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Our ref: COM2461350

Your ref:

Email: Sharon.Evans@horsham.gov.uk

Direct Line: 01403 215538

Sent by email to : [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date: 29/06/2021

Dear Sir / Madam

Re: Complaint regarding Rookwood Golf Course and Local Plan Process

I am responding to your letter not only as the Head of Legal but also as the Council's Monitoring Officer. Part of my role as the Monitoring Officer is to advise whether decisions of the Cabinet are made in accordance with the budget and policy framework.

I have taken the bullet points of your complaint separately and replied below shown in blue for each one.

'We contend that the Horsham District Council Cabinet has violated the Council's constitution in regard to its handling of the Council's Rookwood Golf Course asset. The violations we allege are that the Cabinet:

- **Has committed a total of over £308k from "Place Directorate" budgets for the single purpose of "preparing and supporting the Council's Rookwood asset as a strategic site in the Local Plan process", without first raising a Key Decision'.**

Your main basis of complaint is that you contend that the Council has acted outside of its Constitution by not bringing a Key Decision to Cabinet with regard to expenditure for viability of Rookwood Golf Course and its inclusion within the Local Plan.

You have taken the time to examine and document the Key Decision definition found within our Constitution in article 11 which states.

A "key decision" means a Cabinet decision which is likely:

- a) To involve expenditure or savings of £250,000 or more as well as otherwise being significant having regard to the Council's budget for the service or function to which the decision relates;

Or

- b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district.

Various sites were put forward at the initial stages of the Local Plan process. All of which needed differing amount of assessment for viability. Sites at any stage of the Local Plan process can be discounted and assessment aborted and any stage.

The Council's budget is set annually and so the Key Decision threshold is applied to the projected annual expenditure against the set budget. I have taken the time to go through the expenditure figures and for the period late 2016 to end of 2019 the Council has incurred expenditure in the region of £159k. A further 178K was spent from early 2020 to the present date for the provision of further and additional technical information necessary to ascertain whether the scheme is sustainable, viable and deliverable in planning terms.

I can confirm that none of the separate amounts spent or when added together collectively went above the Key Decision threshold in a given year, and all were made under officer delegation and taken from the authorised relevant budgets. The budget for the preparation of the Local Plan has been continually set and reviewed annually as part of the Council's budget setting process.

It is unlikely to be a good use of Council resources simply if the undertaking of research and preparation to assess feasibility could be considered a Key Decision. It is not until the research and investigation has taken place, and therefore armed with all the facts and details, that a decision is ready for consideration.

The work undertaken by officers in recommending sites for inclusion or otherwise in the Local Plan has been based on an assessment of whether sites are suitable, available and deliverable during the plan period. The purpose of this work, together with the preparation of the supporting evidence base is to enable Council officers to recommend a Local Plan to the Council that is considered to be 'sound' based on the provisions set out in the NPPF.

The content and inclusion of sites within the Local Plan will 'be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district'. It is for this purpose that the consultation process is prescribed by law.

The Regulation 18 document has been through consultation and included an assessment of Rookwood based on 900-1000 homes – the original scheme. [The Regulation 18 document made no specific recommendations for inclusion of this site or any other.](#)

[The Cabinet decision is yet to be taken to get agreement to publish the Regulation 19 document.](#) It is this officer draft document which may include the latest proposals for Rookwood as a recommendation for allocation. Planning Officers are finalising the evidence base and it is this draft document that Cabinet Members will need to make a decision on.

- **'Did not register a Key Decision before including the Council's Rookwood asset as a Strategic Site in the Regulation 18 2020 Local Plan consultation'.**

Answer as above, and to reiterate, [the Regulation 18 document made no specific recommendations for inclusion of this site or any other.](#)

- **'Is proposing to financially mismanage a Council asset by disposing of it without securing full value for the taxpayer'.**

Advice was sought as to whether the Local Authority would satisfy the requirements of obtaining "the best price reasonably obtainable in the market", pursuant to section 123 of the Local Government Act 1972, if the land being disposed of is subject to a live overage clause, in favour of a predecessor, and which requires that 50% of the consideration received upon disposal of the subject land be paid to that predecessor. Or, whether the local authority should wait until the overage provisions fall away?

A local authority would not have to wait until the clawback period has expired and their duties under section 123 of the Act are limited to the best value that can be obtained at the time of the disposal. Section 123 of the Act grants local authorities' powers to dispose of land held by them in any manner they wish.

Accordingly, it is legitimate for the Council to proceed with a disposal of the property so long as best value is obtained at the time of the disposal. The clawback clauses are not a material consideration when making a decision under S123 of Local Government Act.

There is also some legal ambiguity as to whether the clawback will lapse in 40 years' time and consideration has to be given to the fact that a cash receipt now would generate interest for 40 years and so is arguably worth more than a cash receipt that has an uncertain possibility of being nominally higher.

- **'Has compromised the Strategic Planning team and process by failing to provide, as developer, clear evidence that Rookwood is "deliverable" in the Local Plan period as defined in the NPPF'.**

The Council is following a robust and lawful process with regard to dealing with the proposal at Rookwood as both the Landowner and planning authority.

- **'Inappropriately stifled Councillor debate contrary to a requirement of the Localism Act 2011'.**

As the Monitoring Officer I am responsible for Member training with regard to their conduct. Members have been reminded throughout the Local Plan preparatory process they need to avoid any appearance of bias or having 'predetermined' their views when making a decision on planning policy. Clearly expressing an intention to vote in a particular way before the decision-making meeting (predetermination) is indicative of a 'closed mind' approach and this may leave them open to a conduct complaint and the Council open to challenge.

The debate on the decision about which sites are to be allocated has not yet taken place, as already mentioned, as the recommended regulation 19 plan is not due to come to Cabinet and then Full Council until next month. However, the Council has followed a robust and open process at every stage of the Local Plan Review process and that is a matter of public record.

In addition, Councillors have had numerous briefings and have been given the opportunity to test officer advice by posing questions to leading planning QC's and planning experts from the Planning Advisory Service in order to inform their debate at Council in due course. It is incorrect to suggest that debate has been stifled.

- **'Failed to act openly and to consult in a timely manner'.**

Horsham District Council's Local plan has been positively prepared, justified, and is effective and consistent with national policy in accordance with section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) (as amended by the Localism Act 2011) and Town and Country Planning (Local Planning) (England) Regulations 2012 and the National Planning Policy Framework. All planning Laws and Regulations have been followed to date and will continue to be.

Cabinet made the decision for the Horsham District Local Plan Regulation 18 Consultation Document to be published for a six-week consultation between 17 February 2020 and 30 March 2020.

A further Cabinet and Full Council decision will be made shortly in July to enable the Council to carry out its final public consultation on the plan before it is submitted for examination, under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Your letter has been considered under Stage 1 of the Council's complaint process; full details of which can be found on the Council's website at <https://www.horsham.gov.uk/contact/comments-and-complaints>.

I trust that the above clarifies the position of the Local Planning Authority and am sorry that you have had cause to complain. If you remain dissatisfied with the response you may refer your complaint to Mr Glen Chipp, Chief Executive who will review your complaint and respond to you within 20 working days. If it is not possible to meet this deadline we will contact you and explain why.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. L. Evans', with a long horizontal flourish extending to the right.

Sharon Evans

Head of Legal and Democratic Services, Monitoring Officer.

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