

Overview and Scrutiny Report

Report of the Local Plan Sub-group: Review of the Council's Processes – Scaffold Hill Planning Application and Appeal

April 2014 (amended recommendations September 2014)



1. Summary

- 1.1 Following a Council Motion, the Local Plan Sub-group was requested by the Overview and Scrutiny Committee to undertake a review of the Council's processes in dealing with the planning application and subsequent planning appeal in relation to Scaffold Hill Farm.
- 1.2 The Sub-group agreed to consider this matter once it had completed its review of the Local Plan. The sub-group therefore began work on this matter in November 2013.
- 1.3 The Sub-group identified a number of recommendations to address issues identified during the review that were considered at the Overview, Scrutiny & Policy Development Committee on the 1 September 2014.

The Committee agreed to amend 2 recommendations to reflect the benefit of expanding the traffic flow modelling to illustrate the cumulative impact of traffic movements throughout the Borough and the inclusion of children & young people in consultation exercises of this nature.

Recommendations

1	That the relevant Cabinet Member monitors the impact of the revised systems that have been put in place in relation to traffic modelling to ensure they are effective in preventing future errors occurring.
2	That Officers, in consultation with the Chair of the Planning Committee, consider whether the transport model could be introduced as a visual aid at Planning Committee where it would assist Members of the Committee in understanding the traffic impacts of proposed large developments and aid the understanding of the possible cumulative impact any such developments would have on local amenities such as accessing education and health facilities in the borough;
3	That the relevant Cabinet Member explore with officers whether the transport model could be made available to developers on a fee basis as part of the planning application process.
4	That Cabinet review the Council's consultation policy, particularly in relation to planning matters, and ensure that processes are transparent and that wider consultation is undertaken to include children & young people in addition to residents to have real input into the process and to observe that their contributions are being respected.
5	That the above recommendations are implemented within the next 6 months.

2. Background to the study

- 2.1 The Local Plan Sub-group was asked to review the processes in relation to the Scaffold Hill planning application and subsequent planning appeal. This was a result of the following Council Motion which was agreed at a meeting of the Council on 14 March 2013:

“The very recent Planning Appeal (re Scaffold Hill Farm proposals) that caused the Council to withdraw from the appeal altogether as a consequence of information coming to light at a very late stage, in fact the evening before the appeal was to be held, so placing the Council in a very difficult position both financially and also the risk of the appeal process.

Council therefore resolves that an urgent review be taken by the Overview and Scrutiny Committee into how the planning application was processed, the information that was submitted and considered by Officers and Planning committee members, including the analysis of evidence and preparation for the planning Inspector’s Appeal hearing. A report should be produced by Overview and Scrutiny and presented to the Full Council for consideration and discussion.”

- 2.2 The Local Plan Sub-group was originally set up to review the developing Local Plan. The Sub-group was unable to begin this review of the Scaffold Hill Planning application until work on the Local Plan review was complete.
- 2.3 The original membership of the Local Plan Sub-group was:

Councillor J Allan (Chair)
Councillor B Burdis
Councillor M Huscroft
Councillor J O’Shea
Councillor M Rankin

This review has been completed with the primary involvement of Cllrs J Allan and J O’Shea.

3. Methodology

- 3.1 The remit of the sub-group was to review the Council’s processes in dealing with the planning application and subsequent planning appeal in relation to Scaffold Hill Farm with a view to identifying recommendations to address the issues raised by the review. These would be reported back to the Overview and Scrutiny Committee and to full Council.
- 3.2 As part of the review the sub-group received background information from officers on the planning application and appeal. This included detailed information on:

- the legislative position around planning decisions and the appeals process;
- the chronology of events around the Scaffold Hill Farm Planning application determination and subsequent appeal process;
- information on the evidence prepared for the appeal by the highways consultant acting for the council;
- How processes have been reviewed and action put into practice in dealing with subsequent applications.

3.3 The Sub-group also:

- Had discussions with the highways consultant who was appointed by the Council to support the appeal;
- Considered written and verbal comments from relevant ward councillors;
- Met with representatives of the Holystone Action Group, a residents group that had campaigned against the development at Scaffold Hill and were in attendance at the appeal hearing.

3.4 The group met on 5 occasions to complete the review.

Findings/Evidence

4. Introduction to the Planning application and Timeline

4.1 At the beginning of the review the group received information on the original application and a timeline of events as follows.

Planning application Determination Process

4.2 The Sub-group noted that the planning application referred to a site comprising 64 ha of land to the north of the Rising Sun Country Park (RSCP) and east of the A191 Holystone bypass, and extending eastwards to the A19 and northwards to the hotel and public house close to the Holystone roundabout. It comprised open fields separated by hedgerows which were used for agriculture and grazing.

