

Ward: Salvington

Motion on Notice - Worthing Borough Council - High Salvington Mill

Joint report by the Director for Communities and Director for the Economy

1.0 Summary

- 1.1 Councillor Tom Wye submitted a Notice of Motion to Worthing Borough Council at its meeting on 23 February 2016. The Motion is attached to this report as Annex A.
- 1.2 The Motion has been proposed and seconded. As it proposes a policy to be incorporated into the emerging Worthing Local Plan, it is before the Planning Committee for consideration.

2.0 Background

- 2.1 The Director for Communities, as Proper Officer, accepted the Notice of Motion and under Council Procedure Rule 14.5, Council accepted his determination that the matter should be considered by this Committee. Therefore the Notice has been proposed and seconded and automatically referred for consideration and determination.
- 2.2 Council Procedure Rule 14.6 allows the mover of the Motion, Councillor Wye, to attend the committee and explain the Motion.
- 2.3 Under Rule 14.6.2 the Member (Councillor Wye) may, prior to any debate on the matter, answer questions from the Committee for the purposes of clarification, and may sit with the committee for the item in question.
- 2.4 Under Rule 14.6.3 the Member (Councillor Wye) may not partake in the debate nor vote upon the item.
- 2.5 The proposal contained in the Motion seeks to instruct Officers to carry out whatever changes to the Worthing Local Plan are necessary to ensure that any future applications to build/re-develop houses/flats or grow additional trees are refused.

3.0 Proposals

- 3.1 The key objective of the Motion is to protect the operational capacity of Salvington windmill. The fundamental issue is therefore to consider how to ensure that sufficient 'wind flow and speed' can reach the windmill so that it can continue to

function as a working mill. In this regard, it should be noted that significant areas around the Mill are already developed and that there are existing mature trees in the vicinity of the Mill. In this regard, the Council is unable to take any retrospective action to help address any of these concerns.

- 3.2 The Motion refers to the Council controlling the planting of trees. In this regard, it should be noted at the outset that the Council is unable to control the planting of trees as this is not defined as 'development' for which planning permission is required. The Council can only manage trees on land within its ownership and encourage local landowners to do the same.
- 3.3 Therefore, the key issue is whether the Council is able to control certain developments within a certain distance and location of the Mill in a way that may provide additional protection for the functioning of the Mill.
- 3.4 Before the report considers the different mechanisms which could potentially be used to address these concerns, it starts by explaining the current position. This includes reference to recent applications and a summary of the levels of protection from inappropriate development that are already in place.

Current Position

- 3.5 As Members will be aware, Permitted Development Rights mean that not all householder development requires planning permission. Therefore, unless an Article 4 Direction is in place (see below) the Council is unable to control all development. Relaxation to the regulations in the last few years have increased the size of extensions that can now be built without planning permission.
- 3.6 Where planning permission is required the Council must take all material considerations into account when determining an application. This is the case for all applications. This includes recent proposals in close proximity to the Mill when all relevant material considerations, including whether there is evidence that a particular development would materially affect the level of wind reaching the Mill, have been taken into account.
- 3.7 As an example, at a recent appeal for the retention of a garage at 1 Furze Road (AWDM/1446/14), an Inspector concluded that the retention of the building would not adversely affect windflow to the mill. The application had been assessed for its potential negative impact to the windflow to the Mill and a representation from a Mill owner received during the determination of the application had also indicated that there would not be any adverse impact. In dismissing the appeal the Inspector made the following conclusion:

'There is considerable apprehension about the potentially detrimental effect that the new development might have on the amount of wind reaching Salvington Mill. The mill is a working mill where flour is ground from time to time and many local residents have expressed concern about jeopardising the ability and frequency of achieving this. However, on the evidence before me I am not convinced that the elements of the development sought, either individually or cumulatively, would materially reduce the wind flows reaching the mill so as to affect its operation. On

the contrary, Building Research Establishment work on wind engineering suggests that it is generally considered that the effect of a building only extends for approximately four times its height. In this instance, given the height of the garage and the distance from the windmill at over about 40m, the indication is that the operation of the windmill would not be affected.'

