

## Deputation to Council - Neighbourhood Group Re: Planning Good Practice

Date: 3 May 2023

Report of: Chief Planning Officer

Report to: Director of City Development

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### Brief summary

- This report provides the council's response to a deputation who presented to Full Council in March 2023.
- The deputation raised concerns about the planning decision making process with reference to a planning application for a community sports hub (application ref: 20/08412/FU) on land off Thorpe Park.
- This report sets out the legislative and planning policy framework that governs the decision-making process on planning applications. It also describes the systems and processes that are in place at the council that seeks to ensure that the planning service is open, honest, and trusted.
- The report describes how the planning application in question was considered and determined in accordance with relevant the requirements set by the statutory framework and the adopted policies and protocols of the council.

### Recommendations

- a) Note and agree the contents of this report and agree this report as the response to the deputation.

### What is this report about?

- 1 On Wednesday 22<sup>nd</sup> March 2023 a deputation attended Full Council and made a presentation that raised concerns about the council's planning department. It is apparent from the wording of the deputation's speech that the concerns arise from the consideration of a planning application (ref: 20/08412/FU) for a community sports hub, that includes floodlit artificial grass pitches, at land off Thorpe Park, Park Approach. This application was considered at the North & East Plans Panels of 25<sup>th</sup> January 2022 and 17<sup>th</sup> November 2022. At the November Plans Panel, it was resolved to defer and delegate the grant of planning permission to officers subject to the imposition of certain planning conditions.

- 2 The main concerns raised by the deputation are summarised as follows:
  - a) A failure to properly implement the council's 'green policies',
  - b) the operation of public speaking at Plans Panel,
  - c) the level of public participation in the planning application process,
  - d) the loss of green space to artificial football pitches,
  - e) that in considering proposals for artificial sports pitches insufficient regard was had to the Leeds Waste Strategy,
  - f) to grant planning permission for artificial pitches is contrary to objectives to tackle climate change,
  - g) 'economic imperative' has taken precedence over environmental factors, and
  - h) The City Development Team and Planning Officers lack impartiality and political neutrality.

- 3 The deputation concluded their speech by saying:

"We want to work with the Council for the fairer, greener future promised to us by Labour. We see considerable systemic failings relating to the planning process. We therefore call upon LCC to hold an open (but tightly structured) process for people across the city, to share their stories about planning in this city with the aim of making Leeds the best, most transparent, and collaborative local planning authority in the Country"

- 4 This report seeks to address the concerns raised by the deputation about the planning application decision-making process (see paragraph 2 a, b, c, h and 3 above). However, the report does not seek to re-visit the planning merits of the proposal (see paragraph 2 d, e, f, and g) as these were set out in officer reports, and considered in some detail and at length, at meetings of the North and East Plans Panel. It is the role and function of Plans Panels to determine such applications.

### **What impact will this proposal have?**

- 5 In considering the point made by the deputation at 3 above it is important to understand the fundamentals of the operation of the development management system as it exists in England. Planning applications are submitted and determined through the development management process. This is a statutory process that operates within and legislative and policy framework. An underlying principle of the planning system is that it operates in the public interest. The 2004 Planning & Compulsory Purchase Act requires that planning applications must be determined in accordance with the council's adopted planning policies unless material considerations indicate otherwise (or in other words decisions must accord with adopted planning policies unless there are good planning reasons to justify an exception being made to policy). The council has an adopted suite of planning policies, and supplementary planning guidance, and it is against these planning policies that proposals for development are judged and planning decisions made. In determining a planning application, the decision maker must have regard to, and weigh in the decision-making process, all other relevant material planning considerations. These will include national planning policy and guidance, advice from technical consultees and any representations made by third parties. Planning applications will continue to be considered, processed, and determined in accordance with the legislative and policy framework described.

