

## Bath and North East Somerset Council

MEETING: **Development Control Committee**

AGENDA

MEETING DATE: 25 September 2013

ITEM NO:

### REPORT OF **David Trigwell, Divisional Director of Planning and Transport Development**

**Maggie Horrill, Planning and Environmental Law Manager**

**(Contact Ext. No. 5174)**

REPORT ORIGINATOR: **Ms Lisa Bartlett, Development Manager (Tel. Contact No. 7281)**

DATE PREPARED: 17 September 2013

AN OPEN PUBLIC ITEM

#### **BACKGROUND PAPERS**

- (i) Development Control Committee Report 5 January 2012
- (ii) Development Control Committee Report 30 March 2012
- (iii) Development Control Committee Report 9 May 2012
- (iv) Inspector's report dated 13 February 2003 and Secretary of State's Decision dated 1 August 2003
- (v) Ashfords Letter dated 18 January 2013 addressed to the Planning Inspectorate (PINS), with the Appellants Joint Legal Opinion dated 7 January 2013
- (vi) Inspector's Note in response to Ashfords dated 20 January 2013
- (vii) The Council's letter addressed to PINS in response to the Inspector's note dated 22 January 2013
- (viii) Pre-Action Protocol letter from Ashfords dated 21 January 2013
- (ix) Inspector's Further Note in response to the Council's letter dated 23 January 2013
- (x) The Council's Joint Legal Opinion dated 23 January 2013
- (xi) The Council's letter addressed to PINS dated 24 January 2013
- (xii) The Council's response to Ashfords Pre-action Protocol letter dated 25 February 2013
- (xiii) Inspector's Note 3: Matters arising at the adjournment dated 31 January 2013.
- (xiv) Development Control Committee Report 13 February 2013
- (xv) Second Bite Enforcement Notice dated 21 February 2013
- (xvi) CLEU Application
- (xvii) Council's representations to the High Court (Acknowledgement of Service) dated 27 March 2013

### **List of attachments to this Report**

Annex A - Copy of Order by His Honour Judge Jarmen QC stamped 20 August 2013 – granting permission on grounds 1 and 2 but refused on ground 3.

Annex B - .Statement of 31 July 2013 from Bath Preservation Trust

Annex C – Statement of 31 July 2013 from Clerk to Combe Hay Parish Council

TITLE: UPDATE – LAND AT FORMER FULLERS EARTH WORKS,  
FOSSEWAY, COMBE HAY, BATH

WARD : Bathavon West

## **1. BACKGROUND**

1.1. The last written report on this matter went to Committee on 13 February 2013. At that Meeting the Committee:

RESOLVED to authorise the Divisional Director for Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, to exercise the powers and duties (as applicable) under Part VII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act) to issue an enforcement notice or enforcement notices under Section 171B (4) (b) within 4 years of the purported enforcement action (the 2009 enforcement notices). The Committee further resolved that the “second bite” notice or notices should therefore be issued by the Council on or before 24th February 2013.

1.2. As Members will be aware from verbal updates, the Second Bite Enforcement was issued by the Council on 21 February 2013.

1.3. The Committee were given verbal updates at the Meetings in March, April, May and July but requested a written update for this Meeting.

## **2. UPDATE**

### High Court Challenge against the Secretary of State

2.1. The Council is an Interested Party in this proceedings and this Committee therefore at its Meeting on 13 March 2013

RESOLVED that delegated authority be granted to the Divisional Director of Planning and Transport Development, in consultation with the lead Members of the political groups on the Committee, to take any necessary action that he

considers necessary in order to protect the Council as local planning authority in respect of the claim made under Section 289 of the Town and Country Planning Act 1990 and/or for a Judicial Review of the Planning Inspector's Ruling dated 31<sup>st</sup> January 2013 in respect of the former Fuller's Earthworks, Fosseway, Combe Hay, Bath.

2.2. Representations on behalf of the Council were served on the Claimant, other Interested Parties and filed at the High Court on 27 March.

2.3. A copy of the Order dated 20 August 2013 of His Honour Judge Jarman QC sitting as a Judge of the High Court is attached at Annex A and from which the Committee will note that permission has been granted on ground 1 and 2, but refused on ground 3.

#### CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE ("CLEU")

3.1 The Committee will be aware from verbal updates that the Council had received an application for a CLEU. A copy of which can be viewed on the Council's website using the following link

<http://isharemaps.bathnes.gov.uk/projects/bathnes/developmentcontrol/default.aspx?requesttype=parsetemplate&template=DevelopmentControlApplication.tmplt&basepage=default.aspx&Filter=^REFVAL^='13/02141/CLEU'&SearchLayer=DCApplications&SearchField=REFVAL&SearchValue=13/02141/CLEU>

3.2. The application was submitted on 20 May 2013 and validated on 7 June 2013. The target date for a decision was 2 August 2013. Revised plans relating to the following were submitted on 5 August 2013 and further evidence was subsequently submitted.

