



## OPEN REPORT COMMUNITY AND ENVIRONMENT COMMITTEE

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Community and Environment Committee – 6 March 2024

### PLANNING APPEAL: LEYS FARM, WYASTON ROAD, ASHBOURNE

#### Report of the Director of Regeneration and Policy

##### Report Author and Contact Details

Steve Capes, Director of Regeneration and Policy  
01629 761371 or [steve.capes@derbyshiredales.gov.uk](mailto:steve.capes@derbyshiredales.gov.uk)

##### Wards Affected

Ashbourne South

##### Report Summary

The report seeks use of the General Reserve for fees in connection with defending an appeal at a Planning Inquiry relating to an application recommended for approval which was refused by the Planning Committee. It sets out options for defending the appeal. The report is being considered by the Community and Environment Committee, with the agreement of the Chair, due to the urgency to prepare for a Public Inquiry within the timescales required by the Planning Inspectorate.

##### Recommendations

1. That an Urgent Decision is sought to approve a supplementary revenue budget in 2023/24 for additional expenditure of up to £100,000 in respect of a planning appeal, to be financed from the General Reserve.
2. That the approach to defending the appeal set out in section 3 of the report is agreed.

##### List of Appendices

None

##### Background Papers

- Planning application 22/01339/FUL (Planning Committee 12 December 2023)
- Letter from Planning Inspectorate, dated 19 February 2024

##### Consideration of report by Council or other committee

No

##### Council Approval Required

Yes

##### Exempt from Press or Public

No

# PLANNING APPEAL: LEYS FARM, WYASTON ROAD, ASHBOURNE

## 1. Background

- 1.1 An appeal has been lodged against the refusal of planning permission for a residential development. The Planning Inspectorate will hold the appeal by Public Inquiry in May 2024.
- 1.2 The District Council does not make planned budgetary provision for appeal costs arising from planning decisions. Therefore, authority must be sought for a supplementary revenue budget for this unforeseen expenditure, with financing from the General Reserve.
- 1.3 The report outlines the options available to the District Council in defending the appeal and sets out a recommended approach.

## 2. The appeal

- 2.1 An appeal will be held to consider the refusal of planning permission for a residential development of 87no. dwellinghouses with associated landscaping, infrastructure and access at Lot 2, Leys Farm, Wyaston Road, Ashbourne (application 22/01339/FUL).
- 2.2 Planning permission was refused by the Planning Committee on 12 December 2023 for the following reasons:
  1. *The development would be served by an access off a narrow country lane, where vehicle speeds and visibility are such that movements to and from the site would be detrimental to highway safety, and cumulatively with other recent development in the area have severe impacts on the transport network contrary to the requirements of Policy S4 and HC19 of the Adopted Derbyshire Dales Local Plan (2017).*
  2. *The development fails to facilitate choice of travel and safe and easy viable access to the facilities within the town to encourage walking and cycling contrary to the aims of Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and Policy TRA1 of Ashbourne Neighbourhood Plan (2021).*
  3. *Insufficient information has been submitted to demonstrate that surface and foul water flows from the development can be accommodated without adversely affecting the environment and increasing the risk of flooding elsewhere contrary to the aims of Policies S1 and PD8 of the Adopted Derbyshire Dales Local Plan (2017).*
  4. *The proposed development delivers a blended housing mix that is skewed towards larger house types. Without clear and convincing justification, this does not meet the housing needs of the district contrary to the aims of policies S1 and HC11 of the Adopted Derbyshire Dales Local Plan (2017) and Policy HOU1 of Ashbourne Neighbourhood Plan (2021).*
  5. *The layout of the development does not respond positively to the context, character and identity of this part of the town and constitutes poor design contrary to the aims of Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017), Policy DES1 of*

*the Ashbourne Neighbourhood Plan (2021) and policy contained in the National Planning Policy Framework (2023).*

6. *The development fails to adequately compensate for natural grassland loss to deliver a Biodiversity Net Gain contrary to the requirements of Policy PD3 and policy contained in the National Planning Policy Framework (2023).*
7. *The pedestrian link at the western end of the site, terminates before it reaches any adopted path which means that it offers no access benefits and is therefore unwarranted. It also runs alongside an attenuation feature on adjacent land which is detrimental to public safety, contrary to the aims of Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).*

2.3 The Inspector will hold the appeal by Public Inquiry, sitting over eight days during May 2024.

2.4 As set out in a letter from the Planning Inspectorate dated 19 February 2024, the District Council was required to arrange a suitable venue for the Public Inquiry and to notify all interested parties of the appeal by 26 February 2024. The Council is required to send to the Inspector its full Statement of Case by 21 March 2024, and to attend (via Teams) a Case Management conference on 26 March 2024.

