

Executive – 7 June 2007

## **EXAMINATION OF THE SHERFORD AREA ACTION PLAN AND RECEIPT OF TWO PLANNING APPLICATIONS – Position Statement**

### **Report of the Strategic Director (Community) and the Head of Corporate Services and Monitoring Officer**

**Statutory Powers:** Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

**Financial Implications:** The Council has established the Local Plan Reserve to support the development of the planning policy framework for the District. The Reserve stands at approximately £1,800,000 at 14<sup>th</sup> May. Members should however note that profiling of anticipated expenditure between 2005/06 and 2010/11 suggests that the reserve could be fully committed by March 2011.

Events are unfolding which may require us to reconsider the pressure on the reserve in order to cover additional expenditure. This would include two possible developments:

- a statutory appeal to the High Court against the Inspector's Report on the Sherford AAP;
- the determination of either or both the Red Tree and Co-op planning applications by an inspector at a full public inquiry rather than determination by a Development Control Committee.

Both of these possible developments would involve significant legal costs (internal and external) professional advice and internal officer time. The potential financial implications are at this stage difficult to determine, but could have a major impact on the reserve.

**Purpose:** To update Members on the consequences of the receipt of the Inspector's Report on the Sherford AAP and the issues relating to the two planning applications by Red Tree and the Co-op.

**Links to Council Priorities** The new community proposal at Sherford links to all Council priorities and commitments, as follows:

- CP1: Securing a supply of housing for local people at affordable levels.
- CP2: Creating the conditions for growth and maintenance of quality economic activity.
- CP3: Maintaining the district's distinctive environment whilst enabling access and sensitive development.
- CP4: Maintain a clean environment.
- CP5: Working with others to improve access to key services.
- CP6: Improving core service performance in a cost-effective way.

The Sherford proposal also has strong links to the Council's three cross cutting themes of climate change, the needs of younger people and healthier communities, as well as the Council's corporate commitments.

## Recommendation

### That Members;

- (a) **Resolve to note the report.**
- (b) **Use the Sherford Refined planning application fee of £25,000 to further support existing 'back-filling' arrangements within Development Control to enable the Head of Planning and Building Control to assess both the Sherford applications.**

## Background

### The AAP Process

1. The Sherford new community action plan has been prepared by the Council as part of the LDF process. Members have had previous reports on these matters. Documentation is available at [www.southhams.gov.uk](http://www.southhams.gov.uk)
2. The Council is at the forefront of the new national planning system. The Council's Core Strategy was the first in the country to be adopted, and the Sherford Area Action Plan is running in tandem with a proposal for a new community in South Cambridgeshire as the first AAP to be advanced nationally. The Council is therefore a pathfinder for the new system.
3. Running in tandem with the new planning system are new procedures flowing from European Directives relating to Sustainability Appraisal, Strategic Environmental Assessment and Appropriate Assessment. Members will recognise that Sherford is a complex project, and navigating the LDF through the new planning system and recent directives has created some significant challenges.
4. The Sherford Area Action Plan has recently been subject to Examination by an inspector. His report is due to be received by the Council in June 2007. The report is binding on the Council. We are required to present it to Full Council with a view to its adoption by the Authority. At that point the Council's adoption of the Inspector's report can be challenged by an application to the High Court to quash the report.
5. During the Examination Counsel, on behalf of the Co-op, indicated on a number of occasions that in their view the Council's approach to identifying the site for the new community was flawed. Their key concern appears to be the process the Council has undertaken to evaluate alternative sites to arrive at the site choice, prior to publication of the submission stage of the AAP in June 2006. The Council's proposals for Sherford were developed based on a range of considerations including extensive discussion with a wide range of stakeholders, initially facilitated by the Prince's Foundation through the Enquiry by Design process. The Council's proposal for Sherford fully aligns with the proposals in the related North Plymstock Area Action Plan, produced by Plymouth City Council.
6. The Council is, in effect, on notice from the Co-op of a potential statutory challenge to the adoption of the Inspector's report.

## **The Planning Applications**

7. The Council received a planning application from Redtree in November 2006. The application emerged following a period of extensive pre-application discussion. There are on-going discussions between the Council and Red Tree on the terms of obligations under Section 106.
8. At the end of April 2007, the Council received a second Sherford application from the South West Co-operative Society, known as Sherford Refined. This proposal locates the new community further to the south and east of the proposals promoted by both South Hams and Plymouth Council's. The Council is meeting with the Applicants to discuss the application and the potential Section 106 obligations.
9. Where a Local Authority receives a planning application, the Applicant, as of right, can appeal to an Inspector for the application to be determined at a public inquiry if the Council has not reached a decision within the statutory target (in this case 16 weeks). For complex applications of this kind, there is no prospect that we can determine within sixteen weeks. Red Tree, legally, could appeal now and the Co-op will be able to appeal after sixteen weeks has expired. If one applicant has appealed there is a possibility that Development Control could determine the application left with the Council and an Inspector determine the appealed application. There is a possibility, however, that if one application is appealed, then both applications would be determined by an Inspector at the direction of the Secretary of State, so that there was a hearing in one place before one body.