3.3. Further consultation was undertaken as a result of the revised plans and addition information. The Consultation period expired on 27 August 2013.

3.4. The CLEU has yet to be determined.

#### PRE-APPLICATION DISCUSSIONS ON RESIDUAL WASTE FACILITY

4.1 As the Committee will be aware from verbal updates pre-application discussions on the Residual Waste Facility have been reactivated

4.2 A pre-application meeting on the proposed residual waste facility at this site was held on the 17<sup>th</sup> July 2013, where the agent outlined the changes that were being proposed to the scheme previously considered by the Council in 2012. The agent also sought clarification from the Council on the principle of both residual and non residual waste management facilities being located on the site. The notes of the meeting confirmed that the proposed changes discussed would be held in abeyance pending clarification of the Council's position on the co-location issue.

4.3 This clarification was provided in the Council's letter of 27 August 2013. The Council's position is simply that any such proposal must comply with the requirements of Green Belt policy, in particular the impact on openness as this is one of the key development requirements for this site in the Joint Waste Core Strategy.

4.4. As of the 17<sup>th</sup> September there has been no confirmation from the agent as to whether the Council's letter of the 27<sup>th</sup> August provides them with the clarification they were seeking.

## APPEALS

5.1 As the Committee will be aware from verbal updates:

- (a) the Appellants withdraw their appeal against the 2012 Notices on 8 April 2013.
- (b) The Council withdrew Enforcement Notice 01 of 2012 on 10 April 2013.

## APPEALS AGAINST THE SECOND BITE NOTICE

5.2. As the Committee will also be aware from the verbal updates, appeals against the issue of the Second Bite Notice have been lodged with the Planning Inspectorate. The Council have yet to receive directions from the Planning Inspectorate with a date for the appeal or as to how this is to proceed

## QUESTIONS FROM THIRD PARTIES

### Bath Preservation Trust

6.1 The following reply to the specific questions, Annex B, to the Committee was provided to Bath Preservation Trust on 23 August 2013:

1. An update report will be brought to the 25 September meeting of the Development Control Committee.
2. Mr Kendrick, the agent acting on behalf of the site owner did inform the Council that they would cease all discussions in relation to the pre application proposal in order to concentrate on dealing with the Enforcement Notices. He recently contacted us to advise that they would like to re-activate the pre application discussions. Officers will provide informal advice in relation to the pre-application proposals in the normal way and it will be for the applicant along with his agent to decide how to proceed. I cannot comment on any remarks made by Mr Kendrick in relation to his clients' timetable relating to submission of an application.
3. The location of the proposed waste facility is being discussed through the pre-application process having regard to the JWCS and other development plan policies. Again it will be the applicant to decide how to proceed.

4. As in 3 above.
5. Point noted.
6. The application for a CLEU was duly made and the LPA must determine it on the basis of probability having regard to the available evidence

## COMBE HAY PARISH COUNCIL

6.2 The following is in response to the questions raised by Combe Hay Parish Council's Statement attached at Annex C:

1. No, revised plans were submitted on 5 August. The re consultation period ended on 27 August and the application remains to be determined. The application will be determined at Officer level because it is a determination based upon the evidence submitted by the applicant and any other evidence available for example from third parties and the Council's own records. Officers need to determine the application based upon the balance of probability that the application site has been used for the majority of the last 10 years for the purposes set out in the application, namely "General Industrial (B2) Use for the whole application site with the exception of one building which has a lawful use for Storage and Distribution (B8). (Certificate of Lawfulness for an Existing Use)". As such, there is no planning judgement to be made having regard to the consideration of the development plan or other materials considerations as would be the case for a planning application.

2. No, this is not relevant it is for the applicant to decide what evidence they submit in support of their application.

3. The pre-application case is discussed within the main body the update report. Officers cannot comment on the timetable submitted in relation to the submission of a planning application but do remain hopeful that the applicant will adhere to this timetable. Officers are aware of the policies in the Joint waste Core Strategy.

4. The Council has protected its position in relation to the on-going enforcement case by serving the "second bite " enforcement notice dated 9 April 2013. This notice, which is the subject of an appeal, has the effect of "stopping the clock" in relation to the Council's contention that "Without planning permission, the change of use of the Land from agriculture, residential use (of the dwellings and land at 1 & 2 The Firs) and general industrial use (B2) to the mixed use of the Land" for various uses has taken place.

## **CONCLUSION**

7.1. The Committee is asked to note the contents of this Report.