3.8 Another relevant example is an application for extensions and alterations to the roof at 15 Furze Road - AWDM/1342/14 (this was a revision to a previous approval). The issue of windflow to the Mill has been assessed as part of the consideration of each application. A relevant BRE Wind Engineering Assessment (from 1991), together with the assessment provided by an owner of a working mill on behalf of the Society for the Protection of Ancient Buildings (SPAB), concluded that the proposed development would not result in a substantive effect on the windmill. The application was approved.

3.9 In addition to the impact tests applied to all development proposals it is important to note that the mill is a Grade II listed building due to its special architectural and historic interest. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that local planning authorities must have special regard to the desirability of preserving a listed building and its setting when considering whether to grant planning permission for development. More recently, the NPPF (Para 132) states,

'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.'

3.10 The Core Strategy and the NPPF therefore provide a robust policy position on heritage which is supported by Historic England practice notes and other guidance. In advance of a Local Plan review in 2015 the Council also published a 'Conservation and Heritage Guide', a simple 'one stop shop' document to provide developers and other interested parties' information on relevant policy and guidance in respect of Conservation and Heritage matters in Worthing. This document would help to inform any proposals that might impact on heritage assets.

3.11 Given its heritage designation there is clear and robust guidance at national level that needs to be considered when assessing applications which may affect the setting of listed buildings. As a consequence, the impact on this heritage asset and its setting has been taken into account when planning applications have been submitted for development in the vicinity of the Mill. This has included, in relevant cases, an assessment of the potential impact development could have on reducing 'wind flow and speed' to it.

3.12 Therefore, it is clear that the Windmill and its setting is already subject to a high level of protection from development that could impact negatively upon it. Despite this the submission of the Motion demonstrates that there is still concern that further development in the area could impact negatively on the workings of the Mill. This

report now considers mechanisms through which additional protection could be provided, starting with a review of the Local Plan which is the approach advocated within the Motion.

Revisions to a Local Plan

- 3.13 The current Development Plan for the Borough is the Worthing Core Strategy 2011 together with a number of 'saved' Worthing Local Plan 2003 policies. The intention was that the Worthing Core Strategy would help to guide development until 2026. However, it is now being reviewed to reflect latest national policy, particularly with regard to how the Council needs to plan for housing.
- 3.14 The process of adopting or revising a Development plan is not quick or simple. It requires the updating of all relevant evidence, a number of stages of consultation and, ultimately, an examination in public. The timeline for the review of the Core Strategy is set out in the Council's Local Development Scheme (2015) and it is currently estimated that a new Plan will be in place by 2018.
- 3.15 As explained in a separate report to this Committee, the first key stage of consultation (the Issues and Options stage) is expected to be published in the spring. The aim of this consultation is to set out the issues and challenges that will be faced in Worthing over the Plan period and invite comments as to how they can be addressed.
- 3.16 The Local Plan review in consultation with all key stakeholders will develop new policies to address a wide range of issues including the heritage issues of Worthing. Up to date evidence will be used to assess the significance of heritage assets and the contribution they make to the environment.
- 3.17 It is made clear in the consultation documentation that Local Plan policies can be used to help address particular concerns in the local area. Therefore, further to this Motion, there is no reason why representations cannot be submitted during the consultation period that raise concerns about the potential impact of new development on the Mill. As with all issues, Officers will then need to consider whether there is sufficient evidence that would justify the inclusion of a specific policy in the Local Plan. Any policy would need to be supported by robust evidence that would be subject to full consultation as the Plan progresses through its various stages.
- 3.18 Whilst there is nothing to prevent interested parties from proposing such a policy, without clear evidence this route does not offer any certainty. Any policy will be subject to a robust process and scrutiny and is not a short term solution to the issue as the current anticipated adoption of the new Plan is still some time away. It is likely that any draft policy seeking to restrict development within the vicinity of the Mill would be challenged by land owners in the area.
- 3.19 In addition, the planning policy route will essentially guide the determination of those applications that require planning permission and will not cover those that can be pursued through permitted development rights.

