



PL.15 14/15
Planning Committee
4 March 2015

Subject: Appeal against application 131498 Land off Hancock Drive, Manor Farm, Bardney

Report by:	Chief Operating Officer
Contact Officer:	Jonathan Cadd: Principal Development Management Officer
Purpose / Summary:	To advise Members on the appeal submitted and to seek instructions on the way to proceed regarding defending two of the reasons for refusal

RECOMMENDATION: Subject to no further information being submitted to adequately defend reasons three and four of refusal of application 131498 relating to the impact on health and education facilities in Bardney and the impact on highway safety by reason of the single access point and restricted road widths and layout of the existing estate (through which the development would be accessed) the Council formally determine not to pursue the appeal on the basis of reasons 3 & 4.

IMPLICATIONS

Legal: N/a

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

Staffing :N/a

Equality and Diversity including Human Rights :

N/a

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

Climate Related Risks and Opportunities : N/a

Title and Location of any Background Papers used in the preparation of this report:

131498 Hybrid application for up to 170 dwellings-phases 3a, 3b and 3c-of which full planning is sought for 44 dwellings-phase 3a-and outline permission is sought with all matters reserved except for access for up to 126 dwellings-phase 3b and 3c-together with a secondary temporary access for construction traffic off Horncastle Road Bardney

Planning Inspectorate guide to awarding costs

<http://www.planningportal.gov.uk/planning/appeals/guidance/costs>

National Planning Policy Framework (NPPF)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

National Planning Practise Guidance (NPPG)

<http://planningguidance.planningportal.gov.uk/>

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 planning application 131498 at the planning committee on 24th September 2014 regarding the hybrid application to erect of 170 dwellings, with full permission being sought for 44 dwellings and outline permission being sought for up to 126 dwellings with all matters reserved except for access with a secondary temporary access for construction traffic off Horncastle Road. The location is: Land off Hancock Drive, Manor Farm, Bardney. The application was refused for the following reasons:

1. *The proposed development is on a greenfield site that currently contributes significantly to the rural character and appearance of Bardney as a rural village and the tourism value of the Viking Way public footpath. The development of the site would significantly and adversely impact on this character and appearance, specifically as a result of the size and urban character of the development proposed and, as a result, it would conflict with policies RES1 and RES5 of the West Lindsey Local Plan First Review 2006 and the provisions of the National Planning Policy Framework 2012.*
2. *The development by reason of its size and character would result in substantial harm and adversely affect the setting of the grade I listed Church of St. Lawrence and the grade II Manor, Church Lane and a consequence would be contrary to the provisions of the National Planning Policy Framework 2012.*
3. *The proposed development would generate an increased demand on health and education infrastructure and, as a consequence of the inadequate mitigation proposed, would be detrimental to social sustainability and would be contrary to the provisions of paragraphs 7 and 17 of the National Planning Policy Framework 2012.*
4. *The proposed development would be detrimental to highway safety as a consequence of using only one access and the restricted road widths and layout of the existing development through which the proposal would be accessed. As a consequence the development would be contrary to policies STRAT1 and RES1 of the West Lindsey Local Plan First Review 2006 and the provisions of the National Planning Policy Framework 2012.*

- 1.2 The applicant has submitted an appeal against this refusal which is to be dealt with by way of an informal hearing. The Council's appeal statement is due on 24th March 2014.
- 1.3 The applicant has the option to submit 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 statement of case, which will be examined through an informal hearing, will be written to expand refusal reasons one and two regarding: the detrimental impact the development of this greenfield site would have on the rural character and appearance of Bardney and the tourism value of the Viking Way public footpath and; the substantial harm and adverse effect the proposal would have on the setting of the grade 1 listed Church of St Lawrence and the grade 2 listed Manor, Church Lane, Bardney.
- 1.7 In preparing statements it is proving extremely problematic to find sufficient evidence to defend reasons for refusal three and four regarding: the level of contributions for health and education facilities (due to the revised information from the applicant) in Bardney and; the impact on highway safety respectively.
- 1.8 Reason for refusal 3 – Impact on local education and health infrastructure. Lincolnshire County Council confirmed a request for a contribution for £383 398 to mitigate the direct impact the development would have on the local primary school which is full. The NHS also confirmed that its local health care infrastructure would be significantly impacted upon. It requested £72 000 to mitigate the increasing number of residents using its infrastructure.

- 1.9 The application was supported by a viability assessment which was verified by officers. This report concluded that the development would not be viable on the basis of these contributions requested taking account of other factors including: 25% affordable housing, £30 000 for public transport and the provision of on-site open space. As a result of this it was verified that reduced contributions of £100 000 for education and £50 000 for health infrastructure could be offered whilst allowing the proposal to be delivered.
- 1.10 The NPPF and the NPPG indicate (paragraph 173 and 10-001020140306, respectively) that: ‘...sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed is threatened.’ The guidance within the NPPG continues ‘...viability can be important where planning obligations or other costs are introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.’
- 1.11 Given the viability assessment was verified by officers showing that the development would not proceed if the full contributions were imposed it is considered, therefore, that the ability to obtain evidence to support the defence of refusal reason three is very limited.
- 1.12 It is noted, however, that the appellant has now modified the contributions offer as part of the appeal in that they now wish to offer 20% affordable housing. The reduction in this provision would allow the full education and health contributions originally requested to be met i.e. £383 398 and £72 000. Detailed figures and justification have not been provided at this point and officers have not been able to formally assess these changes. It is noted that, at the time of the original application, having assessed the viability assessment, that not all contributions requested could be met. It is therefore considered that the unilateral undertaking proposed by the appellant would address the concerns expanded upon within refusal reason no. 3 and it is recommended that the Planning Committee accept the revised offer rather than supporting the reason for refusal.
- 1.13 Reason for refusal 4 – Impact on highway safety. The proposed development and the single proposed access road through an existing estate was assessed by the Highways Authority and no objections were raised on safety grounds despite objections being raised by neighbours. It is considered that on the basis of the professional opinion provided by highway officers that the ability to obtain support for the defence of reason four would be limited and this could not be sustained.
- 1.14 When defending an appeal there are two options available to the Council:

- To defend the reason for refusal with evidence
- To offer to not pursue stated reasons for refusal

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

1.16 In light of the difficulty in obtaining evidence it is considered that the most reasonable course of action available to the Council is to accept the revised contributions with respect to reason no. 3 and to offer not to pursue reason 4 of refusal, albeit in the knowledge that this could in itself still lead to an application for the award of costs. The appellant would need to show that the Council had still acted unreasonably and put them to avoidable expense. Any claim would relate to the costs incurred by the appellant in rebutting this element of the reason for refusal but would be much less than if the reasons were pursued by the Council.

1.17 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 refusal reasons three and four of application 131498 relating to the impact on education and health facilities in Bardney and highway safety then the Council formally offer to accept the modifications offered in relation to reason no. 3 and not to pursue reason no. 4.