### **How does this proposal impact the three pillars of the Best City Ambition?**

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 6 The Best City Ambition (BCA) sets out the overall vision for the future of Leeds and at its heart is the mission to tackle poverty and inequality and improve the quality of life for everyone who call Leeds home. The objectives of the three pillars are embedded in the council's adopted planning policies, supplementary planning guidance and emerging planning policies.
- 7 Having established that planning applications are judged against the council's planning policies paragraphs 7, 8, 9 and 10 of this report address how this proposed development sits against the 3 pillars of the BCA. Under the heading 'health and wellbeing' the BCA identifies the importance mental and physical health for all ages. This is achieved through, amongst other matters, access to essential services, providing a safe environment, access to local green space and provision for people to be active and play. At the heart of the planning application proposal was to deliver a community facility that provides opportunities for relaxation, informal play and to participate in sport.
- 8 The inclusive growth pillar looks to help deliver an economy that works for everyone across the city. The proposed development is part of the national Parklife programme, which is funded by the Premier League, The Football Association (FA), Department for Culture Media and Sport, and Sport England. The programme is delivered by The Football Foundation – the national Charity of these funders. As a major capital investment programme, Parklife aims to address a chronic shortage of good quality pitches. The Hub that was the subject of this planning application is one of four Parklife Hubs proposed across Leeds. The others being in the following wards: Westwood, Beeston & Holbeck and Calverly and Farsley.
- 9 The Best City Ambition sets out that in 2030 Leeds will have made rapid progress towards neutrality in a way that improves standards of living in all the city's communities. This includes through protecting nature and enhancing wildlife habitats and investing in public spaces, green and blue infrastructure.
- 10 The council's planning policies aim to deliver sustainable development. This includes through the location of new development, providing for sustainable drainage, implementing measures to promote active travel and through limiting carbon emissions from new buildings. There are also specific planning policies that seek to protect open space, provide for opportunities for sport and recreation, protect important natural habitats and achieve bio-diversity net gain. Any development proposal, including the one subject to this report, is considered against the council's adopted planning policies and supplementary planning guidance.

### What consultation and engagement has taken place?

Wards affected: Temple Newsam

Have ward members been consulted?       Yes       No

- 11 No specific consultation has been undertaken to inform this report. However, through the development of the proposals and the consideration of the planning application engagement took place. Prior to the submission of the application two on-line meetings (due to the pandemic) with the applicant's team, ward Members and residents took place in November 2020.
- 12 In January 2021, the applicant team posted flyers to local residents and also emailed Ward Members and local interest groups. Contact details were provided so that residents could contact the applicant team to raise questions about the proposals, in the absence of face to face meetings, which were not possible at the time. The applicant also met with Ward Members and residents.

- 13 The receipt of the application was publicised, and public comment invited, with the posting of site notices 5<sup>th</sup> February 2021 and the publication of a notice in the Yorkshire Evening Post on 29<sup>th</sup> January 2021. The receipt of revised plans was also publicised through the posting of further site notices on 12<sup>th</sup> November 2021.
- 14 Following the first consideration of the planning application at the North & East Plans Panel on 25<sup>th</sup> August 2022 a community exhibition event was held on Tuesday 11<sup>th</sup> October 2022.
- 15 As a consequence of these consultation events the applicant made a number of amendments to their proposals including additional tree planting, changes to the footpaths to make them more user friendly, replacing one playing pitch with a PlayZone and the addition of a children's play area.

### **What are the resource implications?**

- 16 None arise at this point in time.

### **What are the key risks and how are they being managed?**

- 17 The deputation's main concerns relate to the decision-making process both in terms of whether the decision to grant planning permission for the proposed development was the right one and the administration of the process. As set out previously the purpose of this report is not to revisit the planning merits of the proposed development as these were appropriately addressed in the reports presented to the North and East Plans Panel and by the that Panel's consideration of the planning merits of the application.
- 18 There are three substantial risks if there is a failing in the processing and determination of a planning application. These are summarised as follows:
  - Appeal – an applicant has the right to lodge an appeal against a decision to refuse planning permission or grant planning permission with conditions. A planning appeal is made to the Planning Inspectorate who are an Executive Agency of central government and independent of the council. The appointed Planning Inspector may award costs against a party who is found to have behaved unreasonably during the appeal process.
  - Judicial Review – A planning decision may be subject to legal challenge if an interested party considers that the local planning authority has erred in law in the determination of an application. If the Judicial Review is successful, then it is likely that the original decision will be quashed. The Council would then have to redetermine the application, taking account of the flaw identified in the original decision-making process. A claim for Judicial Review must be lodged within 6 weeks of the making of the disputed decision (in this case the planning permission is dated 3<sup>rd</sup> February 2023).
  - Ombudsman – if an interested party considers that a local planning authority has failed to properly administer the processing and consideration of an application then they may lodge a complaint with the council and subsequently the Ombudsman. If the Ombudsman finds that there has been maladministration then they will suggest an appropriate remedy, and this could include amending processes and/or paying the complainant a financial settlement where it has led to an injustice,
- 19 All of the above carry financial burdens and risks and are resource-intensive. If the council fails to successfully defend itself against any of these challenges, then there also is a risk of reputational damage.
- 20 As set out at paragraph 5 above the framework for decision making in relation to planning matters in England and Wales is plan-led and is legislated by Acts of Parliament and Statutory

Instruments. This requires the Local Planning Authority to prepare plans, that set out what can be built and where, as well as addressing a range of local issues through planning policies. All decisions on applications for planning permission should be made in accordance with the Development Plan unless material planning considerations indicate otherwise. The Leeds adopted Local Plan sets out the council's vision and strategy for planning the area until 2033. Planning Policy is compliant with all relevant legislation. Development Management activity is guided by legislation, the main legislation being The Town and Country Planning Act 1990 and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (The Order) which sets the legal framework for determining planning applications. Additionally, documented systems and processes exist which ensures that the decision making is lawful and compliant, open, and transparent.

