

MEETING OF THE DEVELOPMENT COMMITTEE

22nd DECEMBER 2011

REPORT OF THE HEAD OF REGULATORY SERVICES

APPLICATION 11/00338/OUT- Erection of 50 dwellings - The Old Clay Pit, Grantham Road, Bottesford.

1. PURPOSE OF THE REPORT

- 1.1 To consider whether it is desirable to defend at Inquiry reason 3 of planning decision 11/00338/OUT which related to the character and appearance of the area.

2. RECOMMENDATION

- 2.1 **That the reason for refusal relating to character and appearance is not contested at the Public Inquiry.**

3. INTRODUCTION AND BACKGROUND

- 3.1 Planning application 11/00338/OUT was refused permission on the 11th August 2011 for the erection of 50 dwellings. The third reason for refusal was as follows:-

The development of 50 dwellings on a site of this size would result in an urban form in an edge of settlement location where the general character is of a more spacious and open appearance and the proposal fails to reflect the locally distinctive character of Bottesford and would be detrimental to the character and form of the settlement. The proposal would therefore conflict with the provisions of Policy BE1 of the Adopted Melton Local Plan.

- 3.2 Following the refusal of planning permission an appeal has been made to the Secretary of State. The appeal is to be decided by a Public Inquiry which is due to be heard on 21st – 23rd February 2011 and the Council's case to defend the decision is currently being compiled.

- 3.3 Circular 3/2009 covers the award of costs at planning appeals and states that costs can be incurred in circumstances when a party has behaved 'unreasonably', resulting in unnecessary expense for other parties involved. One such example of 'unreasonable behavior' is the inability to substantiate reasons for refusal with evidence. The rationale for the award of costs in these circumstances reinforces the decision making responsibilities within the planning system. Specifically, these require that applications are refused only if there are "sound and clear cut" reason(s) for refusal and that they can be demonstrated with evidence where necessary.

- 3.3 The purpose of this report is to consider the reason for refusal in light of additional evidence and the forthcoming Public Inquiry (n.b. the remaining two reasons would not be affected by this decision).

4. APPRAISAL

- 4.1 In the process of preparing for the appeal, a professional urban designer was commissioned by the Council with a view to acting as expert witness at the Inquiry. In

the course of his research he has advised that due to the mixed built form and distribution of development at this part of Bottesford, the argument that the development would be out of character would be difficult to sustain.

- 4.2 This issue is further compromised by the nature of the application as 'outline' with all matters reserved except for the point of access. This means that there is no layout provided and detailed assessment of how the development would compare to and complement the surrounding form of development are uncertain. As part of his brief, the urban designer spent some time looking at ways that 50 houses could be accommodated on the site and this has further persuaded him that the position is difficult to sustain.
- 4.3 The urban designer's report is attached as Appendix A and Appendix B includes diagrams explaining the above concerns. On the basis of these, he has declined to accept the Inquiry as an expert witness because he would be unable to provide evidence under oath that would support the position.

5. CONCLUSION

- 5.1 The Committee is requested to consider refusal reason 3 with a view to not contesting this reason at the Public Inquiry. It is considered that there is insufficient evidence to justify the reason for refusal and therefore the Council is liable to an award of costs if such evidence is not able to support the reason.
- 5.2 At this stage of proceedings, the appellants will have invested little, if any, resource in addressing this reason for refusal. Informing the Inquiry at this stage that the ground will not be contested would therefore prevent further expenditure either in the preparatory stages or at the Inquiry itself and would limit the Council's liability to costs.

Date: 11th December 2011

Author: Mr J Worley Head of Regulatory Services

Background documents: Planning application file 11/00338/FUL

Appendix A: Report of Urban Design expert (K Brown, 8/12/2011)