2.5 The District Council and the appellant are both required to provide complete Proofs of Evidence to the Planning Inspectorate by 23 April 2024. A decision is expected to be issued by the Inspector on or before 29 July 2024.

### **3. Options Considered and Recommended Proposal**

3.1 Councillor Dobbs, who tabled the motion to refuse permission at the Planning Committee meeting, has agreed to front up the Council's case.

3.2 Given that planning officer capacity is limited, and that (because they recommended approval) the Council's planners could not professionally defend this appeal, the Council needs an alternative professional planning lead. One option would be to appoint a planning consultant to be the lead. However, the Council is to appoint an Interim Development Manager to cover the forthcoming vacancy. This planner has been appointed externally and has no previous involvement in the case. It is therefore recommended that the Interim Development Manager be the Council's planning lead on this appeal when he joins the organisation in early March.

3.2 In addition, the Council will need to put forward expert witnesses, because some of the reasons for refusal (drainage and highways) are technical in nature. In order to defend the District Council's case at the Public Inquiry, it is therefore considered necessary to identify and appoint suitably experienced, independent drainage and highways experts who are prepared to defend the reasons for refusal. A verbal update will be provided to the meeting on progress in this respect. Further, due to the nature of a Public Inquiry, Legal Counsel is

required as legal advocate for the District Council at the Inquiry. An estimated budget of up to £100,000 is therefore required, to be funded from the General Reserve.

- 3.3 Because of the Planning Inspectorate's deadlines, there is a need to have properly procured and appointed expert witnesses and Counsel by 21 March. Therefore, Members are asked to approve seeking an Urgent Decision to set the budget in order to procure expert witnesses and Counsel.

#### **4. Consultation**

- 4.1 All persons who were notified or consulted about the original application, and any other interested persons who made representations to the Council about the, are to be notified by 26 February 2024 that the appeal has been made. They will have been told:

- i) that any comments they made at application stage will be sent to the Planning Inspectorate and the appellant and will be considered by the Inspector (unless they withdraw them within the 5 week deadline). If they want to make any additional comments they must submit them by Monday 25 March 2024. If comments are submitted after the deadline, the Inspector will not normally look at them and they will be returned;
- ii) when and where the appeal documents will be available for inspection;
- iii) that the Planning Inspectorate will not acknowledge representations. They will, however, ensure that letters received by the deadline are passed on to the Inspector dealing with the appeal;
- iv) that they can get a copy of our booklet 'Guide to taking part in planning appeals proceeding by Inquiry' either free of charge from the Council, or on GOV.UK <https://www.gov.uk/government/collections/taking-part-in-a-planning-listed-building-or-enforcement-appeal>;
- v) that the decision will be published on GOV.UK.

#### **5. Timetable for Implementation**

- 5.1 The Public Inquiry will be held over eight days during May 2024. A decision is expected to be issued by the Planning Inspectorate on or before 29 July 2024.

#### **6. Policy Implications**

- 6.1 None.

#### **7. Financial and Resource Implications**

- 7.1 There is no budgetary provision for appeal costs arising from the District Council's planning decisions. It will, therefore, be necessary to seek approval for a supplementary revenue budget of £100,000 in 2023/24 for this expenditure. Any unspent balance at 31<sup>st</sup> March 2024 will be carried forward to 2024/25 through a reserve. It is recommended that this expenditure be

financed from the General Reserve, which currently has an estimated uncommitted balance of £3,122,060. The Council's Medium-Term Financial Strategy permits the use of the General Reserve for meeting 'one-off' expenditure.

7.2 It should be noted that, should the Council lose this planning appeal, there is a risk that the planning inspector could determine that the Council must meet the appellant's costs, which would be significant. Should this be the case, approval would be sought for a further supplementary budget.

7.3 The financial risk of this report's recommendations is assessed as medium.

## **8. Legal Advice and Implications**

8.1 This report is being considered by the Community and Environment Committee, with the agreement of the Chair, due to the urgency to prepare for a Public Inquiry within the timescales required by the Planning Inspectorate (following the urgent business provisions at Part 3 of the Constitution). The legal risk of challenge associated with taking the decisions as recommended has been assessed as medium.

## **9. Equalities Implications**

9.1 None in this report.

## **10. Climate Change and Biodiversity Implications**

10.1 None in this report.

## **11. Risk Management**

11.1 The approach recommended in the report seeks to maximise the robustness of the Council's case at the forthcoming Public Inquiry. Securing strong representation is necessary for a successful defence of the appeal.

### **Report Authorisation**

Approvals obtained from Statutory Officers:

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Paul Wilson	26/02/2024
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	26/02/2024
Monitoring Officer	Kerry France	29/02/2024