

Appendix I

We will today be looking at several applications which are also the subject of draft allocations in the emerging local plan which is currently at examination. Importantly, as the Inspector himself has made clear, the development management and local plan processes are not bound together but instead run in parallel. This was most obviously the case when he explained that notwithstanding that planning permission had already been granted for the site in Stanton Harcourt he would take evidence upon its potential allocation. The converse applies. The processing of applications has a defined period within which applications should be determined unless extensions of time have been agreed. Were we to let those periods of time run out we would i) lose control over the determination of the application in terms of ii) the conditions imposed and also iii) the framing of the legal obligations and iv) contributions, but additionally would be put in a position whereby we could be v) forced to refund the application fees.

Members will be aware that following the Local Plan hearing sessions in July the Council has commissioned further evidence including landscape and heritage advice. In light of this we sought and secured agreement from the applicants to postpone determination of the applications until such time as we had received that advice because it would clearly be a very material consideration in determining the applications. We now have that evidence and as such we are once again in a position to determine the applications having regard to it and other relevant material considerations. No further extensions have been agreed to by the applicants.

Members will be aware that the landscape and heritage evidence is the subject of a 4-week period of consultation until 20 December alongside other technical evidence. Comments received through the consultation will be considered by the Inspector in determining an appropriate way forward for the Local Plan including the draft allocations.

The Inspector's interim findings are however not expected until after Christmas and this does not preclude the necessary determination of the applications now as there are no eot in place. As a result of the lack of eot you officers have given considerable thought as to whether a prematurity argument could be applied.

Prematurity, as is set out on page 6 of item 4 today, is a very difficult case for a LPA to defend at appeal and whilst the emerging plan has some status it does not have full weight, paragraph 14 of the NPPF is engaged and as such the case for rejecting the applications on the grounds of prematurity is in your officers judgement even harder to justify.

I also need to clarify the recent resolutions of the Cabinet meeting held on 15th November. This is of particular relevance to the Burford application. At the Cabinet meeting, the Cabinet Member for Strategic Planning and Economy contended that, following the grant of planning permission on appeal in respect of a site to the south of Burford, Paragraph 116 of the NPPF now came into play and he questioned whether there was a need for further development on the land east of Burford.

He indicated that he wished these comments to be incorporated into the Council's response but acknowledged the possibility that removal of this site could give rise to legal challenge.

Consequently, it was resolved that Officers be requested to seek legal advice on the potential impact of removing the allocation at land east of Burford and the final decision on that matter be delegated to the Head of Planning and Strategic Housing in consultation with the Cabinet Member for Strategic Planning and Economy and the Leader of the Council.

At this point in time however, the Council has not yet indicated its position one way or the other in respect of the Burford site or any other draft allocations.

Instead, the Council has been given the opportunity by the Local Plan Inspector to confirm its position in responding to the current consultation on technical evidence.

It is relevant to note that the Council can however only make suggestions to the Inspector at this stage and the decision on whether or not to remove a site allocation ultimately rests with the Inspector and not with the Council.

I also need to raise one further point and in so doing am fully aware that I will be criticised but as officers we have taken the decision that were we not to raise the issue and the consequences that may follow did subsequently arise and we had not raised it then that would rightly be the subject of greater criticism for staying silent.

The Government has recently introduced additional sanctions in addition to the i) refund of fees and ii) the operation of the tilted balance in favour of development that Officers need to bring to Members attention. It is therefore particularly important that the consequences of any decisions or non decisions are clear in your minds. In seeking to defend the lower housing targets that the Council were promoting at the initial LPI hearings in 2015, a series of speculative applications were refused but subsequently lost at appeal. The Government has now advised that for Authorities where more than 10% of major applications as a proportion of all majors determined are allowed at appeal, then the power to determine such applications can be removed from the LPA and applications would instead be determined by the Inspectorate. Clearly this has major potential implications for both fee income and the ability for the Council to shape its own destiny in determining the biggest applications and this was presumably intended by Government as a further "incentive" to seek to induce LPA to allow more houses. As a small rural authority we have a relatively small number of major applications and as such it will only need one or two major applications to be refused and subsequently lost at appeal for us to be at risk of designation. That does not of course remove your right to reject an application. Clearly if Members are persuaded that there are significant and demonstrable harms that will stand up at appeal then this will not be an issue, but if it is considered that the balance is not so clear cut, then the consequences of a refusal that cannot be defended successfully at appeal could be wider than merely for the application concerned.