- 21 The Order referred to above sets out how applications for planning permission should be publicised. At a local level this is supplemented by the Council's adopted Statement of Community Involvement that details how local communities and others will be involved in the consideration of planning applications. The Order also identifies which technical consultations are to be carried out once a planning application has been received.
- 22 At a local level a suite of documentation exists to embed and communicate systems, processes, and control in place within the planning service to ensure that statutory requirements are met and to ensure there is high quality consistent decision making in Leeds. As part of the service responsiveness to change, these documents are subject a programme for systematic review to ensure that they remain an accurate reflection of arrangements and are up to date and fit for purpose. With regard to the development management function of the council, the following documents are of particular relevance:
  - Officer Delegation Scheme (Council Functions) - Sets out authority for Chief Planning Officer to discharge council functions.
  - Officer Delegation Scheme (Executive Functions) - Sets out authority for Chief Planning Officer to discharge executive functions.
  - Plans Panel Terms of Reference - Sets out authority and remit for Area Plans Panels, the City Plans Panel and Development Plans Panels.
  - Planning Code of Good Practice, part 5(g) of the Constitution Aimed at Plans Panel Members and the emphasis of it is to provide practical supportive advice to Members when dealing with planning matters, keeping There have been no reported complaints or issues in relation to the operation of the Code Last reviewed and amended May 2018.
  - Public Speaking Protocol, part 5(h) of the Council's Constitution Protocol provides the framework for allowing opportunities for public speaking on applications at the Panel meetings and at the pre application and position statement stages.
  - Pre application presentation guide This document guides the principles for pre applications presentations to the Plans Panel meetings.
  - Member Officer Communication Protocol Document describing the consistent approaches to officer- member communication about planning applications
- 23 Annual assurance reports are presented to the Corporate Governance and Audit Committee to allow for scrutiny of planning decision making and the adequacy of the policies, practices, and measures in place that to ensure that the service is open, honest, and trusted.
- 24 In accordance with the Officer Delegation Scheme and the Plans Panel Terms of Reference, planning application 20/08412/FU was reported to the North East Plans Panel for determination. In accordance with long established working practice the case officer prepared a report that was subject to review by a senior planning officer and a legal officer. The Plans Panel agenda was published 5 clear working days before the Panel met. On the morning of the August 2022 Panel

a Members site visit took place. At the Panel the case officer presented the report and public speaking took place in accordance with the council's adopted Public Speaking Protocol. The meeting was conducted in accordance with the council's Planning Code of Best Practice. To aid the decision-making process, as with all Plans Panels, the meeting was supported by a legal advisor. The Panel deferred consideration of the application to allow for further community consultation to take place and for the submission of further information relating to matters including the lifespan of the pitches, the impact on the climate emergency of the material to be used for the artificial pitches and the community use of the proposed facilities.

25 On the 17<sup>th</sup> November 2022 a further report on the planning application was presented to the Plans Panel for determination. This report provided the information requested at the previous Panel and updated Members on the additional consultation that had taken place and the further representations that had been received. In accordance with the Public Speaking Protocol no further public speaking took place (the Protocol allows for public speaking on one occasion unless, in the opinion of the Chair, significant new information has been produced raising new material planning considerations). The Panel resolved:

“To defer and delegate to the Chief Planning Officer for approval, subject to the specified conditions set out in the submitted report, and the additional condition suggested by Members, and any amendments to or additional conditions that the Chief Planning Officer may consider appropriate.”

26 The planning permission was issued on 3<sup>rd</sup> February 2023.

### **What are the legal implications?**

27 There are no legal implications arising from the report. The Council's framework for planning meets the statutory requirements in relation to decision making, and regular monitoring and update of protocols and processes ensures continued compliance. There are no implications for access to information; all procedures and protocols are already or can be available for public inspection.

### **Options, timescales and measuring success**

#### **What other options were considered?**

28 Not applicable.

#### **How will success be measured?**

29 Not applicable.

#### **What is the timetable and who will be responsible for implementation?**

30 Not applicable.

### **Appendices**

- None.

### **Background papers**

- None.