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| Committee | STRATEGIC PLANNING COMMITTEE | |
| Report Title | FORMER TESCO'S CAR PARK, 209 CONINGTON ROAD, LONDON SE13 7LH PLANNING APPEAL – PART ONE (PUBLIC) REPORT | |
| Ward | LEWISHAM CENTRAL | |
| Contributors | JEREMY WARD AND MICHAEL FORRESTER | |
| Class | PART 1 | 9 MAY 2019 |

PART ONE - PUBLIC REPORT

1.0 INTRODUCTION

- 1.1 This report has been prepared to provide an update to Committee on progress regarding the planning appeal in relation to 209 Conington Road (DC/17/101621).

2.0 CONINGTON ROAD APPEAL

- 2.1 As Committee will be aware the planning application DC/17/101621 for this site was refused on 21 May 2018. The reasons for refusal in relation to this application were that the height of the tall building was not justified by the degree of the proposed public benefit, ie access to the viewing gallery, works to the River Ravenbourne and the financial contribution to improvements to Lewisham Train Station.
- 2.2 The applicant MB Homes Lewisham Limited appealed this decision to the Planning Inspectorate on 30 July 2018.
- 2.3 The planning appeal is scheduled to be heard at a public inquiry on Tuesday 14 May 2019 and subsequent days that week.
- 2.4 A subsequent planning application for a virtually identical scheme (DC/18/109184) was submitted on 5 October 2019 and Committee resolved to grant this application at its meeting on 18 December 2018. The GLA directed LB Lewisham to refuse this planning application on 4 March 2019 and the decision notice was issued on 13 March 2019. The reasons for refusal of this application were in relation to affordable housing and viability.
- 2.5 LB Lewisham's planning appeal case relates to the affordable housing and viability reason for refusal. The tall building height / public benefit reason for refusal has been overcome by the decision to grant DC/18/109184, subject to a s106 agreement and planning conditions.

3.0 Public Interest Test

- 3.1 Members are requested to accept legal advice that the matter is heard under “closed session” excluding members of the public and press. Part 4, Section C, paragraph 27.4 of the Council’s constitution provides that committee may pass a resolution at any time excluding the public (including the press) from any meeting during which an item of business whenever it is likely, in the view of the nature of the business to be transacted or the nature of proceedings, that there would be disclosure to them of exempt or confidential information. Legal advice on this matter is “exempt information” pursuant to paragraph 5 of Schedule 12A of the Local Government Act 1972 being “Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings”.
- 3.2 In applying this exemption, the council has balanced the public interest in withholding the information against the public interest in disclosure. Information should only be exempt if it is in the public interest to make it so. Here, the legal advice falls squarely under litigation privilege as it is advice arising out the applicant’s planning appeal. The Information Commissioner has shown through its decisions that litigation privilege would not expect to be waived in cases where disclosure might prejudice the rights of the authority to obtain access to justice.
- 3.3 The legal advice speaks to the strengths and weaknesses of the council’s case in defending the appeal. Such advice and analysis by the council’s lawyer and counsel should be kept confidential so as not to undermine the council’s defence of its position at appeal.

4.0 Recommendation

- 4.1 It is recommended that in accordance with Regulation 4(2)(b) of the *Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulations 2012* and under Section 100(A)(5) of the *Local Government Act 1972*, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 5, of Part 1 of Schedule 12(A) of the Act, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.