Regulatory and Other Committee

Open Report on behalf of Andy Gutherson
Executive Director for Place

Report to:	**Planning and Regulation Committee**
Date:	**7 September 2020**
Subject:	**County Matter Application - 141307**

Summary:

Planning permission is sought by Egdon Resources Ltd (Agent: AECOM Ltd) to vary condition 1 of planning permission 139434 to extend the period to restore the site at land to the east of Smithfield Road, North Kelsey Moor, Market Rasen.

The principle of the development has been established and as a consequence the key issue, in this case, is to consider if the proposed amendment would materially change effects on amenity since the grant of this permission.

Recommendation:

Following consideration of the relevant development plan policies and the comments received through consultation and publicity it is recommended that conditional planning permission be granted.

Background

1. A planning permission (reference: 139434) was granted 1 July 2019 to permit the construction of a temporary security compound adjacent to an approved exploratory well site. The security compound is ancillary to the well site operations and as such a condition was attached to this permission requiring the restoration of the site by the same date as that imposed and which relates to the drilling operations – i.e. 31 December 2020.

The Application

2. Planning permission is sought by Egdon Resources UK Ltd (Agent: AECOM) to vary condition 1 of planning permission 139434 to extend the period to restore the site at land to the east of Smithfield Road, North Kelsey Moor, Market Rasen. The security compound is ancillary to the adjacent exploratory drill site which is subject of a separate permission (reference: 139426). A condition attached to that permission requires the drilling operations to be completed and the site restored by 31 December 2020. The applicant is seeking to extend this end date by a further 12 months and

a separate, concurrent application (reference: 141306) has been submitted and details of that proposal are subject of a separate report.

3. This application relates solely to the security compound which is ancillary to the adjacent exploratory well site. The applicant (Egdon Resources UK Ltd) had planned to build and carry out the drilling operations at the North Kelsey site before the summer of 2020 however, like many industries, the impact and effects of the COVID-19 pandemic has resulted in delays to this planned activity. The applicant has therefore submitted an application that seeks to extend the time limit imposed on the drilling operation which would allow them to remain on site for a further 12 months. As the security compound is intrinsically linked to the exploratory well operations, the applicant is therefore similarly seeking permission to extend the date by which the site must be cleared and restored. The applicant is therefore seeking permission to vary the wording of condition 1 of permission 139434.

Current Condition

4. Condition 1 identifies the date by which the site is required to be restored back to agricultural use. The condition currently reads as follows:

The development hereby permitted shall cease on or before 31 December 2020 and by that date all portable building, plant and machinery associated with the use hereby permitted shall have been removed and the land returned to its previous use as agricultural land.

Reason: To provide for the clearance of the site in the interests of the amenity of the area.

Proposed Amendment

5. The applicant is seeking permission to amend the date set out in condition 1 to allow a further 12 months to achieve restoration (i.e. until 31 December 2021). This proposed amendment would not extend the scope of the development permitted which remains to provide an ancillary function to the principal exploratory development.

6. No other changes or amendments are sought to the development as previously permitted and therefore this application relates solely to an extension of time to complete the removal of the approved structures and completion of restoration works.

Site and Surroundings

7. The application site lies approximately 1.3 km north of Moortown, 2.8km south east of North Kelsey and 4.5km south west of Caistor. The site is accessed off Smithfield Road which is a single track road with passing places along its length. An area of land at the junction of Smithfield Road and the B1434 is also included within the application site.

8. The site itself is agricultural land (photograph). The surrounding area is predominantly in agricultural use with trees and hedges along field boundaries ranging from sparse to dense planting. Immediately to the south of the proposed access track is a ditch and to the south of this ditch is a line of trees and an existing access track.

Approximate location of security compound outlined in red

9. A railway line lies to the east of the application site and beyond this the landscape becomes rolling hills with the presence of a number of telecommunications towers. The western boundary has a number of individual trees, whereas the southern, northern and eastern boundaries are completely open, being part of a wider field.

