

REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

Recommendations of the Public Services Ombudsman for Wales (PSOW) following investigation into the Council's handling of planning application no. 42/2012/1368/PO, Land at Mount House, Bryniau, Dyserth

1 PURPOSE OF REPORT

- 1.1 To **reconsider** the contents of the relevant investigation report issued under Section 21 of the Public Services Ombudsman (Wales) Act 2005. To seek Members agreement to follow specific recommendations of the PSOW. **Members will note that a report on this subject was considered back in February 2016.**

2 BACKGROUND

- 2.1 At the 14th May 2013 meeting of Denbighshire's Planning Committee Members resolved to grant Outline Planning Consent for the erection of a single dwelling on land at Mount House, Bryniau, Dyserth. The relevant Committee report, late representations sheet and minutes of that meeting are attached as **Document 1** to this item.
- 2.2 Members will note that the eventual decision to grant outline consent was made contrary to Officer recommendation following a site inspection panel. Officers did not consider the proposed development complied with relevant planning policies and guidance contained within the, then, UDP, specifically those relating to infill development and potential impacts upon the Area of Outstanding Natural Beauty. Members took a contrary view.
- 2.3 Outline Planning Consent was issued on 17th May 2013.
- 2.4 A neighbouring landowner to the proposed development site lodged a complaint with the PSOW. The PSOW decided to carry out an investigation. This investigation involved the PSOW writing to all relevant Members of the Planning Committee and interviewing certain Members about their understanding of the planning application and determination process. Officers of the Council were also interviewed about the planning application and determination process at that time. Representatives from the PSOW office, including a Planning Adviser, had access to all relevant planning files and documents and interviewed relevant Officers.
- 2.5 The neighbouring landowner raised a number of concerns about the Council's handling of the relevant planning application. These concerns are set out, explained and assessed within the full PSOW investigation report attached as **Document 2**. The specific complaints and the PSOW conclusions are summarised below:

Complaint 1

Mrs E complained that the Planning Committee failed to properly interpret and apply relevant legislation, policy and guidance. – **COMPLAINT UPHELD**

Complaint 2

Mrs E complained that the Council admitted that the development did not comply with policy, but chose to ignore it. – **COMPLAINT NOT UPHELD**

Complaint 3

Mrs E complained that the Council had failed to fully consider the scale of the development and the impact it would have on neighbouring properties. – **COMPLAINT UPHELD**

Complaint 4

Mrs E Complained that the Planning Committee failed to provide any substantial reasons why the appropriate planning polices and guidance notes had not been adhered to. – **COMPLAINT UPHELD**

Complaint 5

Mrs E complained that the statement that the planning decision had been made in accordance with Policy HSG 5, ENV 2 and SPG 10 is false. – **COMPLAINT UPHELD**

Complaint 6

Mrs E complained that Councillor A incorrectly interpreted policy and influenced the other Councillors by making reference to non-material planning considerations. – **COMPLAINT PARTIALLY UPHELD**

3. CONSIDERATION OF INVESTIGATION REPORT

- 3.1 The full investigation report highlights the background to the case, the evidence provided by the Council, the professional advice given by the Planning Adviser to the PSOW and then provides conclusions to each element of the complaint.
- 3.2 The following section of this report will explain the PSOW conclusions on each element of the complaint. In doing so it will also highlight the challenges made to accusations by the Council over the course of the investigation.

Complaint 1 -

Mrs E complained that the Planning Committee failed to properly interpret and apply relevant legislation, policy and guidance. –

COMPLAINT UPHELD

- 3.3 This particular complaint focusses on whether Members of the Planning Committee were justified in taking an opposing view to the professional recommendation of its Planning Officers when assessing the compliance of the proposed development with Planning Policy HSG 5 of the former Denbighshire Unitary Development Plan. The relevant Policy is attached at **Document 3**.
- 3.4 In brief, Officers were of the view that the proposed development of a single dwelling on the application plot did not represent an acceptable infilling scheme. Members of the Planning Committee, some of whom undertook a site visit, felt that the relevant Policy could be interpreted to allow for such infilling in the proposed location.
- 3.5 In proposing to go against the Officer recommendation Members felt that the proposed development was “in the spirit” of Policy HSG 5. This reason was placed in the minutes when Members voted to grant outline planning permission.
- 3.6 The PSOW was critical of Members interpretation of the relevant infill Policy. The investigation reports highlights how Planning Committee should “*interpret policy objectively, in accordance with the language used and read in its proper context.*” The report goes on to emphasise that the reasons given by Planning Committee to go against the Officer recommendation did not show proper interpretation of the Policy. In particular, the reasons given did not explain why Members considered the impact on neighbouring properties and the AONB was acceptable.
- 3.7 The PSOW also highlighted that the Officers report on this case failed to make reference to two previous planning refusals for residential development on the application site. This, it said, was misleading.

