



NORTHAMPTON
BOROUGH COUNCIL
Planning Committee

**SPECIAL PLANNING
COMMITTEE:**

10th November 2015

DIRECTORATE:

Regeneration, Enterprise and Planning

DIRECTOR:

Steven Boyes

REPORT TITLE:

Withdrawal of Reasons for Refusal

N/2013/1035: Outline Application for the Northampton South Sustainable Urban Extension to comprise up to 1000 dwellings, a mixed use local centre, a site for a primary school, green infrastructure including formal and informal open space, reconfiguration and extension of Collingtree Park Golf Course, demolition of all existing buildings and structures within the site, new vehicular accesses off Windingbrook Lane and Rowtree Road, car parking, sustainable drainage systems (including flood risk betterment) and infrastructure (including highway improvements) all matters reserved accept access at land south of Rowtree Road and West of Windingbrook Lane

and

N/2013/1063: Full Application for 378 dwellings served by a new access from Windingbrook Lane, and the re-configuration of part of the Collingtree Park Golf Course including a new temporary hole 17 and the demolition of all existing buildings and structures within the site, green infrastructure including formal and informal open space, car parking, sustainable drainage systems (including flood risk betterment) and infrastructure (including highway improvements) at land south of Rowtree Road and West of Windingbrook Lane

1. RECOMMENDATION

1.1 That Members **note** the withdrawal of the following reasons for refusal for both applications N/2013/1035 and N/2013/1063:

(2) The highway mitigation measures proposed fail to demonstrate that this major development would not have a residual cumulative impact on the A45 trunk road and

associated junctions including local highway network such that the cumulative impacts of the development would be severe. These adverse highway impacts would lead to a detrimental impact on the wider Northampton highway network thereby adversely affecting the prospects for economic growth and regeneration in Northampton. The proposed development would therefore be contrary to the policies of the National Planning Policy Framework and Policies C2, INF1, INF2, N1 and N5 of the West Northamptonshire Joint Core Strategy.

(3) The proposed development would introduce unacceptable impact on residential and general amenity due to the increase in traffic on the local highway network contrary to the policies of the National Planning Policy Framework and Policies S10 and BN9 of the West Northamptonshire Joint Core Strategy.

2. PURPOSE OF REPORT

2.1 The applications are currently the subject of appeals to be dealt with by Public Inquiry scheduled to commence on 1st of December 2015. This report is to provide the Planning Committee with more information about the reasons why reasons 2 and 3 have been withdrawn from the Council's case, as reported verbally, as a matter of urgency, to the 27th October meeting of the Committee.

3. BACKGROUND

3.1 The outline planning application N/2013/1035 (for development of up to 1,000 dwellings) and the full planning application N/2013/1063 (the development of 378 dwellings) on land to the south of Rowtree Road and west of Windingbrook Lane, Collingtree were considered by the Planning Committee on 28th January 2015. The Committee resolved to refuse planning permissions for the following reasons:

(1) The proposed development is contrary to the resolution of Northampton Borough Council on 19th January 2015 to confirm an objection to the identification of the site for the development of 1,000 dwellings in Policy N5 (Northampton South SUE) of the West Northamptonshire Joint Core Strategy.

(2) The highway mitigation measures proposed fail to demonstrate that this major development would not have a residual cumulative impact on the A45 trunk road and associated junctions including local highway network such that the cumulative impacts of the development would be severe. These adverse highway impacts would lead to a detrimental impact on the wider Northampton highway network thereby adversely affecting the prospects for economic growth and regeneration in Northampton. The proposed development would therefore be contrary to the objectives of the National Planning Policy Framework and Policy C2 of the West Northamptonshire Joint Core Strategy.

(3) The proposed development would introduce unacceptable impact on residential and general amenity due to the increase in traffic on the local highway network contrary to the objectives of the National Planning Policy Framework and Policy S10 of the West Northamptonshire Joint Core Strategy.

