

Rother District Council

Report to:	Cabinet
Date:	28 June 2021
Title:	Potential Appeal Costs – Strategy and Planning – a) RR/2020/1822/P Land south west of Strand Meadow, Burwash; and b) RR/2020/151/P Land south of Pett Level Road, Fairlight Cove.
Report of:	Tim Hickling, Head of Service Strategy and Planning
Cabinet Member:	Councillor Vine-Hall
Ward(s):	Burwash and the Weald and Southern Rother
Purpose of Report:	The purpose of this report is to outline the options and costs related to the defence of the appeals of the planning refusals and seek Cabinet agreement to the strategy.
Decision Type:	Key
Officer	
Recommendation(s):	It be RESOLVED : That the Planning Inspectorate be advised that the Local Planning Authority supports: 1) the Written Representations format in defending the Council’s case for the appeal and application for full award of costs, in respect of ‘Land south west of Strand Meadow, Burwash,’ and that funding of up to £150,000 be set aside from earmarked reserves, to meet costs of defending the appeal; and 2) the Written Representations format in defending the Council’s case for the appeal and any application for award of costs, in respect of ‘Land south of Pett Level Road, Fairlight,’ 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 appeals.

Introduction

1. The purpose of this report is to advise Cabinet of the following refusals of planning permission and subsequent appeals:
 - a) RR/2020/1822/P Land south west of Strand Meadow, Burwash. Appeal has been lodged to the Planning Inspectorate along with an application for a full award of costs.

- b) RR/2020/151/P Land south of Pett Level Road, Fairlight Cove. Appeal has been lodged to the Planning Inspectorate and likely to be accompanied by an application for an award of costs.

The potential costs for the defence of the appeals are set out below.

2. The appeals relate to the refusal of planning application:

- a) RR/2020/1822/P Land south west of Strand Meadow, Burwash which sought “*Reserved matters relating to residential development of 30 dwellings (outline permission RR/2017/582/P), conditions 1,2 and 3 together with the discharge of conditions 7 (foul and surface water drainage), 8 (parking and turning of vehicles), 9 and 10 (archaeology), 13 (levels) and 19 (landscaping).*”

This application was reported to and considered by the Planning Committee on 18 February 2021. The recommendation to the Committee was to approve Reserved Matters including details on drainage (in part), parking, archaeology, levels and landscaping. After discussion, the Planning Committee voted to overturn the recommendation and refuse the application.

- b) RR/2020/151/P Land south of Pett Level Road, Fairlight Cove which sought “*Outline: Development of up to 43 residential units (including 40% affordable), including new vehicular access from Pett level Road.*”

This application was reported to and considered by the Planning Committee on 11 March 2021. 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 Applicants (now appellant) for Strand Meadow has exercised their right to lodge an appeal to the Planning Inspectorate and requested that it is considered by way of the Written Representations format. The Council is required to state its preferred appeal format. As Members will be aware having regard to the outstanding appeal for Spindlewood, the decision regarding whether the appeal is heard by written representations, hearing or public inquiry is taken by the Planning Inspectorate.
4. The Applicant (now appellant) for Fairlight is exercising their right to lodge an appeal to the Planning Inspectorate and has already started the procedure of preparing a Unilateral Agreement to accompany the appeal. At this stage it is unclear as to whether they will request the Planning Inspectorate to consider the appeal by way of the Written Representations, Hearing or Public Inquiry format. While 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 will be taken by the Planning Inspectorate.

Appeal Options

5. Written Representations
Officers could defend the Council's reasons for refusal by Written Representation. However, in both appeals officers would be likely to require additional expert advice to robustly defend the Council's case. This format would have the lowest cost but would still enable a robust defence of the appeal. The cost to appoint a consultant will vary for each case dependent upon the expertise required but could be in the region of £5,000 to £50,000. An additional contingency of a further £50,000 is also suggested in the unlikely event costs are awarded against the Council.
6. Hearing or Public Inquiry
The Council's planning officers recommended that both applications be granted for the reasons set out in the relevant planning committee report. Consequently, it would not be possible, in a public forum and/or under cross examination (Hearing of Public Inquiry) for officers to robustly defend the Council's reasons for refusal. Therefore, if the appeal was heard at a Hearing or Public Inquiry the Council's case would need to be defended robustly by outside consultants with the input from Counsel (Barrister/Solicitor). Previous experience indicates that funding of up to £75,000 could be required to cover the costs of a planning consultant and Counsel. Costs are based on a 3-day inquiry and would be increased if longer was required.
7. In addition, no matter what the outcome, the Appellant could seek to claim their costs for all or part of the appeal. In advance of the Strand Meadow appeal, the Appellant has submitted a cost claim against the Council to the Planning Inspectorate. If successful, the Appellant's costs (in full) would likely be a similar amount to the Council's expenditure (cost). Therefore, a Hearing or Public Inquiry could cost the Council in the region of £150,000.
8. Not defend the appeals
The Council could decide not to defend the refusals and therefore not incur the costs. However, some costs would be likely (yet unknown), as each appellant could seek to recover their costs incurred on abortive work to date in preparing their appeals.

Conclusion

9. The appeal of the refusal, of both planning applications listed, RR/2020/1822/P Burwash and RR/2020/151/P Fairlight require a consideration of options and agreement of a strategy. As noted for Burwash, the Appellant has already requested Written Representations. The Council is requested to advise the Planning Inspectorate of its preferred format. The options are Written Representations, Hearing or Public Inquiry. It will ultimately be for the Planning Inspectorate to determine the format, but they are likely to agree to Written Representations if both the Appellant and Council support this format.
10. All three formats enable the Council to robustly defend the appeal, but a Hearing or Public Inquiry would lead to significant costs to the Council for the instruction of consultants and Counsel.

11. The Appellants could seek to claim their costs for the appeal, and these would be significantly higher for the Hearing and Public Inquiry format.
12. This report seeks Cabinet agreement for the Council to request the Written Representations format for both appeals. The report also seeks agreement for the defence of both appeals in respect of 'Land south west of Strand Meadow, Burwash', 'Land south of Pett Level Road, Fairlight Cove' should either be heard via Hearing or Public Inquiry, and to agree to funding being set aside to meet these eventualities, including any award of costs. For both appeals this could be in the region of £300,000.

Financial Implications

13. In both cases there are significant financial risks if Rother District Council (RDC) was unsuccessful in defending the appeals. If RDC wins the appeal there will still be 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.
14. Members will be aware that if the Appellant, in both cases, 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 £200,520 of grant will be foregone for Burwash and £287,412 for Fairlight.

Environmental Implications

15. Written representations will negate the need for parties to travel to and from the Town Hall, Bexhill-on-Sea, thus keeping the carbon footprint of the appeals process to a minimum. However, it is worth noting the Inspector will still need to visit the site.

Legal Implications

16. 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	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Tim Hickling, Head of Planning and Strategy
e-mail address:	tim.hickling@rother.gov.uk
Appendices:	None
Relevant Previous Minutes:	None
Background Papers:	None
Reference Documents:	None