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PL.08 14/15
Planning Committee
17 September 2014

Subject: Appeal against application 131174 Land at Church Lane Saxilby

Report by:	Head of Development and Neighbourhoods
Contact Officer:	Zoe Raygen Acting area Team Manager
Purpose / Summary:	To advise Members on the appeal submitted and to seek instructions on the way to proceed regarding defending one of the reasons for refusal

RECOMMENDATION(S): Subject to no further information being submitted to adequately defend the part of reason one for refusal of application 131174 relating to the impact on education facilities in Saxilby then the Council formally offer no defence

IMPLICATIONS

Legal: N/a

Financial : If the reason for refusal is not adequately defended then the Council is at risk of an award of costs against them

Staffing :N/a

Equality and Diversity including Human Rights :
N/a

Risk Assessment : If the reason for refusal is not adequately defended then the Council is at risk of an award of costs against them

Climate Related Risks and Opportunities : N/a

Title and Location of any Background Papers used in the preparation of this report:
131174 Planning application for the erection of houses at Land at Church Lane Saxilby
Planning Inspectorate guide to awarding costs
<http://www.planningportal.gov.uk/planning/appeals/guidance/costs>

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman) **Yes** **No**

Key Decision:

A matter which affects two or more wards, or has significant financial implications **Yes** **No**

1 Introduction

1.1 Members will recall their determination of the planning application 131174 at the planning committee on 23rd July 2014 regarding the erection of housing at Church Lane in Saxilby. The application was refused for the following reasons:

1. The proposed development of 230 houses will generate an increased demand on the health care and education facilities within Saxilby. The existing facilities already experience significant demand on their services and will have difficulties coping with the additional requirements placed upon them when the houses are completed. As a result there will not be sufficient local education and health facilities to reflect the local community's needs and therefore the proposal would not be socially sustainable contrary to paragraphs 7 and 17 of the National Planning Policy Framework

2. The two new accesses to the proposed development are to be taken from Church Lane. Church Lane is a relatively narrow road that also contains a church and nursery school which regularly attract large numbers of visitors who have to park their cars on the road therefore necessarily narrowing the carriageway. The road is also used by heavy goods vehicles. The proposed development of 230 houses will generate significant traffic movements which will use the already congested Church Lane to the detriment of highway safety contrary to policy STRAT 1 of the West Lindsey Local Plan First Review 2006 and the National Planning Policy Framework

3. The proposed development of 230 houses would be sited on a green field site on the edge of Saxilby. The site contributes significantly to the rural character of Saxilby as a village and its loss would be harmful to that rural character, visual amenity and the views into and out of the village. The proposal would not therefore contribute to protecting and enhancing the natural environment to achieve environmental sustainability, or recognise the intrinsic character and beauty of this area of the countryside as required by paragraphs 7 and 17 of the National Planning Policy Framework and is also contrary to saved policy NBE 20 of the West Lindsey Local Plan First Review 2006

1.2 The applicant has now submitted an appeal against this refusal which is to be dealt with by way of written representations. The Council's appeal statement is due on 26 September 2014.

1.3 The applicant has also submitted an application for the award of costs

1.4 Guidance from the Planning Inspectorate explains that an award of costs can be awarded where:

- a party has behaved unreasonably; and

- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

1.5 The word “unreasonable” is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account

1.6 The Council’s appeal statement has been written to expand both reasons for refusal numbers two and three regarding the impact on the surrounding highway network and the impact on visual amenity.

1.7 At the time of writing this report it is proving more problematic though to find sufficient evidence to defend the part of reason for refusal one regarding the impact on education facilities in Saxilby

1.8 The County Council has confirmed that the local schools do have sufficient space to accommodate the requirements relating to the proposed development.

1.9 When defending an appeal there are two options available to the Council:

- To defend the reason for refusal with evidence
- To offer no defence

1.10 The Council are unable to withdraw the reason for refusal as there has not been a material change in circumstances since the determination was made and a decision issued.

1.11 In light of the difficulty in obtaining evidence it is considered that the best course of action available to the Council is to offer no defence to this element of the reason for refusal albeit in the knowledge that this is likely to incur an award of costs, Any costs would relate to the costs incurred by the appellant in rebutting this element of the reason for refusal.

1.12 Should further information come to light between the time of writing this report and the Committee date it will be reported verbally to Committee

Recommendation

Subject to no further information being submitted to adequately defend the part of reason one for refusal of application 131174 relating to the impact on education facilities in Saxilby then the Council formally offer no defence