4.3 The application sought permission for 450 dwellings (including 113 affordable homes), retail units, a surgery and a 42 ha extension to the RSCP. A play area and Multi Use Games Area and 101 allotments were also proposed.

4.4 The planning application was originally submitted by the applicant on 1 August 2011. There then followed a lengthy period of consideration and exchange of information between the applicant and the Local Planning Authority to ensure that the impact of the development on traffic, flood risk, noise, ecology and local infrastructure had all been comprehensively

assessed. During this time amended plans were submitted by the applicant to address issues raised.

- 4.5 The application was reported to the planning committee on 21 August 2012 with a recommendation from planning officers to approve the application, subject to some conditions and a Section 106 legal agreement.
- 4.6 The Sub-group was informed that the Planning Committee had been advised that they should consider carefully the balance of issues before them and the need to take into account the most recent National policy within the National Planning Policy framework (NPPF) and the weight to be accorded to this. Specifically the NPPF states that Local Planning Authorities should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible.
- 4.7 The Sub-group noted that planning guidance does recognise that the Planning Committee is not bound to accept the recommendation of its officers but it is clear that where professional advice is not followed, the Committee will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence at appeal. Failing to do this may result in costs being awarded at appeal.
- 4.8 At the meeting the Planning Committee resolved to refuse planning permission contrary to the recommendations for the following 6 reasons:
 1. The proposal would lead to the loss of open space and have a detrimental impact on the ecology and habitat of the site and the Country Park contrary to the National Planning Policy Framework and Policies R2/1, R2/2 and E12/6 of the North Tyneside Unitary Development Plan.
 2. The proposal would lead to loss of high quality employment land in proximity to the A19 contrary to Policies LE1/3 and LE1/4 of the North Tyneside Unitary Development Plan.
 3. The proposal would result in the development of a Greenfield site for housing therefore the principle of residential development on this site is contrary to Policy H5 of the North Tyneside Unitary Development Plan 2002.
 4. The proposal would lead to severe traffic impacts on the road network and would therefore be contrary to advice set out in the National Planning Policy Framework and Policy H11 of the North Tyneside Unitary Development Plan 2002.
 5. Insufficient information has been submitted to demonstrate that the proposed sustainable urban drainage system will be implemented and managed to a satisfactory standard to prevent the risk of flooding, contrary to the National Planning Policy Framework and Policy H11 of the North Tyneside Unitary Development Plan 2002.

6. The proposal would have a detrimental visual impact on the character of the area, including the Risking Sun Country Park, contrary to Policy H11 of the North Tyneside Unitary Development Plan.

Appeal Process

- 4.9 The applicant lodged an appeal against the Council's decision in November 2012. The appeal was called in by the Secretary of State for his own determination on the basis of the scale of the development and its impact on government objectives to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The Planning Inspectorate agreed that the appeal should be dealt with by way of public inquiry and this was scheduled to begin on 26 February 2013.

Appointment of Consultant

- 4.10 At the point that the applicant lodged the appeal, the Council appointed an external Consultant, Capita Symonds, to defend the Planning Committee's decision to turn down the application on the basis of traffic impacts. It was necessary to appoint an external consultant for this purpose as Council officers had already given their professional advice to the Planning Committee and this was contrary to the decision taken by the Committee. The Consultants also provided advice on the other grounds identified by the Planning Committee for refusal.
- 4.11 Following the appointment of Capita Symonds, a Highways Engineer from Capita Symonds reviewed the highways impact post-decision and undertook further traffic modelling. On the basis of this work, he advised that the traffic impact of the proposal would be 'severe', contrary to paragraph 32 of the NPPF.

Advice to the Planning Committee

- 4.12 The Council instructed a barrister to represent it at the appeal. Specific advice was requested from the barrister in November 2012 about how best to progress the case, given that the decision of the committee was made contrary to the advice of its professional officers, and the strength of each of the reasons for refusal.
- 4.13 The advice of the barrister was reported to the Planning Committee on 4 December. Having considered this advice the Committee resolved that reasons 2 and 3 and part (b) of reason 1 should be withdrawn and not pursued at appeal. The appeal case for the authority would therefore be progressed on the basis of reasons 4, 5 and 6 and part (a) of reason 1. The inspectorate and the appellant were advised of this decision.
- 4.14 During the course of preparing evidence, the appellant provided additional information regarding the proposed drainage and SUDs arrangements for the development and information about its future maintenance. This additional

information was reviewed by Council Officers and their drainage consultants (Capita Symonds) who advised that the proposals were acceptable. In this context, with the authority's outstanding concerns about flood risk having been addressed, a further confidential report was presented to the Planning Committee on 29 January, recommending that reason 5 not be pursued at the appeal.