Officer Comment on Complaint 1 Conclusions

- 3.8 On receipt of the draft investigation report from the PSOW Officers sought their own legal advice from a specialist planning barrister. Having regard to comments made by the barrister Officers sought to challenge the relevant findings of the investigation report.
- 3.9 In relation to Complaint 1 Officers respectfully suggested to the PSOW that the relevant Policy HSG 5 (infill) was worded to allow for interpretation. It makes reference to a “group” of dwellings and this could be interpreted differently in different locations dependent on the pattern of such a group. (see para 32 of **Document 2**)

- 3.10 In addition, Officers felt that making reference to previous refusals on the site when such decisions had been made against previously adopted Plans (i.e. historic decisions) may be misleading for Members rather than helpful. Officers had thought that focussing Members minds on the most up to date and relevant Policies would be a more reasonable and relevant approach. (see para 69 of **Document 2**) However, the PSOW, in their conclusions on this matter, explain that the Council should have made reference to the historic planning refusals. They explain that as the site remains within the AONB and open countryside (as was the case with the historic cases) the planning history of the site should have been explained in full.

Complaint 2

Mrs E complained that the Council admitted that the development did not comply with policy, but chose to ignore it. – **COMPLAINT NOT UPHELD**

- 3.11 This particular complaint relates to how the decision to grant outline consent was reached by the Council. The complainant claimed that the Officer recommendation to refuse **had** to be followed by Planning Committee and that this could not be ignored. She went on to suggest that, for this reason, the consent should be revoked.
- 3.12 The PSOW, in the investigation report, (see para 76 of **Document 2**) explains that the Officers role is to advise Planning Committee and not to *override* it. The report explains that Committee is entitled to make a decision which is contrary to the recommendation of Officers and concludes that the Council did not ignore information provided by the complainant.

Officer Comment on Complaint 2 Conclusions

- 3.13 Officers acknowledge and welcome the fact that this particular complaint was not upheld by the PSOW but are somewhat confused by the explanations provided in paragraph 76 of the main report. In particular the PSOW makes reference to the complainants request for possible revocation of the planning decision. The PSOW explains that this is a power which can be used by a Council but that "*it is a power used only rarely; and the Council advised the complainant that it did not agree that it was appropriate to do so in this case.*" This is a rather confusing statement having regard to the recommendations section of the report at d) and e).

Complaint 3

Mrs E complained that the Council had failed to fully consider the scale of the development and the impact it would have on neighbouring properties. – **COMPLAINT UPHELD**

- 3.14 This particular complaint relates to whether the Council correctly requested the appropriate planning information with the outline planning application. In addition, whether any lack of information with the application resulted in Planning Committee not being able to adequately assess possible impacts of the development.
- 3.15 The relevant planning application was submitted in “outline” form. This is a type of application where an applicant may “reserve” certain matters such as design, external appearance, landscaping etc. for future approval. However, under the relevant legislation, where the scale of the proposed development is “reserved”, the applicant must provide details of the upper and lower limits for the height, length and width of a building.
- 3.16 In this case the outline application contained a site plan which indicated a “plot shape” on the site. This gave an idea as to the siting, length and width of any new dwelling but did not highlight potential upper limits on height.
- 3.17 The PSOW, in the investigation report, was critical of the Council’s validation process in terms of the legislative requirement to seek the upper and lower limits of height, length and width. Whilst the investigation report acknowledges that Members visited the site (site panel meeting), had regard to the fact that a further reserved matters application would be able to assess the scale of any new dwelling and that the outline design and access statement made reference to a possible two storey dwelling, the PSOW concluded these factors were not adequate substitutes for not complying with the requirements of the legislation.

