

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY, 17 APRIL 2013**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **050003 - GENERAL MATTERS REPORT - OUTLINE APPLICATION - ERECTION OF 12 NO. DWELLINGS INCLUDING DEMOLITION OF EXISTING OUTBUILDINGS AND CREATION OF A NEW ACCESS AT "BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, FLINTSHIRE**

1.00 APPLICATION NUMBER

1.01 050003

2.00 APPLICANT

2.01 HOLTS CONSERVATORIES LTD

3.00 SITE

3.01 **"BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, FLINTSHIRE**

4.00 APPLICATION VALID DATE

4.01 **30/07/2012**

5.00 PURPOSE OF REPORT

5.01 To update Members regarding the progress of the application following call-in by Welsh Government, to seek a view as to the preferred method of determination by the Planning Inspectorate and with regard to how the Authority wishes to be represented or make representations to the Inspectorate (depending on the agreed method of determination).

6.00 REPORT

6.01 Members will recall that this application was first reported to Planning

and Development Control Committee on 12th. December, 2012, when it was resolved that outline planning permission be granted. The terms of the permission were established at the subsequent committee on 16th. Jan, 2013, when it was resolved that prior to issuing the decision a Section 106 Obligation was required to cover various aspects of the development. At that meeting Members were advised that on 15th. Jan. Welsh Government had issued a direction on the Authority not to grant planning permission for the development proposed in the application. At the Committee meeting on 20th. Feb. Members were advised that Welsh Government had, by letter dated 19th. Feb. 2013, called-in the application for determination.

- 6.02 In accordance with the Welsh Government's procedure on call-ins the application has now been passed to the Planning Inspectorate for processing. Such applications are processed under the relevant Appeals Procedure Rules and the Inspectorate has written to the Authority on 27th. March, and in requesting further information in relation to the application has also asked for the Authority's comments on the procedure for dealing with the application (i.e. written representations, informal hearing or local public inquiry). The applicant will also be given these options but the ultimate decision will be down to the Inspectorate. In the case of appeals our procedure is to consult with the local member(s) over the means of determining the appeal and whereas the three local members have been contacted it is considered that Committee should also come to a view in this instance.
- 6.03 Members will recall that an earlier application for the development of this site through the erection of 20 dwellings (App ref. 38067) was also called-in by the then Welsh Office in 2005. On that occasion the application went on to be determined under the written representation procedure (and was subsequently refused).
- 6.04 The reason given by Welsh Government in its letter of 19th. Feb for calling in the current application is :
"The Minister takes the view that the application raises planning issues which may be in conflict with national planning policies in respect of development in the countryside, and has concluded that the application appears to raise issues of more than local importance. In the Minister's view the application represents a major development in the open countryside with no significant differences in relevant aspects to the previous outline application on the site for 20 dwellings that was called in by the Welsh Ministers in 2005. Consequently, to ensure consistency with the previous call in decision and in view of the policy issues raised by the application, the Minister hereby directs that the applicationshall be determined by the Welsh Ministers. "
- 6.05 As stated above, the options now open to the Authority are to request that the current application be determined by means of written representations, an Informal Hearing or a Public Inquiry. On the basis

of the reasoning for calling in the application and the means of determining the earlier application it would seem that the same written representation procedure would be appropriate, in which case there would be a need for little or no further input from the Local Authority, beyond the submission to the Planning Inspectorate of the planning application documents, the various reports to Committee and the Minutes of those meetings (which have already been sent). However, regardless of Committee's view on this, the ultimate decision as to procedure lies with the Planning Inspectorate. If it is decided that the application should be considered by way of Informal Hearing or Public Inquiry a decision needs to be taken as to the level and type of representation to be made on behalf of the Authority.

- 6.06 On appeals (other than written representations) which follow a refusal of planning permission contrary to officer recommendation consultants are normally engaged to represent the Authority, with legal representation in the case of a Public Inquiry. The situation here is different in that the Council's stance is one of supporting the development. On the basis that the applicant will presumably assemble a team (proportionate to the means of determination) to present his case, the Authority would be doing likewise, expanding on the resolution to grant planning permission.
- 6.07 In determining the application the appointed Inspector (who will report to the Minister) will consider the merits of the proposed development and whilst he will be mindful of the Council's stance in support and will presumably attach some weight to this, his eventual decision will be based on his own interpretation of the relevant policies and guidance and any other material considerations. Certainly the Authority will not be required to defend its resolution as the process will be concerned purely with determining the application. These, therefore are the options for representation in the event of a Hearing or, more likely, an Inquiry :
- a). Allow officers to appear on behalf of the Authority (despite the fact that the resolution to grant planning permission was taken contrary to officer recommendation).
 - b). Engage consultants/legal representatives (as appropriate) to represent the Authority (as is the current practice on appeals).
 - c). Nominate Members of Committee (possibly the Proposer and Secunder on the resolution) to represent the Authority's stance. (in which case officers would assist those nominated in the preparation of their evidence).
 - d). Adopt a passive role whereby a statement is provided to confirm the Council's position but that no evidence is offered, leaving the main party (i.e. the applicant) to present the merits of his case.
- 6.08 In considering these options further Members are advised that; although officers could represent the case on behalf of the Authority without compromise, Members have previously indicated on appeals that where there is a conflict of opinion, the Authority should be

represented by consultants. On this basis it is likely that Option a. will not be favoured over Option b. Option c. supposes that individual Members may consider that they are best placed in presenting the Committee's stance in supporting the application. If this option is chosen then a Committee resolution would give those nominated members the necessary authority to appear on behalf of the Council. As stated above, the situation here is different to an appeal in that the applicant and the Authority are of the same opinion in promoting//supporting the development and in these circumstances Members may consider that it would be unnecessary to duplicate the evidence which will be brought forward by the witnesses and legal representatives on behalf of the applicant. My recommendation is that of the above options that Option C would best represent the Council's position and allow those Members who sought to support the application the opportunity to expand on the reasons for their stance. As mentioned above officers, or indeed consultants if that were felt to be more appropriate, would assist the nominated Members in preparing their submissions.

- 6.09 On any of the above options, as in the case of a planning appeal, it will be open to individuals, including individual Members, to make written representations on their own behalf or to appear in the case of a Hearing or Inquiry, but they would not be representing the Authority unless they have been nominated to do so (under Option c. above).

7.00 RECOMMENDATIONS

- 7.01 That the Planning Inspectorate be advised that the Authority recommend that the application be determined by way of Written Representations, consistent with the approach adopted on the previous application for the residential development of this site. In this case relevant documentation will be provided to the Inspector as requested, to enable him (and the Minister) to determine the application.
- 7.02 It is recommended that, whatever the means of determining the application, that the Authority is represented by nominated Members as outlined above in para. 6.08.

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