Main Planning Considerations

Planning Policy Context

10. The National Planning Policy Framework (February 2019) sets out the Government's planning policies for England. It is a material consideration in determination of planning applications and adopts a presumption in favour of sustainable development. A number of paragraphs are of particular relevance to this application as summarised:

The National Planning Policy Framework (February 2019) sets out the Government's planning policies for England. It is a material consideration in determination of planning applications and adopts a presumption in favour of sustainable development. A number of paragraphs are of particular relevance to this application as summarised:

Paragraphs 203 to 209* – directs planning authorities to facilitate the sustainable use of minerals by ensuring sufficient supply and no unacceptable adverse impacts.

*On 6 March 2019 Mr Justice Dove handed down his judgement in the case of Stephenson vs SoS MHCLG [2019] EWHC 519 (Admin) and a subsequent Court Order was issued which, in accordance with the terms of that Order, quashed paragraph 209(a) of the NPPF. Paragraph 209(a) of the NPPF had stated that mineral planning authorities should "recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction". The reference and inclusion to "unconventional hydrocarbons" had been successfully challenged as being unfair and unlawful as the Government had failed to take into account up-to-date scientific evidence on the climate change impacts of such development. This subsection of paragraph 209 was consequently quashed however a Written Ministerial Statement (HCWS1586) was issued on 23 May 2019 which stressed that despite paragraph 209(a) being removed, the Government remains committed to the safe and sustainable exploration and development of onshore shale gas resources and that the remainder of the NPPF policies, in particular, Chapter 17 on 'Facilitating the Sustainable Use of Minerals' remain unchanged and extant.

Planning Practice Guidance 'Minerals' - in March 2014 the Government published a series of web-based National Planning Policy Guidance (NPPG). The NPPG relating to Minerals sets out the overall requirements for minerals sites, including in relation to assessing environmental impacts such as noise, light and visual amenity.

Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies (CSDMP) (2016) – the key policies of relevance in this case are as follows (summarised):

Policy DM3 (Quality of Life and Amenity) states that planning permission will be granted for minerals and waste development provided that it does not generate unacceptable adverse impacts to occupants of nearby dwellings or other sensitive receptors as a result of a range of different factors/criteria (e.g. noise, dust, vibrations, visual intrusion, etc).

Policy R1 (Restoration and Aftercare) states that proposals must demonstrate that restoration will be of high quality and carried out at the earliest opportunity; and

Policy R2 (After-use) requires that the proposed after-use should be designed in a way that is not detrimental to the local economy and conserves and where possible enhances the landscape character, natural and historic environment of the area.

Central Lincolnshire Local Plan (CLLP) (2017) – the key policy of relevance in this case are as follows (summarised):

Policy LP26 (Design and amenity) states that development must make effective and efficient use of land and should minimise adverse impacts on amenity.

Results of Consultation and Publicity

11. (a) South Kelsey and Moortown Parish Council - has no objection to the extension of time, however, supports the view of residents living near the site that another extension is no what they wish for or require as it would prolong the drilling operations for another year. The parish council therefore requests that a definite final date be agreed with the applicant and that this should not be allowed to be extended in the future.

(b) Holton Le Moor Parish Meeting (adjoining parish) - residents of Holton le Moor objected to this development in the past and the parish has no reason to suspect that the residents' position has changed. The parish reminds elected members that in making a judgement all merits and demerits are assessed on a case by case basis, including the impact of the proposal on the amenity of local residents. The delay has introduced an element of uncertainty to residents in the vicinity of the site and on the main traffic routes. Timescales were set out in previous applications to mitigate the impact upon local residents and should this application be approved then a precedent will have been set whereby the applicant can continually submit applications to extend the time period with no regard to the impact upon local residents. The recommendation of the parish meeting is that the application therefore be refused.

(c) Environment Agency (EA) – have no objection to the application.

(d) Highway and Lead Local Flood Authority (Lincolnshire County Council) – has concluded that the proposed development is acceptable and accordingly, does not wish to object to this planning application.

(e) Anglian Water – the application is not foul or surface drainage related, therefore this is outside our jurisdiction for comment.

(f) Natural England – has no comment to make on the variation of condition 1.

(g) Network Rail - have no objection to the variation of this condition.