4.15 The Planning Committee agreed this recommendation.

4.16 Therefore the appeal was to be progressed on the basis of the three remaining reasons for refusal.

Public Inquiry

4.17 In advance of the opening of the inquiry on 26 February 2013, the barrister and witnesses for the Council met to make final preparations for the inquiry on the evening prior.

4.18 During discussions it became apparent that an error had been made in the transport model in relation to the 2021 base line traffic flows. An element of double counting of vehicle trip rates from the site had occurred in the transport modelling review by the Consultant, and the vehicle trip rates for both the existing employment permission and the proposed residential development had been included. The trip rates from the existing employment permission on the site should not have been included within the modelling exercise.

4.19 NPPF states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are 'severe'.

4.20 Once this error was rectified within the transport model it significantly reduced the queue length estimate at A19/Holystone roundabout junction and on this basis the consultants felt unable to argue at appeal that the impact of the development on the road network was 'severe'.

4.21 The barrister informed the Council's representatives on the morning of 26 February 2013 that the appeal case on highway impact grounds was no longer viable. He sought instruction from the Council.

4.22 A telephone conversation took place between the Council's solicitor, planning manager and the Chair of the Planning Committee. The Chair of the Planning Committee took the view that in the light of the significant risk of costs being awarded against the Council that the highway reason should not be pursued and the appellant be advised accordingly.

4.23 The appellant's barrister was advised of the Council's position. The appellant's barrister advised at the time that if the Council agreed not to pursue the remaining reasons that the appellant would not make an application for an award of costs against the Council. He estimated that the appellant's costs at that point stood at around £250,000.

- 4.24 Further discussions took place within the Council. The Council's barrister advised that the remaining 2 reasons did not satisfy the tests of the NPPF and that to pursue them would be likely to result in a substantial award of costs. Taking into account the significant risk of costs and the advice of the barrister, the Chair of the Planning Committee agreed that the remaining reasons should not be pursued.
- 4.25 At the opening of the inquiry the Council's barrister advised that the Council was withdrawing the remaining reasons for refusal, having firstly secured agreement over highway mitigation works with the appellant.
- 4.26 The appeal was concluded on 27 February 2013, following hearing of representations from two local residents, discussions on conditions and the legal agreement and a site visit by the Inspector. The appellant did not make an application for an award of costs.
- 4.27 The appeal decision was issued on 3 July 2013. The appeal was allowed. The Inspector's report was also published and the inspector also recommended approval of the application. The decision was subject to over 70 conditions and a legal agreement which secured £560,000 for public transport and pedestrian improvements, 113 affordable homes, over £200,000 for health provision, over £200,000 for employment and training, £2.3m for education provision and sums for sports play and air quality monitoring, in addition to the extension of the Rising Sun Country Park and £500,000 towards its future maintenance.

Lessons Learned and Action Taken

- 4.28 The Sub-group was advised that, following the appeal, the Council's Engineering Client and representatives from Capita Symonds had met to identify what went wrong with the transport modelling exercise and to agree an action plan of preventative measures to reduce the risk of similar errors occurring in the future.
- 4.29 It was acknowledged that the network in this area, and in particular the Holystone junction, is difficult to model due to fluctuations in traffic flows.
- 4.30 It was agreed that a more structured audit and checking process would have minimised the risk of the modelling issues occurring. In view of this, a new process has now been developed and implemented. This includes:
- A process map to ensure that all information and data can be independently checked and validated at various stages throughout the modelling process;
 - A requirement for sign-off from a senior technical officer at each key stage.

- 4.31 The Sub-group was informed that the new system will considerably reduce the risk of a similar error occurring when examining future major planning applications.
- 4.32 In addition, the Sub-group had an opportunity to view a demonstration of the new transport model that is under development to show traffic flows along the A191 corridor through the borough from the Holystone roundabout to Four Lane Ends.
- 4.33 The Sub-group was informed that the model had been developed based on the highway network and trip matrix information gained from travel surveys carried out during neutral months. The model incorporates all committed developments that will impact on this part of the network. The next stage of development will be to input the potential Local Plan residential and employment sites in order to show the potential impact. This could also include sites identified by Northumberland Council and Newcastle City Council that are close to the North Tyneside border and could be expected to have an impact on the highway network in North Tyneside.
- 4.34 The sub-group suggested that the model could be of use to developers, and it was noted that consideration was being given to making the model available to developers on a fee basis during the planning application process, with the aim of reducing lengthy negotiations in relation to traffic mitigation measures.
- 4.35 The sub-group acknowledged the action taken to address the issues that had arisen in relation to this case and made the following recommendations:

Recommendations:

1. That the relevant Cabinet Member monitors the impact of the revised systems that have been put in place in relation to traffic modelling to ensure they are effective in preventing future errors occurring;
2. That Officers, in consultation with the Chair of the Planning Committee, consider whether the transport model could be introduced as a visual aid at Planning Committee where it would assist Members of the Committee in understanding the traffic impacts of proposed large developments and aid the understanding of the possible cumulative impact any such developments would have on local amenities such as accessing education and health facilities in the borough;
3. That the relevant Cabinet Member explore with officers whether the transport model could be made available to developers on a fee basis as part of the planning application process.

