

# **Officers Report**

## **Planning Application No: 137950**

**PROPOSAL:** Outline planning application for residential development for up to 20no. dwellings - all matters reserved.

**LOCATION:** Land off Lea Grove Bardney Lincoln LN3 5XN

**WARD:** Bardney

**WARD MEMBER(S):** Cllr I Fleetwood

**APPLICANT NAME:** Mr J Dean

**TARGET DECISION DATE:** 17/01/2019 EOT 30/04/2019

**DEVELOPMENT TYPE:** Major - Dwellings

**CASE OFFICER:** George Backovic

**RECOMMENDED DECISION:** Refuse planning permission

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**Introduction:** The application was originally presented to Planning Committee on 17<sup>th</sup> October 2018 (original report at appendix 1) where the minutes record that the resolution was to grant planning permission:

“Subject to conditions would be delegated to the Chief Operating Officer, to enable the completion and signing of an agreement under section 106 of the Planning Act 1990(as amended) pertaining to: -

1. An affordable housing contribution of 5 dwellings on the site
2. A contribution of £45,105 towards an additional classroom at Bardney Primary School or land adjacent Bardney Primary School as in-kind payment of this contribution.

In the event of the section 106 not being completed and signed by all parties within 6 months of the date of this Committee, then the application will be reported back to the next available committee meeting following the expiration of the 9 months.”

As of 17<sup>th</sup> April 2019 (6 months following the resolution) the section 106 had not been completed or signed. This would require reporting back to committee after 17<sup>th</sup> July 2019 (9 months). This is on the basis that the section 106 would still be secured to deliver the required affordable housing and education contribution as per the committee’s resolution.

The application is now being reported to committee at an earlier stage as it is now being brought into question as to whether the previously agreed provisions for the affordable housing or required education contribution will be provided to meet with the policy requirements.

Work on the preparation of the legal agreement commenced following the committee resolution as normal. Various drafts of the legal agreement were exchanged and comments made by both parties which is standard practice in such matters. WLDC legal advisers sent what was considered a final draft to the applicants’ legal advisers

on 4<sup>th</sup> March 2019 with a further email sent to them on 28<sup>th</sup> March 2019 seeking confirmation that it was approved to enable this to progress to engrossment. This second email was acknowledged on the same day by the applicants' solicitors. A further email was sent by WLDC legal advisers on 4<sup>th</sup> April 2019 conscious of the deadline for confirmation "to avoid this going back to committee". This was acknowledged with a request for confirmation of the deadline which was duly given. On 15<sup>th</sup> April 2019 another email was sent on behalf of WLDC seeking an update.

In response to this the following email was received on 15<sup>th</sup> April 2019:

*"Thank you for your email, we have been instructed that our client has employed a viability expert to assess the site and the mitigation package required as a result of the proposals. It appears that this is going to take some time to review and prepare the appropriate report. Our client is keen to move this forward but must do so once it is confirmed that the scheme will be viable to build out. With that in mind I should be grateful if you could take instructions from your officers, with regards to agreeing an extension of time to progress this application. Clearly if the viability report requires changes then the Council may need to report these matters back to the committee, but in the meantime we should be grateful if your officers could agree to put the negotiation of the 106 Agreement on hold pending the receipt of the viability report. We understand that our client's agents will be discussing this with your officers in due course and we hope that they will be agreeable to our request whilst matters are ongoing on the viability front. Once the report is received we can then move this matter forward accordingly. "*

On Wednesday 15<sup>th</sup> May 2019 a "viability" report was submitted which purports to demonstrate that no affordable housing contribution can be made with the only contribution delivered being that towards education infrastructure.

In view of this request, it is proposed that there are two options available to the Council, as follows:

1. To Agree an extension of time to reassess and determine the application – to allow for detailed assessment and appraisal of the submitted viability report, renegotiation of Heads of Terms for the planning obligation, as appropriate – reassessment of the planning application and planning balance (to be reconsidered by the Planning Committee), rewriting and completion of the S106 planning obligation.

**Or**

2. Refusal of the application;

The proposed development does not provide the required level of affordable housing to support 20 dwellings and would be contrary to the Central Lincolnshire Local Plan in particular policy LP 11

### **Option 1**

The applicant has previously agreed to meet the policy requirements of the Central Lincolnshire Local Plan. However, to date, despite the six month period following the

committee's resolution to grant permission, the applicant has yet to sign or commit to making such provision.

It is only at this point, over 10 months from making their application, and at the point by which the S106 can be expected to have been completed, that the applicant has sought to now undertake work into the proposed viability of the scheme.

The implications of going down the route offered by option 1 is that the applicant is now proposing no affordable housing a significant change to the 25% that was originally presented to planning committee and afforded weight at the time of consideration.

