

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**INCOMPLETE RESIDENTIAL DEVELOPMENT
WEST STREET, WEST BUTTERWICK**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform members of the issues surrounding a major housing development that has been commenced in West Butterwick but which has not been completed within a period considered satisfactory or reasonable to the local planning authority.

2. BACKGROUND INFORMATION

- 2.1 Reports were submitted to the committee at meetings held on 13 January and 10 March 2010 concerning extant planning permissions where a developer has effectively started work on a development within the requisite period and informing the committee that there is no provision within the Town and Country Planning Act 1990, as amended, ('the Act') which requires that the development be completed within a specified period of time.
- 2.2 Problems associated with part-built structures are varied, but they can be visually damaging to an area and attract vandals and antisocial behaviour. Similarly, incomplete developments that have stood dormant for several years or more may, under current local policies and national guidance, be considered as inappropriate development.
- 2.3 Section 94 of the Act allows a local planning authority to serve what is known as a completion notice requiring an implemented development to be completed within a specified period of time if the local planning authority is of the opinion that it would not be completed within a reasonable period. Such a notice has to be confirmed by the Secretary of State before taking effect but in practice is really only beneficial on larger development sites where, for example, a number of dwellings might have been built and the notice would prevent the developer completing the remaining ones. Such a completion notice would not, however, be beneficial where a part-built house extension or a single dwelling has not been completed. In such circumstances, if a single building is partially complete, it can remain so for a long period of time. In these circumstances the only recourse open to the local authority might be to serve a Section 215 notice requiring the appearance of the property to be improved by demolition.
- 2.4 A completion notice has to be served on the owner and occupier of the land and on any other party who will be affected. It must be confirmed by the Secretary of State before it can take effect. The completion notice will not take

effect immediately; it must specify a period of at least 28 days before it takes effect and any person served with the notice can require the Secretary of State to hold an inquiry before he confirms the notice. The notice must also give a minimum of 12 months in which to comply.

- 2.5 Assuming that the notice is confirmed by the Secretary of State, if the development is not completed by the date specified the planning permission to which it relates will become invalid. This means that no further work can take place under the permission, but the local planning authority cannot take action against any work that has already been carried out. So if a building is half-complete, it will remain so and the local planning authority cannot require its demolition under the terms of a completion notice. If, however, the planning permission was in respect of a number of dwellings on a site and only half of them had been built by the specified date, the remaining half could not be built.

3. SITE SPECIFIC INFORMATION

- 3.1 The incomplete development to which this report specifically refers is on land off West Street, West Butterwick which was granted outline planning permission for residential development in 1999 under reference PA/1998/1295 and subsequent reserved matters for the erection of 31 dwellings in 2003 under reference PA/2001/1162. The attached site plan shows the extent of the site together with the current development limit for the village.
- 3.2 The local planning authority is satisfied that development has been properly implemented under the provisions of Section 56 of the Act and within the period allowed in which to commence works and therefore the permission is extant and can be completed at any time by the landowner. Implementation has occurred as a result of discharge of relevant conditions and the subsequent provision of a visibility splay as required and by the construction of pile foundations in respect of plot 31. The existence of the pile foundations has been clarified by the council's Building Control section.
- 3.3 When outline planning permission was granted, the relevant local planning policy document was the South Axholme Local Plan. The Boothferry Borough Local Plan Deposit Draft and the North Lincolnshire Local Plan (Pre-deposit Draft) were also considered. At that time the site was wholly within the defined development limit for West Butterwick in the South Axholme Local Plan and met with the residential allocation Policy R12; outline planning permission was subsequently granted for the site on 8 January 1999.
- 3.4 When the application for reserved matters was approved, the relevant local planning policy documents were the Humberside Structure Plan, South Axholme Local Plan, Boothferry Borough Local Plan and North Lincolnshire Local Plan (Revised Deposit Draft). The assessment of the development in relation to these policies at the time read, *'When the original outline planning application was submitted the North Lincolnshire Local Plan was not sufficiently advanced to carry any significant weight in determining planning applications. The planning decision was made using the adopted Plan for the area. This Plan reflected outdated planning policies rather than Government objectives to achieve sustainable patterns of developments. Therefore the*

proposal was granted permission contrary to the emerging North Lincolnshire Local Plan.