The following bodies/persons were also consulted on the application on the 2 July 2020 but no response or comments had been received within the statutory consultation period or by the time this report was prepared:

Local County Council Member, Councillor A Turner
Environmental Health Officer (West Lindsey District Council)

Countryside & Public Rights of Way (Lincolnshire County Council)
Public Health (Lincolnshire County Council)
Lincolnshire Fire and Rescue
Lincolnshire Police (Counter Terrorism and Designing Out Crime)
Lincolnshire Wildlife Trust
North Kelsey Parish Council (adjacent).

12. The application has been publicised by notices posted at the site entrance and three other locations including the site access, the junction of Smithfield Road and the B1434, the junction of B1434 and Easthall Road and the crossroads in Moortown. It has also been advertised in the local press (Lincolnshire Echo on Thursday 9 July 2020) and 79 letters of notification were sent to residents.

13. Grasby Parish Council (a nearby parish) and 51 householder representations had been received, by the time this report was prepared, which raise concerns or objections to the proposal. A summary of the comments and objections received is as follows that fall within three categories:

- Climate Change and Climate Emergency – this type of industry should not be promoted as it contributes to global warming through carbon emissions and results in pollution of watercourses and aquifers, flooding and sea level rising, crop failure, and impacts on wildlife. A number of academic, national and international reports and UK legislation have been cited including Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) 2019, UKFIRES ABSOLUTE ZERO, Guidance on fracking: developing shale gas in the UK and The Climate Change Act 2008 (2050 Target Amendment) Order 2019.

  On shore oil/gas production is unsustainable and should be reduced, as is already happening in the North Sea. Councillors have a duty to act on behalf of the general public and should be promoting renewables such as wind farms and solar farms and energy from waste and biofuels.

- Location, Environmental and Residents Amenity – the industrialisation of the countryside with high fencing, drilling rigs and flaring will have visual impacts on the open countryside and the site is also near the Lincolnshire Wolds AONB. The effects of, fracking, poor air quality, noise and light (24/7) pollution will impact on local residents. The loss of agricultural land should not be supported in the interests of food security and the proposed development will have a negative effect on wildlife in the area. The watercourses and drainage ditches will become polluted. The road access to the site is in a poor state of repair and narrow. Smithfield road is used by walkers, horse riders and cyclists and there are concerns about safety. The vibration caused by HGV's will cause damage to the foundations of historical and residential properties.

Another extension of time only contributes to the anxiety of the residents of the area, who have lived with uncertainty for six years. The applicant has cited COVID-19 as the cause of delay but they waited until this year to begin the work and even without COVID-19 they would not have been able to complete the development by the approved deadline of 31 December 2020.

- Proposed development and consultation – the description of the development is misleading as it only appears to relate to restoration. Consultation and notifications were not widespread and this is planning by stealth. This application does not deliver local employment and is only the beginning, as more sites will be inevitable. The applicant has been proved incompetent through the Wressle appeal and has had fires at other sites and will use hydraulic fracturing. The promised liaison group has not been set up.

District Council's Recommendations

14. West Lindsey District Council has made the following observations/comments in relation to this proposal:

- Planning permission for this development was originally granted some six years ago with seemingly little progress having been made. Concerns expressed as to the extent and lack of progress with the exploration and the Councils Planning Committee is not convinced of the justification for requiring yet a further extension to the time limit.

- With the increasing green agenda concern expressed in regard to the extraction of a finite resource, the exploitation of which is ultimately unsustainable, when there are more sustainable alternatives that are available.

- It is requested that any representations received from the local population around this site relating to the localised impacts on the local populace be taken into account when determining the application.

Conclusions

15. The application has been submitted in accordance with Section 73 of the Town and Country Planning Act 1990 (as amended) which allows for conditions attached to planning permissions for developments to be amended or varied. The development was first granted permission (reference: 139434) in July 2019.

16. The compound will provide accommodation for security personnel that supports, and is ancillary to, the adjacent drill site. A concurrent application (reference: 141306) has been made which, if granted, would extend the time permitted to enable the operations associated with the drilling of the exploratory borehole and subsequent production and evaluation testing to be completed. The applicant is therefore similarly seeking to vary condition

1 of planning permission 139434 so as to extend the date by which the compound is to be cleared and the site restored.

