



**Planning Committee**

**Date: 6 March 2019**

**Subject:** Appeal against application 138491 Land to West of A1133, Newton on Trent, Lincs

Report by:

Chief Operating Officer

Contact Officer:

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Purpose / Summary:

To determine whether to continue to defend reason 2 of the planning refusal 139491 relating to the sterilisation of mineral resources with a minerals safeguarding area.

**RECOMMENDATION:** Subject to no further information being submitted it is recommended that the Planning Committee formally accept the additional information offered in relation to refusal reason no.2 of application 138491 relating to the potential sterilisation of minerals within a minerals safeguarding area and would not seek to defend this reason for refusal, in the event of an appeal to the Secretary of State.

## 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 it, if found to have acted unreasonably.

**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, if found to have acted unreasonably.

**Climate Related Risks and Opportunities:** N/A

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

138491 Outline planning application for mixed use sustainable village extension comprising of up to 325no. private and affordable dwelling units-Use Class C3, community meeting rooms-Use Class D1, with ancillary pub-cafe-Use Class A4 and sales area-Use Class A1, new landscaping, public and private open space with all matters reserved- resubmission of 134411. Refused 10<sup>th</sup> January 2019.

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/publications/national-planning-policy-framework--2>

National Planning Practice Guidance (NPPG) - Appeals

<https://www.gov.uk/guidance/appeals>

**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**

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**No**

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**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

**Yes**

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**No**

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## 1 Introduction

- 1.1 Member will recall their resolution to determine planning application 138491 at the planning committee meeting held on the 9<sup>th</sup> January 2019 regarding the outline planning application for mixed use sustainable village extension comprising of up to 325no. private and affordable dwelling units-Use Class C3, community meeting rooms-Use Class D1, with ancillary pub-cafe-Use Class A4 and sales area-Use Class A1, new landscaping, public and private open space with all matters reserved-resubmission of 134411. The location is: Land to West of A1133, Newton on Trent, Lincolnshire. The application was refused for the following reasons:

*1. The development proposed would be located within open countryside and would not accord with the limited development types usually acceptable outside settlements contrary to the sustainable spatial strategy advocated within the Central Lincolnshire Local Plan. As an extension to Newton on Trent the development would vastly exceed the small scale development of a limited nature typically supported within a small village. There has not been a clear demonstration, through evidence, of local community support. At the scale proposed, it would result in the growth of this small village at unsustainable levels in view of its limited facilities and being heavily dependent on private vehicles to access employment, retail and other basic facilities. The application site would expand the village in housing numbers and area substantially and it would not retain a tight village nucleus, and would instead extend away from the village into the open countryside almost doubling in size. The adverse impacts of development would significantly and demonstrably outweigh the benefits of development and the development does not meet the NPPF presumption in favour of sustainable development. Development does not comply with the policies of the Central Lincolnshire Local Plan, namely policies LP2, LP4 & LP13.*

*2. The application proposes a non-mineral development within a Mineral Safeguarding Area for Sand and Gravel. Insufficient evidence has been provided to determine whether the development would sterilise mineral resources within the Minerals Safeguarding Area, and it has not been demonstrated that the development could not be reasonably sited elsewhere. Development does not therefore comply with policy M11 of the Lincolnshire Minerals and Waste Plan: Core Strategy and Development management Policies.*

*3. The proposed development would be located within flood zones 2 & 3 contrary to policies: LP4, LP14 and the provisions of the NPPF as the proposal fails to provide sufficient evidence that sites less vulnerable to flooding were not available to accommodate this level of development and sufficient exceptional reasons have been provided to support the scheme.*

- 1.2 The applicant has indicated that he will submit an appeal against the refusal and will request a public inquiry to determine the outcome of the proposal. However, the duty to determine the procedure for dealing with an appeal rests with the Secretary of State and will be exercised by the Government's Planning Inspectorate.

- 1.3 The applicant also has the right to apply for an award of costs, if they consider the local planning authority has acted unreasonably.
- 1.4 The 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.
- 1.6 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.
- 1.7 The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.
- 1.8 In the knowledge that an appeal will be submitted shortly the applicant has submitted additional information with reference to second reason for refusal to show that the proposal would not sterilise mineral resources potentially found at the site.
- 1.9 This additional information takes the form of a detailed professional report providing further geological information about the likely level of minerals present at/under the site, the limitations of extraction and the use of any minerals extracted from the site. This includes details of intrusive trenching dug at the site along with evidence from adjoining the site and potential levels of materials likely to be extracted.
- 1.10 This report has been submitted to the Waste & Minerals Planning Authority (Lincolnshire County Council) for consideration. They have confirmed that the information provided is sufficient to meet the requirements set out within policy M11 of the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies (adopted June 2016) and no longer object to the proposal as outlined within reason 2 of the decision notice attached to 138491.
- 1.11 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.

- 1.12 In light of the additional detail report provided by the applicant it is considered that the most reasonable course of action available to the Council, in light of this additional information that was not available at the time of the decision, is to accept the offer to not pursue reason 2 of refusal at this early stage should an appeal be formally submitted.
- 1.13 It is acknowledged that withdrawal of a reason for refusal could in itself still lead to an application for the award of costs. The appellant, however, would need to show that the Council had acted unreasonably in doing so, and put them to avoidable expense. It would also be noted that the applicant would have incurred the cost of the report if it had been requested as part of the application process. Any claim would also only relate to the costs incurred by the appellant in rebutting this element of the reason for refusal and would be much less than if the reason was pursued by the Council.
- 1.14 Should further information come to light between the time of writing this report and the Committee date it will be reported verbally to Committee.