With this proposal being a Reserved Matters Application and not a new application and it has been submitted within 3 years of the original application being granted, this permission can be approved.'

- 3.5 As indicated in paragraph 3.4 above, were this type of development proposed and made the subject of a new planning application under current local planning policy (North Lincolnshire Local Plan), and national guidance, then the development would fail several of these policies and be recommended for refusal.
- 3.6 The developers of this site are under no obligation to comply with current policies relating to, for example, affordable housing and flood risk, having already implemented a permission which did not require them to do so.
- 3.7 Under current policies the application site lies outside the development boundary of West Butterwick, in the highest risk 'flood zone 3' area, and has no requirement for affordable housing. Therefore current policies that such an application would fail are:

H5 (New Housing Development)

H8 (Housing Design and Housing Mix)

ST2 (Settlement Hierarchy)

ST3 (Development Limits)

DS16 (Flood Risk)

C1 (Education Contributions under Section 106 Obligation)

PPS25 (Development and Flood Risk)

4. OPTIONS FOR CONSIDERATION

- 4.1 For the reasons discussed in paragraph 3.7 above the council, as local planning authority, could serve a completion notice requiring development to be completed within 12 months or such longer period at the committee's discretion. A 12-month period is deemed, however, more than adequate to complete a development of this size, ie 31 dwellings.
- 4.2 For the reasons discussed in paragraph 3.7 above the council, as local planning authority, could, if it appears expedient, revoke or modify any permission to develop land granted on an application before those operations have been completed.
- 4.3 Do nothing and allow the developers to lawfully develop the site as and when considered appropriate by them.

5. ANALYSIS OF OPTIONS

- 5.1 Service of a completion notice under Section 94 as discussed in paragraph 4.1 above is regarded as being most effective where a planning permission relates to the large-scale construction of new dwellings or industrial units. In essence, if the notice is served and confirmed, it gives the developers a finite date at which time all development on that site must cease, whether properties, infrastructure, landscaping etc are complete or incomplete. Although this course of action will not resolve the issues of non-compliance with current policies, it will terminate the development and remove the uncertainty surrounding it. The service of such a notice will clearly signal to the developers that it is the council's view that this site should be developed and completed as quickly as possible otherwise the permission will be lost.
- 5.2 As discussed in paragraph 4.2 the council, as an alternative to serving a completion notice, has powers under Section 97 of the Act to revoke any planning permission at any time before those operations have been completed. However, such a course of action by the local planning authority would (under Section 107 of the Act) lead to a claim for compensation by the developers. Such a claim would be substantial and would be based on any loss of development value for any unimplemented units. In view of this it is not considered that the service of a revocation order would be cost effective or appropriate.
- 5.3 As discussed in paragraph 4.3 in not serving a completion notice under Section 94 or Section 97 the site may be developed in accordance with the approved consents in perpetuity at a pace decided entirely by the developers.

6. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

6.1 Financial

Appeal costs for defending the issue of the notice.

6.2 Staffing

Existing staffing resources in Development Control and Legal.

6.3 Property

None

6.4 IT

None.

7. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)

7.1 Statutory

None.

7.2 **Environmental**

If development is allowed to proceed at the developers' own pace, this site could remain in its current 'implemented' but 'undeveloped' state for several years, or be built at a piecemeal rate. Whether this development is built at the developers' own pace or under the terms of a completion notice, the flood risks associated with the housing development on this site will be equal.

7.3 **Diversity**

None.

7.4 **Section 17 – Crime and Disorder**

None.

7.5 **Risk**

None.

7.6 **Other**

None.

8. **OUTCOMES OF CONSULTATION**

8.1 None.

9. **RECOMMENDATIONS**

9.1 That the council serves notice under Section 94 of the Town and Country Planning Act, the period of compliance being 12 months.