Evidence from interested parties

1. Ward Councillors

- 4.36 The sub-group invited ward councillors from the wards affected by the planning application to a meeting to share their views on their experiences of the process.
- 4.37 Cllr Spillard attended the meeting in her capacity as Ward Member for Battle Hill. Other ward members were unable to attend the meeting in person but did submit written comments to the sub-group.
- 4.38 The ward councillors acknowledged that mistakes happen and that actions have been taken to address the issues that arose in this case. However, they wished to highlight concern that the issue in relation to the traffic modelling had only been picked up at a very late stage and it had been very difficult for the ward councillors who were in attendance at the appeal to explain this to residents. Ward Councillors had been placed in a very difficult position at the appeal hearing.
- 4.39 The Sub-group acknowledged the views of ward councillors and agreed that they would like an opportunity to speak directly to representatives of the residents to hear their views and to stress that the Sub-group was looking into the issues thoroughly.

2. Meeting with Representatives of the Residents Campaign Group

- 4.40 The sub-group noted that the Holystone Action Group had played an active role in campaigning against the planning application on behalf of the residents of Holystone and that representatives of the group had been present at the appeal hearing. The Sub-group invited two members of the Holystone Action Group, Mr Keith Page and Mrs Vivien Fenn Webber, to a meeting in order to hear directly from the representatives about the experiences of the process. In addition, the Group held a further meeting with Mr Mark Tovey and Mr Keith Page of the Holystone Action Group to discuss the developing transport model for the A191 corridor.
- 4.41 Mr Page provided a written note of issues he wished to raise with members and there was an opportunity to discuss the points set out in the note. In particular, Mr Page stressed that the Campaign Group felt they had been unfairly treated by both officers and politicians, and had been attacked in political leaflets and accused of acting in a political capacity, which they disputed.
- 4.42 The conversation also covered wider issues in relation to the Council's approach to consultation on the original Core Strategy proposals which identified potential sites for residential development in the Borough. Mr Page highlighted the dissatisfaction of the campaign group with the consultation

process and the difficulties they encountered in relation to the consultation. In particular, the Group did not feel that the Council had communicated effectively with the public during the initial consultations on the Core Strategy, had not followed proper processes and had not acted fairly in its approach.

- 4.43 Members of the Sub-group acknowledged the views put forward by representatives in relation to both their experiences of the Council's consultation processes in relation to the Core Strategy and in relation to the Scaffold Hill planning application. Members were of the view that lessons should be learnt from this experience and that transparent processes should be put in place to allow residents to have their say.

Recommendations:

4. That Cabinet review the Council's consultation policy, particularly in relation to planning matters, and ensure that processes are transparent and that wider consultation is undertaken to include children & young people in addition to residents to have real input into the process and to observe that their contributions are being respected.

5. Background Information

- 5.1 The background papers and research reports listed in Appendix A have been used in the compilation of this report and copies of these documents are available from the contact officer.

6. Acknowledgements

- 6.1 The working group would like to place on record its thanks and appreciation to those Council officers, ward councillors and representatives from the Holystone Action Group for their assistance providing evidence to the Sub-group.
- 6.2 A full list of all those individuals who helped the Sub-group with its work is set out in Appendix B.

List of Background Papers

The following background papers have been used in the compilation of this report and copies of these documents are available from Joanne Holmes, Democratic Services, e-mail joanne.holmes@northtyneside.gov.uk Tel 643 5315

- Scaffold Hill – Briefing Note – introductory presentation
- Briefing note – checking procedures for traffic modelling
- Note to Sub-group from the Holystone Action Group
- Electronic Version of A191 traffic model
- Local Plan Sub-group – notes of meetings

Acknowledgements

The working group would like to place on record its thanks and appreciation to the following individuals for their assistance to the working group:-

North Tyneside Council

Jackie Palmer – Planning Manager, Capita
Andrew Flynn – Integrated Transport Manager
Andrew Green – Capita
Nicholas Bryan - Capita
Joanne Holmes – Scrutiny Advisor

Councillor Lesley Spillard
Councillor Alison Waggott-Fairley
Councillor Gary Bell

Resident Representatives:

Mr Keith Page
Mrs Vivien Fenn Webber
Mr Mark Tovey