(4) The proposed development site is located within close proximity of the M1 motorway. The noise and air quality mitigation measures proposed fail to demonstrate that a satisfactory residential environment could be created for the future residents of the proposed development detrimental to residential amenity

contrary to the objectives of the National Planning Policy Framework and Policies S10 and BN9 of the West Northamptonshire Joint Core Strategy.

(5) Due to the proximity of Village 1 and the historic settlement of Collingtree Village, the proposed development would fail to safeguard the setting of Collingtree Village and Collingtree Village Conservation Area, contrary to the objectives of the National Planning Policy Framework and Policy BN5 of the West Northamptonshire Joint Core Strategy.

4. Current Situation

- 4.1 Appeals were lodged on 22nd of May 2015 in relation to the refusals of the planning applications. The appellant Bovis Homes Ltd have asked that the appeals are to be considered by way of a public inquiry, scheduled to commence on 1st of December 2015. The Council must adhere to a very strict time table set by the Planning Inspectorate in terms of submitting relevant documentations prior to the public inquiry.
- 4.2 The Council has engaged Tim Corner QC, a leading Planning barrister and a team of independent consultants to defend the Council's decisions to refuse planning permission and to act as expert witnesses at the forthcoming public inquiry.
- 4.3 On 28th July 2015, following consideration of advice from the Council's QC, the Committee resolved that out of the 5 original reasons for refusal, reason 1 would need to be removed and reasons 2, 3, 4 and 5 would need to be amended in order to avoid the Council defending reasons for refusal which could not be substantiated with sound evidence. Removing and amending the reasons as proposed avoids both the Council and the appellant incurring unnecessary costs through the appeal process.
- 4.4 The appeal team have continued to work on the Council's case and recently received a significant amount of additional traffic data from PBA (the appellant's highway consultants). This data reveals that the development is predicted to increase traffic significantly at a number of junctions that have not been assessed by PBA, as follows:
 1. A5123 Danes Camp Way/Hunsbury Hill Road/Hunsbury Hill Avenue – traffic flows increase by 93 vehicles in the PM peak in 2026 as a result of the full development.
 2. Towcester Road/Gloucester Avenue/Lancaster Way – traffic flows increase by 72 vehicles in the PM peak in 2026 as a result of the full development.
 3. Towcester Road/Rothersthorpe Road – traffic flows increase by 59 vehicles in the AM peak and 68 vehicles in the PM peak in 2026 as a result of the full development.
 4. Rowtree Road/Hill Farm Rise – traffic flows increase by 111 vehicles in the AM peak and 107 vehicles in the PM peak in 2026 as a result of the full development.
 5. Rowtree Road/Hill Drop Road – traffic flows increase by 241 vehicles in the AM peak and 199 vehicles in the PM peak in 2026 as a result of the full development.

