

Decision Maker: PLANS SUB-COMMITTEE NO. 3

Date: Thursday 31 March 2016

Decision Type: Urgent Non-Executive Non-Key

Title: (15/03077/OUT) - WESTERHAM RIDING SCHOOL, GRAYS ROAD, WESTERHAM TN16 2HX

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Chief Officer: Chief Planner

Ward: Darwin

1. Reason for report

To ask members to reconsider the grounds on which to contest the current appeal against the Council's decision to refuse planning permission for "Demolition of existing stabling and commercial buildings and erection of 6 detached dwellings with access drive and landscaping (outline)" at the above site in light of the recent High Court decision regarding a challenge to an Inspector's appeal decision against the Council's refusal of similar planning application at Bromley Common Liveries.

2. **RECOMMENDATION(S)**

Members are requested to agree not to contest the appeal on the first ground of refusal for the reasons set out in this report. The second ground of refusal is unaffected.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 Application 15/03077/OUT for “Demolition of existing stabling and commercial buildings and erection of 6 detached dwellings with access drive and landscaping OUTLINE APPLICATION” at Westerham Riding School was refused planning permission at Plans Sub Committee on 22nd October 2015. The report is attached for information.
- 3.2 The application was refused for two reasons as follows:
- 01: The proposal constitutes inappropriate development in the Green Belt and no very special circumstances have been demonstrated that might justify the grant of planning permission as an exception to established Policy G1 of the Unitary Development Plan and the National Planning Policy Framework
- 02: The proposal would result in the permanent loss of a site which could continue to be used for outdoor recreational uses with or without adaptation, or for business purposes appropriate to its rural Green Belt location, thereby contrary to Policies EMP5 and L1 of the Unitary Development Plan.
- 3.3 Since the decision was made an appeal has been submitted against the refusal and a hearing is scheduled for 12th April 2016.
- 3.4 The appellant’s agent has written to the Council (letter attached) setting out how they consider that a recent High Court judgement affects the Council’s case at appeal in this case. The case mentioned is *London Borough of Bromley v Secretary of State for Communities and Local Government (SoS) and Rookery Estates Company Limited* (attached).
- 3.5 In this High Court case the Council unsuccessfully challenged a Planning Inspector’s decision to allow an appeal against the Council’s refusal for “Demolition of existing buildings and redevelopment to provide a new barn and on site linked residential unit and erection of 9 additional private dwellings for market housing with associated landscaping and parking (outline)” at Bromley Common Liveries, Bromley Common, Bromley BR2 8HA.
- 3.6 The first refusal ground in the Bromley Common Liveries case was almost identical to that used in the Westerham Riding School case. The High Court decision is attached. In summary the Council attempted to argue that the change of use to residential was inappropriate in itself and that the Inspector had failed to properly consider this point in reaching his decision. The judgement centred around bullet points in paragraph 89 of the National Planning Policy Framework which set out exceptions to inappropriate development in the Green Belt, and in particular bullet point six which states: *“limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”*
- 3.7 The judge concludes: *“It follows that, in my judgment, providing the new buildings fall within the use and other restrictions of the applicable indent of paragraph 89 the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be appropriate development”*
- 3.8 The original committee report for Westerham Riding School (attached) concludes that the proposal would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development, being of reduced size, but concluded that the change of use itself was inappropriate. Since the argument for Westerham Riding School is along the same principle as Bromley Common Liveries, in light of the Court decision, it is now accepted that the proposal meets the test for appropriate development in bullet point 6 of paragraph 89 of the NPF.

- 3.9 Members are advised from both a planning and legal viewpoint that continuing to contest the appeal on this first ground would be almost certain to fail and there would be a high risk of an award of costs for unreasonable behaviour should it be pursued.
- 3.10 The second ground for refusal is unaffected by the recent legal case and it is recommended that it should continue to be contested at the appeal.

4. POLICY IMPLICATIONS

The recent High Court case confirms that elements of Unitary Development Plan Policy G1 are out of date, however this matter is being addressed as part of the new Local Plan process.

5. FINANCIAL IMPLICATIONS

There is a high risk of an award of costs should the Council pursue the appeal in respect of the first ground of refusal.

Non-Applicable Sections:	Legal, Personnel
Background Documents: (Access via Contact Officer)	National Planning Policy Framework 2012 London Borough of Bromley v Secretary of State for Communities and Local Government (SoS) and Rookery Estates Company Limited Unitary Development Plan 2006 Applications, reports and appeals for cases 14/03398/OUT and 15/03077/OUT