## **Issues to consider**

### **The AAP Inspector's Report**

10. If the Inspector finds the AAP unsound, then the Council will be required to undertake the process afresh. In those circumstances, it is unlikely that there would be any appeals to the High Court.
11. If the Inspector finds the AAP sound, then the following consequences are likely to occur. Red Tree would seek determination of their planning application against the policy framework established by the AAP, as in their view, their proposals broadly align with the Council's policies.
12. The Co-op, in line with their written and oral submissions to the AAP, are likely to seek to challenge the Inspector's report in the High Court. They would need to lodge an application to the High Court within six weeks of the adoption of the Inspector's Report by the Council. Such an application would seek to quash the Inspector's report and require the Council to re-run the process at the AAP, in whole or in part, and for a fresh report by an Inspector to be prepared and adopted by the Council.
13. On receipt of the Inspector's report, the position will become clearer. As matters unfold, officers will report further to Members when there is a little more predictive certainty about what will actually happen, rather than speculation about what could happen.

14. Members will, therefore, on a future date, need to consider the following key issues:
- the consequences of the Inspector's findings as to whether the AAP is found sound or unsound;
  - the report of the Inspector and if the AAP is sound, when the Council will adopt it at Full Council;
  - if the AAP is found unsound, the Council will need to set in motion a re-run of part or the whole of the Sherford AAP process;
  - if the AAP is found sound, then the Council, in adopting the report, will know within six weeks whether there is to be a statutory challenge. If such a challenge occurs, the Council will be advised as to what steps to take in relation to a hearing in the High Court. There are two consequences: either the High Court dismisses the challenge, or the challenge is upheld and the Council is required to re-run the Sherford AAP hearings, in whole or in part. If the challenge is successful, in whole or in part, the Council could face substantial claims for costs on behalf of the applicants to the High Court.

### **The Planning Applications**

15. The determination of the planning applications could proceed whether or not there was a finding of sound or unsound in the AAP processes. It is up to the applicants whether they appeal to an Inspector after the statutory sixteen weeks for the Council to determine the applications have elapsed. There is no fault to the Council in failing to determine in sixteen weeks because these applications are so substantial that the timescale for determination is impractical.
16. The determination of the procedural issues here are largely outside the control of the Council. The issues that Members will need to be advised upon, are as follows:
- the lodgement of an appeal for non-determination by either of the applicants, and / or any request to call in the applications to the Secretary of State;
  - the representations the Council makes following either of such events and, where appropriate, the decision of the Secretary of State;
  - in the event of a planning appeal, where both planning applications are heard together, (a conjoined appeal) how those appeals will proceed in terms of their length / the cost to the Council of its representation and the resources required in putting the Council's case and the potential of any costs awards.
17. An immediate resourcing issue for Members to bear in mind is that the Council now has to assess the two applications irrespective of whether the AAP is found sound or not. In December 2006 the Executive considered a report which set out the pressures facing the Development Control service in the light of the Red Tree planning application. Members will recall that the initial proposal was for a joint appointment with Plymouth City Council of a senior Development Control Officer to support the assessment of the Red Tree application. Three unsuccessful attempts

were made to fill the post. In these circumstances the Head of Planning and Building Control offered to perform the role provided his post could be backfilled on a temporary basis by the appointment of an interim Development Control Manager. An interim manager has been employed on a 2 days a week basis, funded by the fees received for the Red Tree planning application (£50,000) In the spirit of partnership Plymouth City Council have reviewed their staff resources available to be allocated to the new community proposal to provide shared development control experience to benefit the two Councils. However this current arrangement will not provide sufficient level of resources to respond to the two applications, particularly if this also coincides with a legal challenge and the need to prepare for the case. It should be noted that the Co-op proposal has only generated a fee of £25,000 because of the different nature of the submission compared to Red Tree (i.e. it is wholly an outline application). In the circumstances it is proposed to use the fee from the new application to extend the current arrangements.

## Risk Assessment

Risk	Mitigation
Indication by the Co-op that the AAP if found sound by the Inspector it is likely to be legally challenged.	Carefully consider the Inspector's report and take Counsel's advice prior to adoption of the AAP.
Financial loss. Difficult to quantify at this stage, but a successful challenge could result in the Council having to pay the objector's legal and other costs. These costs have the potential to be significant.	If costs awarded, they could be funded from the Local Plan reserve. The Reserves would then need to be topped up to enable other LDF work currently programmed to proceed.
Appeal by either applicant against non-determination of the applications within 16 weeks.	Identify resources to defend the Council's policies at appeal. Likely to require additional professional and legal support.
Unable to adequately resource the assessment of two major applications for a new community to secure the Council's objectives.	Identify resources to defend the Council's policies through application discussions. Likely to require additional professional and legal support.

## Conclusion

20. This report seeks to set out the framework under which the AAP process and the determination of the planning applications will continue. Until certain key matters become clearer, it is not possible to advise Members, as a matter of predictive certainty.

21. Further reports will be lodged with Members at appropriate times.

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**Executive**  
7 June 2006

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**Background Documents**  
Local Development Framework documents