6. Penvale Road/Clannell Road – traffic flows increase by 129 vehicles in the AM peak and 177 vehicles in the PM peak in 2026 as a result of the full development.
 7. Clannell Road/Hill Drop Road – traffic flows increase by 174 vehicles in the AM peak and 175 vehicles in the PM peak in 2026 as a result of the full development.
 8. Clannell Road/Hill Farm Rise – traffic flows increase by 170 vehicles in the AM peak and 176 vehicles in the PM peak in 2026 as a result of the full development.
- 4.5 The Council's highway consultant commented that whilst the above increases appear significant, and indeed are well above the threshold of 30 vehicles in the recently withdrawn DfT Guidance on Transport Assessment, for the majority of the junctions they are adding to a very low base.
- 4.6 The Council's consultants carried out preliminary traffic modelling to assess the impact at those junctions that are most affected by the increases in traffic. This indicated that junctions 1 and 3 will operate over-capacity in 2026, both without and with the development. The impact of the development at these junctions would be to worsen conditions, but not to the extent that the effect would be severe. Assessments of the remaining junctions indicated that they will operate within capacity in 2026, both without and with the development, so again there would be no severe effect.
- 4.7 The Council's noise consultants have done traffic noise calculations on the above traffic figures. They concluded that the changes in off-site road traffic noise are likely to result in greater impacts than identified in the Environmental Statement but the changes do not cross the SOAEL (Significant Observed Adverse Effect) threshold to become unacceptable in policy terms. The changes remain in the adverse impact category, which, in policy terms, should be mitigated and reduced. Consequently, the off-site traffic noise calculations do not support the "unacceptable impact" identified in reason for refusal number 3. There is an adverse effect that requires mitigation, but is not so significant that it should lead to refusal.
- 4.8 On this basis, our highway and noise consultants have both concluded that they are unable to sustain a case based on the impact of the development on the local road network, as referenced in refusal reasons 2 and 3. Neither consultant is therefore willing to appear at the public inquiry to give evidence in support of those refusal reasons as their view is that the Council does not have a defensible case in relation to the two grounds. If the Council was unable to present evidence at the inquiry and that seems to be the case now it would very likely be deemed unreasonable behaviour and would almost certainly result in a substantial award of costs against the Council.
- 4.9 Given these circumstances, the Council's QC advised the Council in a written Opinion that the best outcome for the Council would be to withdraw reasons 2 and 3 while avoiding paying consequential legal costs to the appellant. The Council's best chance of achieving that outcome was to approach the appellant as soon as possible. The Council's Monitoring Officer (and Borough Solicitor) considered leading Counsel's opinion on the relevant refusal grounds; the traffic consultants' advice and unwillingness to give evidence at the Inquiry and the large risk of a costs award against the Council, which would be substantial. Given the urgency of the matter the Monitoring Officer exercised a delegation to protect the Council from a costs award by withdrawing the ground of refusal from the Inquiry. The appellants confirmed in

writing that, if reasons 2 and 3 were withdrawn, they would not seek consequential costs. Officers then wrote to the Planning Inspectorate withdrawing reasons 2 and 3 from the Council's Statement of Case.

- 4.10 Urgent action had to be taken, first because the Council had to submit its Statement of Case to meet the strict timetable set by the Planning Inspectorate, secondly because the appellants set a deadline in their agreement not to pursue costs in respect of reasons 2 and 3. It was therefore not possible to report the matter for a decision by the Planning Committee as the first available meeting was after the deadlines referred to above. The matter could not have been reported to an earlier meeting because the new information had not been provided by the appellants.
- 4.11 The appeal team will continue to defend the two remaining reasons for refusal (in relation to noise and heritage matters) and will present the Council's case at the public inquiry in December.

5. Government Guidance on Appeal Processes

- 5.1 The National Planning Practice Guidance (NPPG) published by the Government advises that all those involved in an appeal should behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. It also encourages Local Planning Authorities to exercise their development management responsibilities responsibly, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.
- 5.2 The NPPG warns that Local Planning Authorities are at risk of costs being awarded against them if they fail to produce evidence to substantiate each reason for refusal on appeal and for not reviewing their case promptly following the lodging of an appeal against refusal of planning permission, as part of sensible on-going case management.

6. Main Options

- 6.1 Given the inability of the Council's highway and noise consultants to defend reasons 2 and 3, the advice of the Council's QC, the view of the Council's Monitoring Officer was that there was only one reasonable and prudent option – to withdraw reasons 2 and 3 while avoiding paying consequential legal costs to the appellant.

7. Other Options Considered

- 7.1 Proceed with the appeals on the basis of defending all the (revised) reasons for refusal. This would have put the Council at grave risk of a substantial award of costs against it on the grounds of unreasonable behaviour by pursuing objections that it is unable to support with evidence or provide a reasonable basis to justify.