Officer Comment on Complaint 3 Conclusions

- 3.18 At the time of the assessment of the outline application Officers genuinely considered that Members had sufficient information on the potential impacts of a new dwelling in the location proposed (remembering Officers were recommending refusal). This issue was discussed at the site panel meeting and Members were aware that, should they choose to approve the outline application, they would be able to assess a reserved matters submission which provided the detailed scale and design of a dwelling at a later date. Whilst Officers challenged the draft investigation report in respect to complaint 3 they have acknowledged and accepted that they should have sought more precise details on scale at the validation stage of the outline application.
- 3.19 Members should note that validation procedures have since been amended and improved to ensure that such an issue does not occur again. Officers now strictly follow the checklist on the planning portal “one-app” form to ensure upper and lower limits of scale are included

with outline applications. Applications will not be made valid unless all the relevant information is provided.

Complaint 4

Mrs E Complained that the Planning Committee failed to provide any substantial reasons why the appropriate planning policies and guidance notes had not been adhered to. – **COMPLAINT UPHELD**

- 3.20 This particular complaint relates to whether, in reaching a contrary decision to the professional Officer recommendation, Members gave adequate reasons and that these reasons were duly recorded.
- 3.21 At paragraph 86 (**Document 2**) of the main investigation report the PSOW again explains that it was unclear from the reasons given by Planning Committee “*whether it was of a view that the development was or was not in accordance with Policy HSG 5.*” If Members believed the proposal **was** in accord with Policy HSG 5, the PSOW states that this was a wrong interpretation of the wording of the Policy (see complaint 1).
- 3.22 Notwithstanding the interpretation of Policy HSG 5, however, the PSOW report highlights that Members did not give sufficiently clear reasons for going against the Officer recommendations having regard to all the relevant Policies, including ENV 2 related to impacts on the AONB. Merely stating that Members thought the proposal “fulfilled the spirit of Policy HSG 5”, was not sufficient.

Officer Comment on Complaint 4 Conclusions

- 3.23 This particular complaint links to complaint 1 as it is about Member interpretation of Policy. As explained previously Officers felt that Policy HSG 5 (infilling) was worded in a way which could be interpreted differently by Members depending on the pattern of development in a particular location. The PSOW does not agree. As such, the PSOW feels that Members should have interpreted Policy HSG 5 as its professional Planning Officers had and duly refused the outline application.
- 3.24 Furthermore, the PSOW has been critical of the way Members gave reasons for going against the Officer recommendation in this case. The PSOW emphasises that “*whilst it is not a legal requirement to give reasons for granting planning permission....failure to give adequate reasons for voting, contrary to Officer advice, is non-compliance with paragraph 3.1.5 of Planning Policy Wales and is maladministration.*”
- 3.25 It should be noted that Planning Committee procedures have been tightened since the relevant outline planning application was determined. Planning and Legal Officers always ensure that Members provide clear reasons for not following Officer advice on any particular

planning application at Committee. Officers will challenge Members on their reasons ensuring that they have regard to Policies and other material considerations.

Complaint 5

Mrs E complained that the statement that the planning decision had been made in accordance with Policy HSG 5, ENV 2 and SPG 10 is false. – **COMPLAINT UPHELD**

- 3.26 This particular complaint relates to the laying out and wording of the relevant outline certificate of decision. As with other planning certificates of decision it is common practice to make reference to the relevant planning policies and guidance considered when reaching the planning decision and state them on the actual certificate.
- 3.27 In this instance the grant of outline consent was contrary to Officer recommendation. Officers believed the proposal **did not** comply with the provisions of Policy HSG 5 (infilling). Members took a contrary view and outline consent was granted. It followed that the approval certificate made reference to the relevant planning policies and guidance “considered” by the Council in reaching its decision. These included Policies HSG 5, ENV 2 and SPG 10.
- 3.28 The PSOW, in the investigation report at para 91 (**Document 2**), acknowledges that the relevant certificate of decision lists the policies considered but **does not** state whether the specific proposal accorded with those policies. That said, the PSOW feels that the Council were wrong to list those policies on the certificate in this case. Given that Members had not given clear reasons to go against Officer recommendation, and it was not clear as to whether they considered the proposal **was or was not** in accord with those policies, they should not have been listed on the relevant certificate of decision.

