

Rother District Council

Report to:	Cabinet
Date:	5 October 2020
Title:	Potential Appeal Costs - Strategy and Planning – RR/2017/1705/P – Land off Spindlewood Drive, Bexhill
Report of:	Tim Hickling, Head of Service – Strategy and Planning
Cabinet Member:	Councillor Vine-Hall
Ward(s):	St Marks, Bexhill
Purpose of Report:	The purpose of this report is to outline the options and costs related to the defence of the appeal of the Spindlewood Drive planning refusal and seek Cabinet agreement to the strategy.
Decision Type:	Key
Officer Recommendation(s):	That it be RESOLVED : That the Planning Inspectorate are advised that the Local Planning Authority supports the Written Representations format for the defence of the appeal in respect of ‘land off Spindlewood Drive, Bexhill,’ and that funding of up to £150,000 be set aside from earmarked reserves, to meet costs of defending the appeal.
Reasons for Recommendations:	To ensure that the Council is prepared for the planning appeal.

Introduction

1. The purpose of this report is to advise Cabinet that the refusal of planning permission RR/2017/1705/P – Land off Spindlewood Drive, Bexhill has been appealed and to set out the options and potential costs for the defence of the appeal.
2. The appeal relates to the refusal of planning application RR/2017/1705/P, Land off Spindlewood Drive, Bexhill which sought “*outline: residential development for circa 160 dwellings with all matters other than access reserved*”.

This application was reported to and considered by the Planning Committee on 12 March 2020. The recommendation to the Committee was to grant outline planning permission, subject to completion of a Section 106 Agreement. After discussion, the Planning Committee voted to overturn the recommendation and refuse the application.

Analysis / Details of the Proposals

3. The Applicant has exercised their right to lodge an appeal to the Secretary of State. The Applicant has requested that the Planning Inspectorate consider the appeal by way of the Written Representations format. The Council is required to state its preferred appeal format. The decision regarding whether the appeal is heard by written representations, hearing or public inquiry would be taken by the Planning Inspectorate.

Options

4. Written Representations – Officers could defend the Council's reasons for refusal by Written Representation (as planning officers recommended that the application should be granted and set out clearly in the report their reasons for this recommendation, it would not be possible, in a public forum – see below - for officers to robustly defend the Council's reasons for refusal). Officers would require the expert advice of a drainage consultant to robustly defend the appeal. This format would have the lowest cost but would enable a robust defence of the appeal. The cost to appoint a drainage consultant is likely to be in the region of £5,000 to £10,000. An additional contingency of a further £10,000 is also suggested in the unlikely event costs are awarded against the Council.
5. Hearing or Public Inquiry – If the appeal was heard at a Hearing or Public Inquiry it would need to be defended by outside consultants with input from Counsel. Previous experience indicates that funding for up to £75,000 could be required to cover the costs of a planning consultant and Counsel. Costs are based on a three day inquiry and would be increased if longer was required.
6. In addition, if the Planning Inspector granted permission, the Appellant could seek to claim their costs for the appeal, on the basis that the appeal would have been avoided if the Council had granted permission. The Appellant's costs would be likely to be a similar amount to the Councils and therefore far higher for a hearing or public inquiry. A Hearing or Public Inquiry would likely cost the Council in the region of £150,000.
7. The Council could decide not to defend the refusal and therefore not incur the costs. However, some costs would be likely (as yet unknown), as the Appellant could seek to recover their costs incurred to date in preparing the appeal.

Conclusion

8. The appeal of the refusal, of planning application RR/2017/1705/P, Land off Spindlewood Drive, Bexhill requires a consideration of options and agreement of a strategy. The Applicant requests that the appeal is determined by Written Representations. The Local Planning Authority is requested to advise the Planning Inspectorate of its preferred format. The options are Written Representations, Hearing or Public Inquiry. It will be for the Planning Inspectorate to determine the format, but they are likely to agree to Written Representations if both the Applicant and Local Planning Authority support this.
9. All three formats enable the Council to robustly defend the appeal, but a Hearing or Public Inquiry would lead to significant costs for the instruction of consultants and Counsel.

10. The Applicant could seek to claim their costs for the appeal, and these would be significantly higher for the Hearing and Public Inquiry format.
11. This report seeks Cabinet agreement for the Local Planning Authority to request the Written Representations format for the appeal. It also seeks agreement for defence of an appeal in respect of 'land off Spindlewood Drive, Bexhill', should it be heard via Hearing or Public Inquiry, and to agree to funding be set aside to meet these eventualities, including the Applicant's costs should the appeal be successful.

Financial Implications

12. There are significant financial risks if Rother District Council (RDC) defended the case and lost. If RDC wins the appeal there are still non-recoverable costs. If RDC chose not to defend the appeal there is a risk the appellant will seek to recover costs incurred to date.
13. Members will be aware that if the Appellant wins the appeal against the decision then no New Homes Bonus Grant will be received. Based on the number of properties in the application, it is estimated that £1,069,400 of grant will be foregone.

Legal Implications

14. The costs indicated do not include our legal services costs.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Sustainability	No	Exempt from publication	No
Risk Management	Yes		

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Appendices:	None
Relevant Previous Minutes:	None
Background Papers:	None
Reference Documents:	None