Conservation Area Designation

- 3.20 One suggestion is that the Mill and surrounding area could be designated as a Conservation Area to ensure that it is given greater protection from undesirable changes. A Conservation Area can be designated because of its special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.
- 3.21 In this case it is questionable whether this route would achieve the desired outcomes. As previously stated, as a Grade II listed building, the Mill (and its setting) is already afforded a high level of protection against development that would impact on its heritage status. The designation of exactly the same area as a Conservation Area would not provide any additional level of protection.
- 3.22 Consideration could be given to the designation of a wider area beyond the listed windmill and its setting but there would need to be clear reasons as to why adjoining areas should be included. There is no evidence to suggest that the identification of wider area would meet the assessment criteria that would justify its designation as a Conservation Area. In this respect there are no other buildings of significant architectural merit in the locality of the Mill which would justify a Conservation Area and the need to preserve the setting of the Mill provides the same level of protection in any event.
- 3.23 Furthermore, it should also be noted that even if Conservation Area designation were justified, it would not automatically rule out development. What it would mean is that some developments, that may have been built now as permitted development, would require permission and all developments would be carefully scrutinised to assess their potential impact on heritage assets. This assessment would include consideration of windflow to the Mill, as is the situation at present.

Article 4 Direction

- 3.24 As already explained, certain developments do not require planning permission and can be built as permitted development. An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order which enables the Council to withdraw specified permitted development rights across a defined area. However, to do this there needs to be clear justification for both its purpose and extent and the Council can be liable to pay compensation to those whose permitted development rights have been withdrawn. While Article 4 Directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 Directions at any point.
- 3.25 It should be noted that the Direction does not in itself prohibit any development but means that a landowner is required to seek planning permission whereas without the Direction this would not be necessary.
- 3.26 It is the view of your Officers that the use of an Article 4 Direction to help address concerns about inappropriate developments around the Mill would not be

appropriate. Firstly, the Council does not currently have robust evidence to demonstrate why such a measure could be justified and secondly it is likely that the type of householder development which currently benefit from permitted development rights would not be of a scale that would have any significant impact of the workings of the Mill.

Options to address concerns of the Trust

- 3.27 The concerns of the High Salvington Windmill Trust are appreciated and it is clear that recent appeal decisions have considered that, in principle, the adverse impact of development on the operation of the windmill could be a material consideration in the determination of planning applications. However, as the previous appeal Inspector has also noted any decision to refuse planning permission or to inform a policy seeking to, for instance, resist development within any particular location around the windmill would have to be informed by clear and robust evidence. Certainly in connection with a recent appeal evidence submitted clearly indicated that any impact would not be material whether individually or cumulatively.
- 3.28 It would be appropriate to seek further guidance on this matter from Historic England, Sussex Mills Group and the SPAB. These bodies would have the necessary experience to understand current risks and advise on whether there would be a need to undertake further studies to assess current windflow and where restrictions to current flow could materially impact on the future operation of the Mill. The Council as landowner could assist with funding further studies if recommended by heritage experts.
- 3.29 If there is clear advice on the need to control certain developments it may be necessary to consider either a policy in the emerging plan or a Supplementary Planning Document (SPD) which seeks to provide guidance to applicants proposing development close to the Mill. Alternatively it may be necessary to amend the current List of Validation requirements to require applicants to submit wind assessment studies to demonstrate no adverse impact on the future operation of the Mill. This latter point may be particularly relevant as it would be difficult to generalise on potential impacts as each case would have to be considered on its individual merits.

5.0 Legal

- 5.1 Worthing Borough Council, as local planning authority, can only control “development” which is defined in Section 55 of the Town and Country Planning Act 1990. “Development” does not include the planting of trees. However, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that all local planning authorities must have special regard to the desirability of preserving a listed building and its setting when considering whether to grant planning permission for development which would affect a listed building or its setting.

6.0 Financial implications

- 6.1 There are no direct financial implications to the Councils of this Notice of Motion. The review of the Core Strategy and the progression of a new Local Plan is being funded through existing budgets.