Officer Comments on Complaint 5 Conclusions

- 3.29 As with complaint 1 and complaint 4 this complaint hinges on whether the interpretation of Policy HSG 5, by Planning Committee, was reasonable. If it was, and Members believed the development complied with that Policy, then it would be reasonable to list that Policy and others of relevance in the certificate of decision.
- 3.30 In this instance, however, the PSOW clearly concludes that the proposal was not in accordance with Policy HSG 5 and so reference to it on a certificate approving the development was wrong.
- 3.31 Officers feel that this particular conclusion is somewhat harsh. The policies listed on the certificate of decision were considered by both Officers and Members and so by merely listing them Officers fail to see who has been prejudiced. If the interpretation of the policy is wrong

then that is a different matter but the fact remains that the policy was relevant, was considered and therefore should have been listed.

Complaint 6

Mrs E complained that Councillor A incorrectly interpreted policy and influenced the other Councillors by making reference to non-material planning considerations. – **COMPLAINT PARTIALLY UPHELD**

- 3.32 This particular complaint relates to the role and actions of a particular Councillor in the application process. In particular it focusses on how the Councillor interpreted policy and whether he influenced other Councillors with non-material planning considerations.
- 3.33 The PSOW, in the investigation report at para 96 (**Document 2**), explains that the specific Councillor requested the application be brought to Planning Committee for determination (call-in). The request did not follow the adopted Scheme of Delegation in that no formal written reasons were provided by the Councillor for the call-in. The PSOW is critical of this failing.
- 3.34 At Committee itself Councillor A is accused of promoting the wrong interpretation of Policy HSG 5 (infilling) but to also bring up other non-planning related considerations which may have influenced Planning Committee (see para 98 of **Document 2**).
- 3.35 The PSOW has partially upheld this complaint in so far as he believes the Councillor did interpret Policy incorrectly. However, the PSOW cannot be clear as to whether Councillor A's reference to non-planning considerations influenced other Members of Planning Committee in reaching their decision.

Officer Comment on Complaint 6 Conclusions

- 3.36 Firstly, it should be noted that Officers will always seek written requests from Members for Planning Committee call-in's in accordance with the adopted Scheme of Delegation. In this particular case Officers took a lenient approach as the particular Member did not feel comfortable using electronic or other mail. Officers are not aware of any other such requests being accepted which did not accord with the Scheme of Delegation.
- 3.37 The fact that the PSOW has partially upheld this complaint links to the fundamental issues in this investigation – whether Councillor A and his fellow Members of Planning Committee interpreted Policies correctly. The PSOW has concluded they didn't and as such must partially uphold this complaint also.

4. RECOMMENDATIONS OF INVESTIGATION REPORT

- 4.1 Having regard to the PSOW investigation report recommendations have been issued by the PSOW which the Council must now consider. The following paragraphs explain the PSOW recommendations and what action the Council has taken, or intends to take, to deal with them. Recommendations a) to c) have been actioned but recommendations d) and e) need to be considered together, and further in this Part 2 report.

Recommendation a) – the Council ensures that its validation process is updated to ensure that it takes account the statutory requirements set out in Article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

- 4.2 The above relates to how Officers validate Outline planning applications to ensure relevant information required by the aforementioned legislation is provided.
- 4.3 Officers follow the validation procedures set out in list 2 of Appendix A(1) of Welsh Government Guide. All Officers validating Outline and other applications follow this guide ensuring relevant details are provided.

Recommendation b) – the Council shares this report with the Planning Committee and arranges additional training for the Planning Committee which encompasses the failings identified in the report.

- 4.4 The report has being shared with Planning Committee. Planning training for Members on the issues raised by the PSOW took place on 9th March 2016. The event was attended by the following Members:
- Cll. Brian Blakeley
 - Cll, Jeanette chamberlain-Jones
 - Cll. Stuart Davies
 - Cll. Alice Jones
 - Cll. Pat Jones
 - Cll. Barry Mellor
 - Cll. Bob Murray
 - Cll. Dewi Owens
 - Cll. Arwel Roberts
 - Cll. Anton Sampson
 - Cll. Gareth Sandilands
 - Cll. Barbara Smith
 - Cll. Julian Thompson-Hill
 - Cll. Joseph Welch

The Development Manager went through the PSOW report in detail highlighting key issues from each recommendation. Members were able to look again at the interpretation of Policies in the Local Plan and to test out reasons for going against Officer recommendation.

