

## **TABLED UPDATE FOR DEFERRED ITEM 1 and Item 2.1**

### **Def 1 - 19/503810/OUT – Land at Bartletts Close, Halfway**

### **Item 2.1 – 18/506328 – Land to the south of Dunlin Walk, Iwade**

Members will no doubt be aware that two public inquiries have recently taken place in relation to major developments at Barton Hill Drive, Minster and at Wises Lane, Borden. As part of its defence in refusing the above schemes, evidence has been presented by the Council to demonstrate why the developments should be built to achieve substantial reductions in carbon emissions. The Council has presented a case at both Inquiries that planning conditions should be imposed (if the appeals are allowed) that require new house builds to achieve a minimum reduction in carbon emissions of 50% compared to existing Building Regulations (rising to zero carbon in future years)

Members will also be aware that the same approach has been taken by the Planning Committee in recent meetings, and that the committee has sought the imposition of similar conditions on housing developments reported to committee.

This approach has been challenging, not least because the Council's current local plan policies do not set specific targets for reducing carbon emissions in residential developments, nor are there such targets in current national planning policies. The Council presented a case at the two recent Public Inquiries that its Climate Change Emergency declaration (and subsequent letter from the Energy Minister) were material considerations that justified the imposition of specific targets.

The appeal decision for the development at Barton Hill Drive was received earlier this week. The appeal has been allowed. A copy of the appeal decision is attached.

The Planning Inspector has made specific reference to climate change and to the Council's proposal for specific carbon-reduction targets in paragraph 59 of the appeal decision (and also in paragraph 60 relating to non-residential buildings). Members will note that the Inspector does not support the Council's approach to require a minimum reduction in carbon emissions of 50%, and states (in the last sentence of Paragraph 59) that *"the condition suggested by the Council is not supported by any national or local policies"*.

The Inspector has taken a clear position that neither the existing local plan policies or current national policies provide sufficient justification to require developments to meet a 50% reduction in carbon emissions (or indeed any specified figure as a reduction), as sought by the Council. The clear inference in the appeal decision is that a condition setting a specific target to reduce carbon emissions (whether 50% or a different figure) can only meet the tests of being reasonable and necessary if such targets have been set out and evidenced through the planning policy process.

The Council is in the process of reviewing the current local plan, and it is highly likely that measures for developments to mitigate against climate change will feature prominently in the review. However, this is not a quick process, and it will take some time before emerging policies have been tested, have been subject to consultation, considered at examination, and can be given sufficient weight.

An appeal decision carries significant weight, and in the absence of an adopted or emerging evidenced local plan policy that sets a requirement for a minimum 50% reduction in carbon emissions, I would advise Members that they should no longer seek to impose such wording in the conditions. In my opinion, if the Council continues to seek to impose such conditions, it will expose itself to a high risk of an adverse award of costs at any subsequent appeal.

The Inspector did recognise that a condition to mitigate climate change impacts was necessary, and imposed condition 9 to achieve this (on P19 of the appeal decision). The Inspector stated that *"I am satisfied that the condition would be flexible enough to take into account the relevant Building Regulations and planning policy requirements at the time of construction of each phase of the development"*. This means that if the Council subsequently adopts a new planning policy with specific requirements or higher standards, then such standards can be applied to any unbuilt phases of the development yet to be submitted for approval.

As such, I would advise Members that the same or a similarly worded condition can continue to be used on applications for housing developments to provide some control over the energy efficiency of dwellings, albeit that it cannot set a defined target, nor require measures beyond planning policy requirements or Building Regulations. Members will need to recognise that at present, based on the current local plan policies, this will not require developments to achieve substantial reductions in carbon emissions. However once a new policy has sufficient weight, this will then form the basis for the assessment of any such details submitted in relation to energy efficiency and carbon reductions.

Members will note that the two applications for residential development being reported to this meeting both include conditions relating to sustainable construction (proposed condition 14 for Deferred Item 1 and proposed condition 21 for item 2.1). My recommendation would be for the wording of both conditions to be amended to follow the wording used by the Inspector under condition 9) of the Barton Hill Drive decision. The proposed wording is as follows –

*No development beyond the construction of foundations shall take place until details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.*

**RECOMMENDATION:** That conditions 14 of 19/503810/OUT and 21 of 18/506328/OUT are amended to the above wording.

