

FUNDING FOR PLANNING APPEALS

Head of Service/Contact:	Vicki Potts, Head of Place
Urgent Decision?(yes/no)	Yes
If yes, reason urgent decision required:	Two planning appeals have been received and another is anticipated relating to three major planning applications.
Annexes/Appendices (attached):	Not applicable
Other available papers (not attached):	Not applicable

Report summary

Two appeals have been submitted to the Planning Inspectorate in respect of two major planning applications. In addition, following a decision to refuse planning permission for development at 24-28 West Street, Epsom the Council has been advised that the applicants are preparing to lodge a third appeal against this decision.

In order to provide a robust defence of the decision it is essential to submit a case to the planning inspectorate which has been prepared by an independent qualified planning consultant on an impartial basis to support the Council's reasons for refusal.

The Planning Department does not have a budget for defending planning appeals, so a financial provision is required to secure a planning consultant to prepare and submit the cases for the appeals.

Recommendation (s)

The Committee resolves to

- (1) Allocate up to £150,000 to engage consultancy and barrister support to defend the two appeals which are currently with the Planning Inspectorate and a third anticipated appeal relating to 22-24 West Street, Epsom**
- (2) That the budget of up to £150,000 be funded from the Corporate Projects Reserve.**

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1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 The Council's Core Strategy, adopted in 2007, identifies the key issues and the social, economic, and environmental objectives for the future development of the Borough up to 2022, and a strategy to achieve them. It is central to the delivery of sustainable development and creating sustainable communities.

2 Background

- 2.1 The two planning applications the subject of current appeals relate to:

**Langley Bottom Farm Langley Vale Road Epsom Surrey KT18 6AP
(Reference: 20/00475/FUL)**

Planning Committee 18 February 2021.

Description of Development: Demolition of the existing buildings on the site and construction of twenty residential dwellings, of which eight (40%) would be affordable together with associated access, landscaping and parking. (Amended site location plan received 06.08.2020)

Decision Issued: 22 February 2021

REFUSED based on the following reasons:

1. The proposed development would constitute inappropriate development in the Green Belt and therefore by definition would be harmful to the Green Belt. The proposal would conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. The Council is not satisfied that the special circumstances put forward by the applicant are sufficient to outweigh the significant harm caused to this Green Belt site. The proposal therefore conflicts with policy CS2 of the Core Strategy 2007 and paragraphs 133, 134, 144 and 145 of the NPPF 2019
2. The proposed development is located within the Green Belt outside the defined Built Up Area, and it is without good public transport links. If the development is permitted, it would encourage journeys that would be heavily reliant on private transport. This would not comply with Policy CS8 and CS16 of the Core Strategy 2007, and paragraphs 102 and 108 of the NPPF 2019
3. The adverse impacts of the scheme would significantly and demonstrably outweigh the benefits of the development including additional housing units when assessed against the policies in the National Planning Policy Framework taken as a whole. The proposal is contrary to the NPPF 2019, and Policies CS2 and CS16 of the Core Strategy 2007

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4. In absence of a completed legal obligation under section 106 of the Town and Country Planning Act 1990 (as amended), the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) and para 64 of the NPPF 2019 in relation to the provision of eight affordable on-site units.

Appeal Received: 12 August 2021

Epsom General Hospital Dorking Road Epsom Surrey KT18 7EG (20/00249/FUL)

Planning Committee 12 May 2021

Description of Development: Erection of a multi storey car park comprising ground plus 5 storeys and 527 car parking spaces, reconfiguration of surface parking to provide 104 car parking spaces and improvement to the access road from Dorking Road.

Decision Issued: 1 June 2021

The Application be REFUSED based on the following reasons:

1. The proposed development, by reasons of its height, mass, scale and poor design (including its roof form, and choice of specified materials), would adversely impact and harm the character and appearance of the area, failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM9, DM10 and DM11 of the Development Management Policies Document (2015) and paragraphs 2, 122 and 127 of the NPPF (2019).
2. The proposed development, by reasons of its height, mass, scale and poor design (including its roof form, and choice of specified materials), would fail to preserve or enhance the character or setting of the adjacent Woodcote Conservation Area, failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM8 and DM9 of the Development Management Policies Document (2015) and paragraphs 2, 193, 196 and 202 of the NPPF (2019)

Appeal received: 26 November 2021

- 2.2 The Planning Committee resolved to refuse the following application at the Planning Committee on 9th December and the applicant has indicated that they will appeal this decision.