8. CONCLUSION

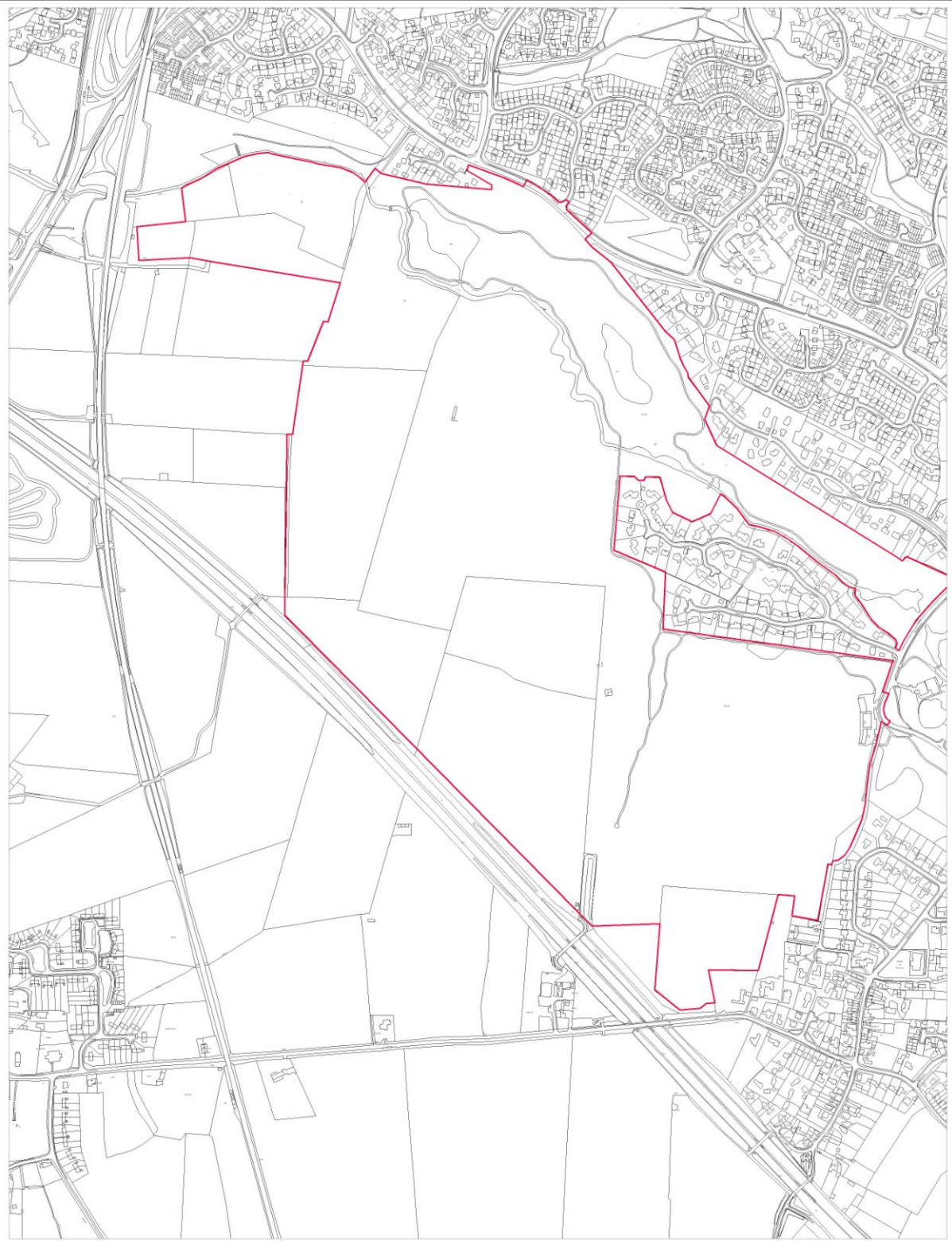
- 8.1 Withdrawing reasons 2 and 3 has provided clarity and best enabled Officers and the appeal team to defend the Council's decisions at the public inquiry whilst reducing its exposure to an award of costs.

9. LEGAL IMPLICATIONS

- 9.1 As set out in the report.

10. SUMMARY AND LINKS TO CORPORATE PLAN

- 10.1 Officers have had regard to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Name: **Site Location Plan**
Date: **13th July 2015**
Scale: **1:8000**
Dept: **Planning**
Project: **Planning Committee**

Title

Land south of Rowtree Rd & West of Windingbrook Lane

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