HEAD OF PLANNING

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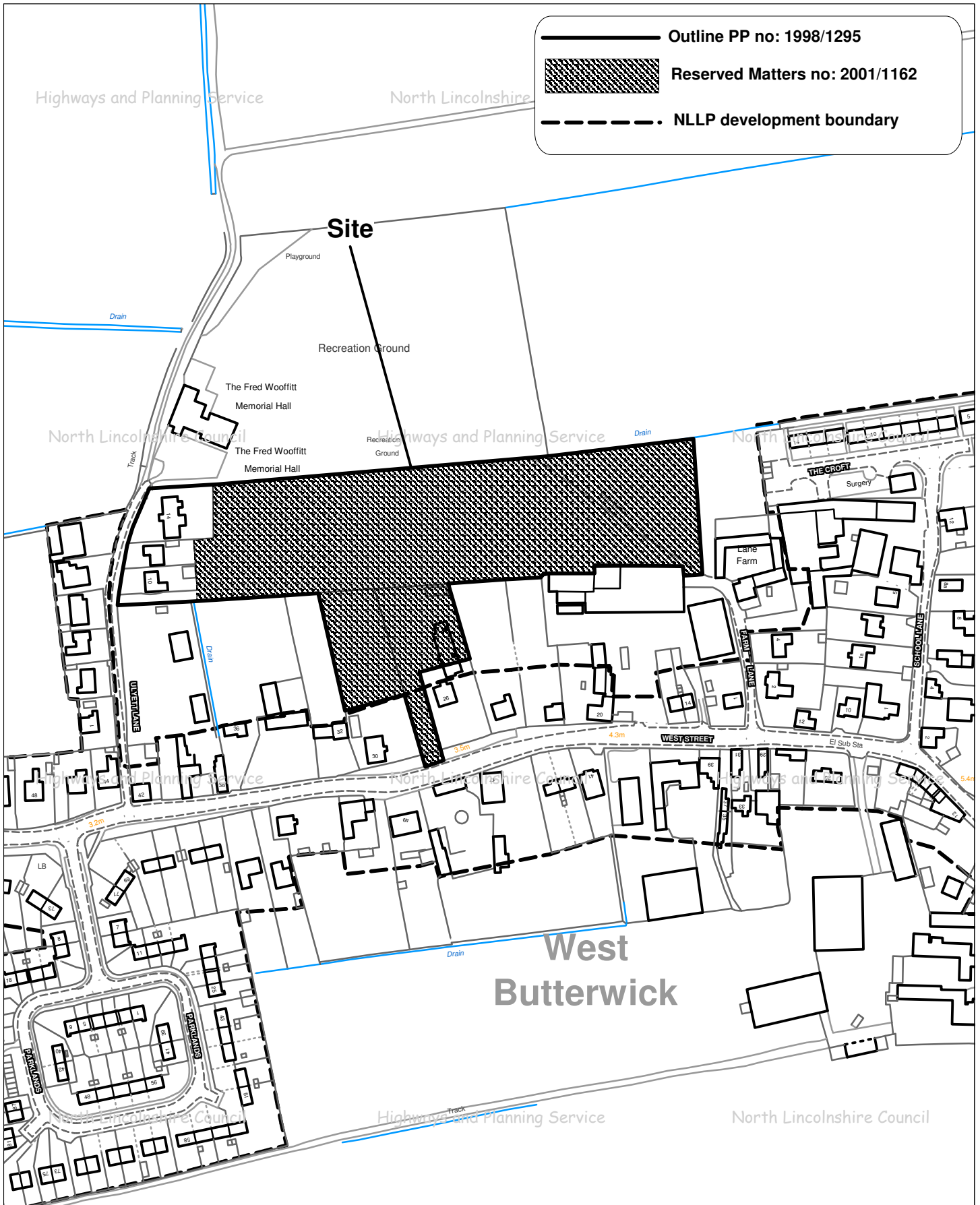
Background Papers used in the preparation of this report

Outline planning permission PA/1998/1295

Approval of reserved matters PA/2001/1162

2 reports (dated 13/01/2010 and 10/03/2010)

Letters of representation from local residents



Drawing Title: Incomplete development - West Street West Butterwick

OS Grid Ref: SE83250589

Drawn by: KC

Scale: 1:2500

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