Recommendation c) – the Council ensures that it accurately records reasons given for decisions taken which are contrary to Officer advice.

- 4.5 Members will note that during debate at Planning Committee Officers will press Members for detailed reasons why they may propose to go against Officer recommendation. Officers will check these reasons with Members to ensure clarity before recording them.

Recommendation d) – based upon the findings in this report the Council considers whether it is appropriate to revoke the permission it has granted.

Recommendation e) – if following on from d), the Council ultimately decided not to revoke then, within one month of the completion of the development, the Council instruct the District Valuer to assess the impact of the development on Mrs E's properties and pay her an amount which equates to the difference in value before and after the development.

- 4.6 In considering the recommendations d) and e) above Officers need to make Members aware of some other relevant background information.
- 4.7 Firstly, it should be noted that a letter had been received from solicitors acting on behalf of the complainant, Mrs E. This letter strongly advises the Council to revoke the planning permission stressing that Mrs E is not interested in financial compensation. The letter goes on to say that, should the Council decide not to revoke the permission, a separate legal claim against the Council will be made.
- 4.8 In addition, a letter had been received from solicitors acting on behalf of the site owner. This letter strongly advises the Council not to revoke the planning permission and stresses that the land owner would also seek legal redress from the Council should it decide to revoke.
- 4.9 Finally, it should be noted that Officers have sought input from the District Valuer (DV) in respect to recommendations d) and e). Officers sought to ascertain from the DV, in general terms, estimates of the financial implications of revoking the permission or paying the complainant compensation for any loss in value of her properties should a dwelling be built on the land in question. The DV report is attached at **Document 4**.

The report will now turn to the issue of whether the Council should revoke the relevant Outline consent, or not.

Revoking the permission

4.10 The statutory test for revocation of planning permission is set out under Section 97 of the Town and Country Planning Act 1990....

“If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.”

4.11 The question, therefore, is one of expediency and Members should have regard to the following in reaching their decision to either revoke the original Outline Planning Permission, or not.

Firstly, Members should consider the current adopted Local Development Plan and assess whether the substantive proposal to develop the land for a new single dwelling would comply with the Policies and Guidance therein.

Secondly, Members should have regard to any other material considerations in order to determine the expediency of revoking the Outline consent.

Such considerations will include:

- the interpretation of the Policies and Guidance used when the substantive proposal was assessed, specifically against Policies HSG 5, GEN 6 and ENV 2 of the former Unitary Development Plan;
- the impacts a new single dwelling will have upon the complainant’s properties and the residential amenity of occupiers;
- the PSOW recommendations; and
- the potential compensation issues outlined further in the report.

Members will need to weigh up all of these considerations and come to a reasoned decision as to why it is considered expedient to revoke the consent or not.

The Current Adopted Development Plan

4.12 Members should give due consideration as to whether the proposal to develop a single dwelling on the land in question would now comply with the policies contained within their current adopted Local Development Plan.

Denbighshire Local Development Plan

The Denbighshire Local Development Plan (LDP) was adopted in June

2013.

The previous infill Policy from the UDP (Policy HSG 5) was not directly carried forward into the new LDP. The policy emphasis for any new dwelling in such an open countryside location, within the new LDP, is on ensuring it is provided for local affordable need.

The LDP policies considered relevant to the development of a single dwelling in this location are as follows:-

The proposed development site remains outside of the development boundary and accordingly any housing thereon is limited to it being in compliance with Policies BSC 6, BSC 8 **or** BSC 9 of the Local Development Plan. Policy VOE 2 is also relevant as it relates to development within Areas of Outstanding Natural Beauty (AONB) and Areas of Outstanding Beauty. The site is located within the AONB.

Policy BSC6 – Local connections affordable housing in hamlets, states that local connections affordable housing will be permitted in the hamlets listed within the plan, provided a number of tests are met.

Policy BSC 8 – Rural Exceptions, states that affordable housing development will be supported as an exception to normal policy provided it meets a number of tests.

In relation to policies BSC 6 and BSC 8, the site is not within a hamlet listed in the LDP and the proposed dwelling is not promoted as an affordable housing unit, therefore these policies are not considered to be relevant to the consideration of this application.

