

## Record of officer decision

<b>Decision title:</b>	<b>RE THE APPEAL BY BLOOR HOMES WESTERN IN RESPECT OF LAND NORTH OF LEDBURY VIADUCT, ADJOINING ORCHARD BUSINESS PARK, LEDBURY</b>
<b>Date of decision:</b>	18 <sup>th</sup> February 2020
<b>Decision maker:</b>	Solicitor to the Council and Monitoring Officer
<b>Authority for delegated decision:</b>	<p>Herefordshire Council's constitution at Section 2. 10.8 states that the Solicitor to the Council is authorised to issue, defend, settle or take part in any legal proceedings on the Council's behalf where such action is necessary to give effect to decisions of the Council where they consider that such action is necessary to protect the Council's interests.</p> <p>Under the corporate support scheme of delegation – authority to act is given under item 42 where delegation is given by the solicitor to the council to issue, defend or take part in any legal proceedings on the council's behalf.</p>
<b>Ward:</b>	Ledbury North
<b>Consultation:</b>	<ul style="list-style-type: none"> <li>• The Solicitor to the Council and Monitoring Officer has taken into account the views of members at Planning Committee on 11<sup>th</sup> December 2019 and also those expressed at Full Council on 14<sup>th</sup> February 2020 following a motion by the Ledbury ward member Councillor Harvey.</li> <li>• Consultation with cabinet members and other statutory officers including the Chief Executive and external consultants.</li> </ul>
<b>Decision made:</b>	<p>Bloor Homes (the Appellant) have appealed to the Planning Inspectorate pursuant to Section 78 of the Town and Country Planning Act 1990 against the Council's decision made at Planning Committee on 11 December 2019 to refuse planning permission. The Appellant must go through this process in order for the application to be considered by the Planning Inspectorate and for a decision to be subsequently made as to whether to grant planning permission for the development, or the reasons for refusal to be upheld and the appeal dismissed.</p> <p>The difficult decision is to withdraw the reasons for refusal of the planning permission made on 11<sup>th</sup> December 2019. There are no legislative provisions within the Town and Country Planning Act 1990 or any other statutory provisions that would allow the Solicitor to the Council and Monitoring Officer on behalf of the Council to revoke the decision made to refuse the planning permission.</p>

<p><b>Reasons for decision:</b></p>	<p>The appeal is against the refusal by the Council, at its Planning Committee on 11<sup>th</sup> December 2019, to grant planning permission for a mixed used development including the erection for up to 625 homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works. Planning reference 171532</p> <p>The appeal is not concerned with the fact that the Planning Committee resolved to refuse the grant of planning permission contrary to officers recommendation. However, pursuing the defence of the reasons for refusal by the Council could be seen as unreasonable given there is no technical evidence to support the grounds for refusal. It should also be noted that the Council is having difficulty securing technical experts who would provide their evidence in support of the Council's decision to refuse the planning application.</p> <p>Regrettably, the legal advice of the Solicitor to the Council and Monitoring Officer is to withdraw the 'reasons for refusal' given by the Planning Committee on 11<sup>th</sup> December 2019 to both mitigate the reputational damage to the Council and to limit the significant costs that the Council could incur.</p> <p>It is likely that the Inquiry will still take place however the Council will withdraw its reasons for refusal. The benefit of agreeing to withdraw the reasons for refusal now is that the Appellant's costs incurred in the appeal should be significantly reduced, the inquiry should be shorter, some expert witnesses may not be required to attend and the Council's costs incurred in instructing technical experts will be reduced</p>
<p><b>Highlight any associated risks/finance/legal/equality considerations:</b></p>	<p>The Solicitor to the Council and Monitoring Officer does not have any legal power to revoke the decision of the Planning committee. However, by withdrawing the reasons for refusal, the Council will be acting reasonably and will limit its risk of costs (which would be a waste of tax payers' money) and its potential reputational damage.</p>
<p><b>Details of any alternative options considered and rejected:</b></p>	<p>If the Inquiry went ahead and the Council sought to defend its decision to refuse planning permission then it may be necessary for individuals both members and professional officers to provide evidence in support of the reasons for refusal however that is likely to create a conflict as there is no substantive technical evidence to support the reasons for refusal. It could put professional officers in breach of their own Code of Professional Conduct and also contrary to Part 5 Section 6 the Planning Code point 5.6.68, more particularly (a) and (b), which stipulate:</p> <p style="padding-left: 40px;">In cases where an officer recommendation for approval has been overturned by Committee and an appeal is lodged:  (a) officers will give full support to Members and any external witnesses in</p>

	<p>preparing evidence for any public inquiry, short of giving evidence themselves; and  (b) officers will give evidence themselves only in exceptional circumstances where their Code of Professional Conduct is not breached</p> <p>If the Council chose to defend its decision (rather than withdraw the reasons now) it risks being liable for the costs of the appeal.</p> <p>This option is not supported by the Solicitor to the Council and Monitoring Officer.</p>
<b>Details of any declarations of interest made:</b>	None declared

Signed: Claire Ward, Solicitor to the Council

Date: 20 February 2020