It would mean that the development would no longer be fully addressing the impacts of development or meeting with the expectations of the Local Plan, as set out within policy LP11

It would alter the planning balance, resulting in the need to reappraise the planning application as a whole.

Consequently, now approaching 12 months from when the applicant submitted their application (having received pre-application guidance), the Council would be required to review the applicant's viability assessment, leading to further negotiations. It would lead to the need to review the previously agreed Heads of Terms, and therefore reconsider the overall planning balance of the proposed application. If new terms were agreed – it would then require further resource to rewrite a new planning obligation and aim to complete and sign it.

## **Option 2**

The refusal of the application would delay the provision of housing on this site although the applicants would have the option to resubmit a new planning application containing all the evidence required to support the case now made belatedly on the grounds of viability.

No new information or evidence has come to light in terms of "extraordinary or unexpected abnormal costs" associated with developing the site, since the committee's earlier resolution to grant planning permission. To only now submit a viability assessment in order to determine whether the proposed development is indeed viable at such a significant period after the Council has already considered and made a resolution on the application, is not considered to be reasonable. Prior to formal submission of the application under consideration pre application advice was sought and given on 14<sup>th</sup> February 2018 for the development of the site (Ref: 137314). The extracts dealing with affordable housing and infrastructure are set out below:

**Affordable Housing** – The site is within the Lincoln Strategy Area. A contribution of 25% affordable housing will be sought on a development of 11 or more houses (policy LP11). This should be integrated seamlessly into the overall development.

Infrastructure – Any identified shortfalls in local infrastructure required to support the development, that are not otherwise included on the CIL 123 List, will be expected to be addressed (policies LP9, LP12).

The applicant was directed to the policy provisions of the Central Lincolnshire Local Plan prior to making their application. They made their application in knowledge of the policy requirements for the District.

The formal submission which was validated on 15<sup>th</sup> June 2018, four months after the receipt of pre-application guidance, included a planning statement which set out that

- 1.2. The application has been informed by West Lindsey District Council's (WLDC's) response to a Pre-Application Enquiry (reference number 137314) dated the 14 February 2018, presented as Appendix A.
- 1.3. The application is supported by the following assessments, which have informed the Statement and the detailed proposals set out in the planning application:
  - Preliminary Geo-Environmental Risk Assessment
  - Flood Risk Assessment and Drainage Strategy.

The application as originally submitted proposed “up to 22 dwellings with up to 25% of those as affordable dwellings”. It should be noted that no viability report formed part of the application at the time of submission. At no time during the determination of the planning application in the lead up to presentation of the application to planning committee was the issue of viability raised by the applicants' representatives. The recommendation to planning committee was clear in that it did not seek a contribution of 'up to' 5 dwellings. This was not open to debate as it explicitly required 5 dwellings. This is crucial as this was the context against which the application was considered and positive weight was afforded both to this element of the application and the education contribution.

The minute's record that the applicants' representatives addressed committee and this matter was not raised at any time – at the time of the committee's resolution the applicant had not sought to raise any concerns as to the viability of the scheme.

The NPPF (paragraph 57) states that “where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment **at the application stage**” [emphasis added]

It is only now, some six months after the committee's resolution, and some 11 months after making their application and having received pre-application guidance, that the applicant now seeks to reopen and negotiate previously agreed terms that were deemed necessary in order to make the development compliant with the policy provisions of the development plan.

It is considered that the applicant has failed to demonstrate, despite being given a significant period of time that the development can address the infrastructure requirements arising from the development and meet the provisions of the Local

Plan, particularly policy LP11. The applicant has not signed any planning obligation to commit to making this provision, despite the resolution of the committee allowing the applicant a period of six months to complete and sign the planning obligation within a specified six month window.

As the application stands there would be conflict with the Central Lincolnshire Local Plan in particular policy LP 11 - Affordable Housing It is noted that LP 11 allows for negotiation with developers if an accurate viability assessment demonstrates the requirement cannot be met in full, however, the requirement for the level of affordable housing was made specific in the pre application response dated 14<sup>th</sup> February 2018 and has not been provided with the application or during the Council's consideration of the application.

It was only explicitly raised on the applicant's behalf over a year later on 15<sup>th</sup> April 2019 resulting in a submission on May 15<sup>th</sup> 2019, beyond the six month window for completing the S106 planning obligation.

**Recommendation: It is recommended that option 2 is followed, and that planning permission is now refused for the following reason:**

**The application has failed to demonstrate that it can make adequate infrastructure provision to accommodate the development and meet the policy requirements of the Central Lincolnshire Local Plan in terms of the provision of affordable housing provision, in particular under policy LP11**