Accordingly, the proposal relates to new residential development in the open countryside and can only be considered under Policy BSC 9 - Local connections affordable housing within small groups or clusters.

Policy BSC 9 states the following:

In open countryside, local connections affordable housing development of one or two units will be permitted within small groups or clusters, provided that the proposal meets **all** the following criteria:

- i) comprises infilling of a small gap between buildings within a continuously developed frontage; and
- ii) does not result in ribbon development or the perpetuation of existing ribbon development; and
- iii) is of comparable scale and size to, and is sited so as to respect adjacent properties and the locality; and
- iv) satisfactory arrangements can be made to ensure that the dwelling(s) are retained in perpetuity as affordable dwelling for local need and this is contained in a Section 106 agreement.

It is not considered that the proposal satisfies criterion i) or iv) of the policy. The development does not comprise the infilling of a small gap between buildings within a continuously developed frontage and therefore conflicts with criteria i). No information has been submitted suggesting the proposed property would be an affordable dwelling for local need and accordingly the proposal is contrary to criterion iv).

Policy VOE 2 states that in determining proposals within or affecting the Area of Outstanding Natural Beauty (AONB) or Area of Outstanding Beauty (AOB) development that would cause unacceptable harm to the character and appearance of the landscape and the reasons for designation will not be permitted. It is Officers view that impacts on the AONB can be adequately controlled with a suitably designed dwelling. As such, it is not considered the proposal would be contrary to Policy VOE 2.

In conclusion, with respect to the current adopted Local Development Plan, Officers consider that the proposal to develop the site for a single dwelling (as submitted) would not comply with Policy BSC 9. This is, therefore, a factor which weighs in favour of revocation.

Other Material Considerations

The previous Denbighshire Unitary Development Plan

- 4.13 It is clear that the original decision to grant Outline consent for the proposed new dwelling was taken having regard to Policies and Guidance within the former Denbighshire Unitary Development Plan. Namely, Policies HSG 5 (infill) and ENV 2 (AONB). In addition SPG 10 was of relevance.

The Officer report to the original Planning Committee on the Outline proposal is attached as **Document 1**. Members will note the clear recommendation to refuse on three grounds:

- The proposal did not, in Officers view, represent an acceptable infill scheme in compliance with Policy HSG 5 and SPG 10 of the UDP.
- The proposal had the potential to have a negative impact on the residential amenities of neighbouring dwellings.
- The proposal had the potential to have a negative impact upon the AONB.

Members were fully aware of the Officer recommendation and had undertaken a pre-Committee site visit to assess any possible impacts a new dwelling would have in this location.

It is relevant to consider whether Members were entitled to have taken a different interpretation of the relevant policies to Officers. The view of the PSOW is that Members should not have interpreted the policies of the UDP differently to its Officers.

The report by the PSOW on this issue is critical of Members' approach to the interpretation of the UDP Policies. Officers, however, believe that Members interpretation of the key Policy on infill, which did use phrases such as "groups of dwellings", was not so out of kilter, given the pattern of development in the area, to make it irrational.

As such, whilst it is clear that the proposed development of a single dwelling in this location having regard to the current LDP Policies would be unacceptable, it could be argued that the proposed development did comply with the former UDP Polices. This is a factor which Members will need to weigh up in their decision to revoke the consent, or not.

Impact on the Complainant's Properties and the AONB

- 4.14 Members should give further consideration as to the impacts any new dwelling constructed on the proposed site would have on neighbouring properties (namely the complainants properties at The Bungalow and Carreg Wen) and on the AONB in which it would be located. These factors should be considered in the decision to revoke the Outline consent, or not.

It should be remembered that the original Outline application reserved matters such as design, scale, external appearance and landscaping of the proposed dwelling for further approval. Officers at that time raised concerns about the **potential** impacts any new dwelling would have on neighbouring amenity and on the AONB.

The PSOW was again critical of the Council's approach to the assessment of the impacts as it found that it had failed to fully ascertain the proposed maximum limits for the height, width and length of any new dwelling on the site at the Outline stage.

Members, however, in reaching their decision to grant Outline consent did so having undertaken a pre-Committee site visit. They also believed that impacts on neighbouring properties and the AONB could be further controlled through the submission of reserved matters details. The Outline application made reference to a maximum two storey dwelling being developed on the site.