Development Site At 24-28 West Street Epsom Surrey (19/01021/FUL)

Planning Committee 9 December 2021

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Description of Development: Demolition of existing building and construction of a new part 7 and part 8 storey building containing ground floor commercial/retail (E use class) and 25 residential units (C3 Use) on upper levels and associated development

Committee resolved to refuse for the following reasons:

1. As a result of its overall height, design and density, the proposed development would fail to integrate with the character and appearance of the area, to the detriment of the existing town character and therefore, in accordance with paragraph 134 of the National Planning Policy Framework (2021), should be refused. The proposal would be contrary to Policies CS1 and CS5 of the Epsom and Ewell Core Strategy (2007), Policies DM9, DM10 and DM13 of the Epsom and Ewell Development Management Policies (2015) and Policy E7 of the Plan E Area Action Plan (2011).
2. The proposal would result in the loss of a good quality Conservation Area building that makes a positive contribution to the character and appearance of the Epsom Town Centre Conservation Area, for which no suitable replacement has been made. The proposal would therefore cause less than significant harm to the heritage asset that would not be outweighed by the public benefits of the scheme. The proposal would therefore fail to accord with Section 72 of the Listed Buildings and Conservation Area Act 1990, paragraph 202 of the National Planning Policy Framework (2021), Policy DM8 of the of the Epsom and Ewell Development Management Policies (2015) and the relevant paragraphs of the NPPF 2021.

Decision due to be issued w/c 10th January.

3 Financial and Manpower Implications

- 3.1 The planning department does not have sufficient resources to divert officers away from processing planning applications to undertake the research and preparation of cases to defend the two current appeals. In the event of a further appeal relating to 22-24 West Street, then further significant external resources will be required to undertake a public inquiry into the resolution to refuse planning permission.
- 3.2 A total budget of up to £150,000 is requested to defend the three appeals and prepare for a potential Public Inquiry. This £150,000 budget is in addition to the £96,000 allocation previously agreed by Strategy & Resources Committee in December 2020.
- 3.3 **Chief Finance Officer's comments:** *Major planning decisions that subsequently result in appeals can be very costly for the Council to defend.*

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- 3.4 *The planning service has an annual budget of £6,500 for defending appeals.*

For the Council to defend itself against these latest appeals, members would need to allocate funding from the Corporate Projects Reserve, which currently holds an uncommitted balance of £2.795m. Allocating up to £150,000 for these appeals will reduce the reserve balance available for other corporate projects down to £2.645m. The Council's reserves are expected to come under significant pressure in the coming years due to the long term financial impact of Covid-19.

4 Legal Implications (including implications for matters relating to equality)

- 4.1 None arising from the contents of this report

4.2 ***Monitoring Officer's comments:*** *The exercise of planning judgment did not take into account cost consequences of appeals and neither should it. Ordinarily the parties to planning appeals meet their own costs unless unreasonable conduct costs are awarded. As part of any appeal it is important that officers take independent advice and consider the objective of the costs regime as fully set out in the Planning Policy Guidance on appeals.*

5 Sustainability Policy and Community Safety Implications

- 5.1 There are no Sustainability Policy or Community Safety issues arising from this report.

6 Partnerships

- 6.1 There are no partnerships issues arising from this report.

7 Risk Assessment

7.1 The three planning applications were refused by the Planning Committee against officer recommendation. The council's performance at appeal in cases where major applications are refused against officer recommendation is monitored by central government. If more than 10% of such major appeals are allowed at appeal, then the council will be at risk of government intervention and ultimately its decision-making powers with regard to planning applications being removed.

7.2 It is important therefore that the council submits the strongest possible case at appeal in an effort to secure dismissal of both the current appeals.

7.3 In the absence of an up-to-date Local Plan, we face a number of risk areas. These include the continued absence of a 5-year housing land supply, and the additional measures introduced through the outputs of the Housing Delivery Test. Should we fail to respond to these factors we could face direct intervention by the Secretary of State.

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8 Conclusion and Recommendations

- 8.1 The Committee is asked to agree the allocation of sufficient financial resources to enable an effective defence against the planning appeals.

Ward(s) affected: (All Wards);