7.0 Conclusion

- 7.1 Any decision made by the Council to develop a policy or other mechanism which would, in effect, restrict development must be informed by robust evidence. At this stage, Officers do not consider that there is sufficient evidence that would justify any of the measures outlined above. However, given the need to protect this valued heritage asset and the level of concern about the potential impacts of further development (as expressed through this motion) consideration should be given to whether sufficient evidence could be gathered to support any restrictions.
- 7.2 It is considered that the Council should consult with heritage experts to seek further guidance on the current risks to windflow to the Mill and the need for any further technical guidance. If further studies are required the Council as landowner could commission an independent specialist study to determine the effect of any potential future development on the loss of wind power to the Mill. The findings of this study could then inform the most appropriate course of action. A conclusion of this study might be that the Council require developments in certain prescribed areas around the Mill to demonstrate no adverse impact. In this regard, it should also be noted that this study might also conclude that appropriate safeguard measures are already in place and that there is no need or justification for any additional levels of control.
- 7.3 With the aim of protecting this important functioning heritage asset the Council and Mill Trust could take a more proactive approach with neighbouring landowners to explain the need/importance of reducing the height of existing trees and the impact of any additional planting in certain locations. If evidence indicates that existing trees impact significantly on the windflow to the Mill the Council could agree to a more flexible approach to the removal of any trees that are currently covered by a Protection Order. However, in these instances clear justification would need to be provided that the impacts caused by through the loss of a protected tree are outweighed by the benefits to the Mill.

8.0 Recommendation

- 8.1 The Planning Committee is recommended to determine the Notice of Motion as attached to this report at Annex A. It is recommended that,
- i) the Council requests that appropriate Heritage Experts (such as Historic England, Sussex Mills Group and SPAB) be appointed to advise on future risks to the operation of the Mill and whether there is a need for further technical evidence to be prepared;

- ii) if further technical evidence is required then this be sought to inform the most appropriate course of action (likely to be funded by the Borough Council); and
- iii) once appropriate heritage advise is received, this matter should be considered by the Local Plan Working Group as part of the ongoing Local Plan Review.

Local Government Act 1972

Background Papers:

Motion on Notice received by email 1 February 2016

Planning Applications Ref: AWDM/1342/14 and AWDM/1446/14

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Schedule of Other Matters

1.0 Council Priority

1.1 This report does not link to any Corporate Priority however the Worthing Local Plan is a key document containing a number of policy documents and priorities for Worthing.

2.0 Specific Action Plans

2.1 None

3.0 Sustainability Issues

3.1 Matter considered.

4.0 Equality Issues

4.1 Matter considered

5.0 Community Safety Issues (Section 17)

5.1 Matter considered, no issues identified

6.0 Human Rights Issues

6.1 Matter considered

7.0 Reputation

7.1 Matter considered, no specific issues identified.

8.0 Consultations

8.1 No specific consultations were undertaken

9.0 Risk Assessment

9.1 There is a risk that a piecemeal approach to amending the local plan without due consideration of the consequences and with suitable evidence that any Inspector would dismiss policies contained in it.

10.0 Health & Safety Issues

10.1 Matter considered, no issues identified.

11.0 Procurement Strategy

11.1 Matter considered, no issues identified

12.0 Partnership Working

12.1 Matter considered.

Notice of Motion - High Salvington Mill

There has been a windmill on the Furze Road site since at least 1615; the current mill has been on the site since the 1700's. That the mill is now a fully operating windmill is because thousands of man hours have been committed by volunteers in not only restoring it to its former glory but ensuring the work carried out was to the highest possible standard, thus ensuring the mills availability for future generations. While carrying out this work they have also managed to save sufficient funds to ensure that they would be able to positively react to a major incident.

All of this work is now under considerable threat as over the years development of houses and the growing of trees has resulted in only two areas from which the wind can blow when it would be possible to operate the mill and grind corn. That is in small areas of the south west and north east. If any development was permitted in these areas the mill would be unable to operate.

Senior officers of the Council have visited the mill and have agreed that it is worth preserving and it is thought that this sentiment is also that of the Councillors.

This Council moves that the officers be instructed to carry out whatever changes to the Worthing Local Plan are necessary to ensure that any future applications to build/re-develop houses/ flats or grow additional trees are refused.

The Grand old Lady of Worthing, the Salvington Mill, deserves your protection as do the volunteers who have put their hearts and souls into preserving her.

Proposed by; Cllr Tom Wye MBE

Seconded by; Cllr Vino Vinojan