Officers consider that Members were entitled to take a contrary view to their Officers on the issue of impacts on neighbouring dwellings and the AONB at the time of the Outline application. The eventual scale, design and appearance of any new dwelling on the site could have been controlled and impacts on the neighbouring properties and the AONB could be minimised.

It is evident that a single dwelling (of modest single storey scale and design) has been proposed through a Reserved Matters application. This dwelling is set away from the complainant's properties and set within the land levels so as not to have any unacceptable impacts upon neighbouring dwellings or the AONB. These factors should be weighed up by Members when reaching their decision to revoke the Outline Consent, or not.

Compensation Considerations

- 4.15 If a planning permission is revoked, the beneficiary of that planning permission is entitled to compensation under s107 of the Town and Country Planning Act 1990. Such compensation may include abortive costs in seeking and obtaining planning permission but also compensation for any diminution in the value of the land in question. It has been established by case law that, in deciding whether it is expedient to revoke a planning permission, a local planning authority can take into account the prospect and amount of compensation that might be awarded. This is another factor for Members to weigh in the overall determination of whether the planning permission should be revoked.

The report from the District Valuer (DV) (**Document 4**) explains that should the Council decide to revoke the Outline Consent the land owner, in this case, could seek compensation of up to **£100,000**.

This would be broken down as £90,000 for the potential loss of value to his plot by not having a single dwelling permission thereon and £10,000 for abortive planning/architectural fees to date.

Members should also note the potential financial consequences of not revoking the planning permission. The PSOW's firm recommendation was that if the Council decided not to revoke the planning permission, it should consider compensating the complainant for any loss in value of her properties.

In this regard, the report from the DV goes on to explain that the possible compensation payable to the complainant for potential loss in value to her existing two properties could reach **£25,000**. Members should now be aware of the Reserved Matters scheme proposed by the site owner which shows the potential development of a modest single storey dwelling sited away from the complainant's properties. Officers consider that this has the potential to lower the possible compensation estimate to the complainant further. However, for the purposes of Members consideration, without any updated estimates on possible loss in value based on an approved dwelling, the £25,000 should be taken as the most accurate estimate available at this time.

This means that there would be a potential net financial loss to the Council of **£75,000** should it decide to revoke the Outline Consent. This is a factor which weighs against the revocation of the Outline Consent.

Officer Conclusions and Recommendations on Revocation

- 4.16 Members should be aware that they will need to weigh up a number of factors in reaching a decision whether to revoke planning permission or not.

The above sets out how, in Officers opinion, the proposal to develop the site for a single dwelling is contrary to the current LDP and the former UDP.

However, policy compliance is only one factor in reaching a decision whether to revoke a planning permission or not.

Members should also give consideration to the findings of the PSOW paying particular attention to the criticism of how Members had originally misinterpreted Policy and failed to give reasons for going against the advice of their Officers.

Members should also consider the ultimate impact a dwelling may now have on the residential amenities of the complainant's properties, any other properties in the area and on the AONB.

Finally, Members should be fully aware of the financial implications on the Council should they decide to revoke the Outline Consent, or not.

Weighing all of the above factors Officers are of the view that the original decision to grant Outline Consent was wrong in terms of the planning policy principles.

That said, the actual impacts on the complainant's properties and the AONB of a dwelling are subjective issues. Officers are of the opinion that Members were entitled to have taken the view that such impacts could reasonably be controlled when layout, scale and design of a dwelling was to be assessed. It is considered, therefore, that the impact of a dwelling would not have such a significantly negative impact on the amenity of the complainant's properties and the AONB so as to warrant revocation.

Having regard to the financial implications on the Council should Members decide to revoke the permission Officers consider that this could be a significant sum and for this reason do not consider it expedient to revoke the Outline Consent.

The full details of the Officer recommendations having regard to the PSOW findings are set out below.

5. OFFICER RECOMMENDATIONS

5.1 a) That Members note and accept the PSOW recommendations a) to c) having regard to the measures agreed and implemented by Officers.

b) After due consideration of the issues and advice of this report that the Council confirms it will not be seeking the formal revocation of the planning permission

c) That Members agree to further instruct the District Valuer (DV) to assess the impact of any completed development (the subject of a reserved matters application linked to the outline consent) on the complainants properties, within one month of the completion of the development, and pay her an amount which equates to the difference in value before and after the development.