

CABINET

14 SEPTEMBER 2016



LOCAL GOVERNMENT OMBUDSMAN FURTHER REPORT RELATING TO MILL HOUSE FARM, WINDMILL

Report of Corporate Management Team

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Purpose of the Report

- 1 For Cabinet to note and endorse the process for determining whether to utilise revocation, modification and discontinuance powers in respect of land at Mill House Farm, Windmill following a further report from the Local Government Ombudsman ("the LGO").
- 2 The LGO requires the Council to consider whether to revoke, modify or discontinue permissions for 3 barns on agricultural land at Windmill, as a result of finding that the permissions were improperly granted and had unacceptable impacts on the neighbours because of the intensive housing of livestock. This is a Council decision, delegated to the Head of Planning & Assets. This report to Cabinet seeks endorsement of the process to reach a decision, requires Cabinet to note the costs of the various options as set out in a report which appears as an exempt item in this agenda, and where necessary to approve a budget for the next steps as also set out in that report.

Introduction

The LGO's Reports

- 3 On 29 February 2012 the Local Government Ombudsman issued a report finding maladministration by the Council in respect of (among other matters) the granting of planning permissions for 3 barns on agricultural land at Mill House Farm, Windmill. The ombudsman's reports are the result of a long running set of issues that have their roots in activity before Local Government Reorganisation on 2009.
- 4 The first two planning permissions were granted by Teesdale District Council in 206 and 2007 respectively and the barns were constructed. The third

permission was granted by Durham County Council in 2010 and has yet to be built.

- 5 The ombudsman recommended that the Council commissioned reports and then made a decision whether to revoke, modify or discontinue any of the permissions.
- 6 Progress has been affected by an associated police investigation into letters that the LGO found to have been removed from planning files by officers. The significance of the letters was that they appeared to be letters from a parish council objecting to the granting of the first two planning permissions and their receipt by Teesdale District Council. They removed the authority for any planning officer to have granted planning permission. The letters were produced by one of the complainant neighbours to the ombudsman investigator when she had indicated that she was not proposing to investigate. It appeared to the ombudsman that these highly relevant documents had been wrongly disposed of by officers.
- 7 Resolving this matter has proved to be complex, not only in terms of the council obtaining clear expert advice on a way forward, but also a number of additional complications covering enforcement and other planning issues. A significant delay arose after October 2013 when advice from the police revealed that the two letters from the parish council were forgeries and had not been sent by the parish council, nor received by Teesdale Planning Officers. That led to a provisional negotiated solution being withdrawn whilst the police investigated the authorship of the letters and the ombudsman considered her recommendations in relation to its outcome. The police investigation culminated in a criminal conviction and sentencing in November 2015. In the meantime, the council commissioned further reports on the planning permissions, the first having been based on full acceptance of the original ombudsman's report.
- 8 The LGO has issued a further report to set the record straight in relation to the letters but in the light of her other findings of maladministration she has reiterated that the Council should make a decision on the revocation/modification/discontinuance questions by October 2016. Failure to do so could result in censure by the Secretary of State.
- 9 The LGO also made other recommendations in her first report including that the Council should compensate each household in the sum of 50% of the council tax due on their properties from March 2010 until the date of its decision. The obligation to make these payments continues. A schedule of the compensation paid and still arising is referred to the exempt report in the agenda.
- 10 The persons who hold title to the site of the barns are not in possession of it. This makes dealing with the landowner, and therefore the progression of voluntary measures to resolve the position, very difficult. It is however foreseeable that the council will be in a position to enter into voluntary negotiations in the relatively near future.

Commissioning of reports

- 11 In order to try and resolve this complex set of issues The Council has commissioned reports from Aecom, and subsequently from Fairhursts. Robson & Liddle have advised on compensation entitlements on a confidential basis and their advice is summarised in the exempt item on the agenda.
- 12 The advice is that the permissions, if exercised to their natural capacity, would produce unacceptable impacts unless further planning controls are imposed. The extent of the control needed is the subject of some disagreement (which is inevitable given that planning judgments are being exercised).

Costs

- 13 Making revocation, modification or discontinuance orders (which would require confirmation by the Secretary of State) will carry costs consequences to the Council, arising out of the obligation to compensate the landowner. Those costs are a material consideration for the planning authority.

The Process

- 14 Making revocation/modification/discontinuance orders lies within the delegated authority of the Head of Planning and Assets. Given the significance of the decision, it is proposed to refer the question to the Area Planning Committee for their advice at their meeting on 20 October before a decision is made. It is proposed that the landowner, local residents and other interested parties will be consulted prior to the meeting of the Planning Committee, and that normal public speaking arrangements will apply at that meeting.

Recommendation

- 15 It is recommended that Cabinet:
1. Endorses the proposed process for reaching a decision in response to the LGO's recommendations; and
 2. Notes and where applicable approves the proposed costs as set out in the accompanying exempt report; and
 3. Authorises the Head of Planning and Assets to take all reasonable steps required to achieve the planning controls sought by any orders he decides to make, and/or such other controls as he deems expedient.

Background Papers:

LGO report of 29 February 2012

LGO report of 18 July 2016

Aecom Planning Assessment

Fairhurst Planning Assessment and Addendum

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Appendix 1: Implications

Finance - as set out in the exempt report on the agenda

Staffing – as set out in the report

Risk – as set out in the report

Equality and Diversity / Public Sector Equality Duty the reports deals with addressing potential planning damage caused to a small community and involves developments on private land and implementing the recommendations of the Local Government Ombudsman. The report proposes a process for decision making.

Accommodation – N/A

Crime and Disorder – as set out in the report

Human Rights – as set out in the report

Consultation – as set out in the report

Procurement – N/A

Disability Issues – N/A

Legal Implications – as set out in the report