delay would increase the risk, and amount, of costs being potentially awarded against the Council pursuant to refusal reason 1.
- 2.5 In the circumstances, therefore, and in consultation with the Chairman of PDCC and the Mayor, the Chief Executive has exercised his emergency powers to amend the Council's position on the appeal by in effect withdrawing the refusal reason relating to prematurity.
- 2.6 It is considered likely that the other reasons for refusal (affordable housing/transport contributions/land management/education provision/archaeology/drainage) can be resolved by planning obligations or conditions.
- 2.7 Acknowledging the position in relation to Francis Gardens does not, in itself, prejudice the Council's position in relation to the other local reserve sites or other land which may be subject to development proposals. Any application will be determined on its merits and against prevailing policy. If there is a change in the Government's position relating to the calculation of land supply by the time an application is determined then this will be a material consideration which can be taken into account.

### 3 Determination of the Planning Appeal

- 3.1 Having regard to the analysis undertaken by the Council's officers and as noted above it appears that we now cannot contest the issue. The current evidence insofar as the appeal at Francis Gardens is concerned and taking into account government requirements, which will be applied by the Planning Inspector, means that the Council is unable to dispute the evidence of the Appellant. Consequently, to enter into such a dispute would be to invite a successful costs application without any prospect of proving the Council's original reason for refusal.
- 3.2 Notwithstanding the effective withdrawal of refusal reason 1 explained above, the appeal will still proceed, with the public inquiry starting on 1 December, and the Secretary of State will make a decision thereafter. However, the Council will not contest the appeal on the principle of housing land supply and prematurity. Matters like planning obligations and the imposition of conditions will still need to be considered in relation to the other reasons for refusal. Furthermore, interested parties are still able to participate in the appeal process and the Inspector will need to consider matters raised by them when deciding whether or not to grant permission.

#### OTHER CONSIDERATIONS:

#### 4. SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

The control of development contributes to the High Quality Environment outcome of the Sustainable Community Strategy.

#### 5. RESOURCE IMPLICATIONS:

Potential award of costs against the Council pursuant to the planning appeal.

#### 6. RISK MANAGEMENT ISSUES

None

#### BACKGROUND DOCUMENTS:

- Strategic Housing Land Availability Assessment (SHLAA) - Results of consultation - CAB1901
- Assessment of Need to Release Local Reserve Sites - CAB1902
- Winchester District Local Plan Review 2006
- Affordable Housing SPD (February 2008)

- Implementation of Local (Housing) Reserve Sites Policy SPD (July 2006)
- South East Plan
- PPS1: Delivering Sustainable Development
- PPS3: Housing

APPENDICES:

None