17. Planning permission 139434 has yet to be implemented however the condition that is sought to be revised relates to the end date for completion and restoration of the site and not the date by which the development must be started. As a result the proposed revision can be appropriately dealt with by way of a Section 73 application and so is a valid application which the Mineral Planning Authority is required and able to determine.

18. As a Section 73 application, the Mineral Planning Authority is only required to consider the question of the proposed amended/varied condition and so is not required to reconsider the principle or acceptability of the development itself. Nevertheless the advice provided by statutory and non-statutory consultees as well as the views expressed by other bodies, groups and individuals should still be taken into account in determining such applications.

Objections

19. A considerable number of representations have been submitted from residents both local and from the wider Lincolnshire area. A significant proportion of the submissions question the need for oil/gas and the local community have reiterated their earlier objections to both the principle of that exploration development and the need for security. The areas of concern include impacts on the environment and residential amenity (e.g. highways and highway safety, landscape, wildlife and the wider environment, emissions, noise and light) due to the industrialisation of the countryside. Additionally they have expressed their continuing anxiety due to the timescales being extended and lack of communication from the applicant on when the exploration development would commence.

20. As this is a Section 73 application, it is not therefore necessary to reconsider the need or principle of the development again. The principle of the development, in this location, has previously been assessed and considered acceptable and so too have the various measures that would be adopted to ensure that any potential adverse impacts are ameliorated and mitigated. Notwithstanding this, the local parish councils/meetings have either objected to this proposal or commented that they support local resident's objections and encourage elected members to refuse the application as it would be contrary to the aims and objectives of tackling climate change and moving towards a low carbon future.

21. Although these objections and comments are acknowledged, it should be noted that when the previous application was considered and assessed in 2019 (which resulted in the permission now sought to be amended) this took into account changes that had been made to the NPPF and the subsequent direction contained within the Written Ministerial Statement. Other than seeking an extended period of time to complete the restoration, the applicant is not proposing any changes or amendments to the permitted

security compound. Given this it is only necessary to consider whether the grant of an extended period of time to complete the development is justified rather than re-examine the principle of the development again as this has already been accepted.

Extension of time

22. Planning permission for the security compound was granted in 2019 and a condition was imposed which required the site to be cleared by 31 December 2020 – this is consistent with the date set for the adjacent oil development. Due to the current COVID-19 pandemic however, the applicant's plans to carry out the oil exploration operations this year had to be suspended and as a result negated the need for the security compound to be installed. Additional time is therefore being sought (via separate applications) which would allow both of these developments to be retained on site for a longer period.

23. The applicant's reasoning and justification for seeking an extension of time are acknowledged and understood. The impact of the Covid-19 pandemic on the national economy and the operations and activities of businesses across all sectors is well-known and reported it is accepted that this has had a negative impact on the planned operations for the site. This situation was out of the control of the applicant and largely as a result of the restrictions and actions taken by the Government to try and address the pandemic. The Government has made it clear that authorities should prioritise decision-making as it is important to keep the planning system moving so that it is able to play its full part in the economic recovery at both national and local levels. In this case, a further extension of time would enable the development that has already been deemed acceptable in all other respects to be completed. The Government in recognising the difficulties in progressing approved planning permissions, as a consequence of the pandemic, introduced legislation in July 2020 in the form of the Business and Planning Act 2020. This provided an automatic extension of time, where unimplemented permissions, due to lapse on or before 31 December 2020, could be extended to 1 May 2021 is considered material. This demonstrates that the Government has recognised that the Covid situation will cause developers a delay to the implementation of permissions and provided this automatic extension of time. Whilst in this case the developer is seeking to extend the time for the completion of the development the circumstances are similar in that the applicant has not been able to construct the drilling pad and carrying out the exploratory drilling operations due to the Covid situation. Therefore it is considered that the application is line with Government legislation to provide developers more time to implement planning permissions due to the delays caused by Covid-19.

24. Taking into account the above I am satisfied that the proposed amended condition and extended time period sought to restore the site would not cause greater impacts than those already considered acceptable. This proposal can therefore be supported and does not conflict with nor compromise the aims and objectives of policies, DM3, R1 and R2 of the

CSDMP or Policy LP26 of the CLLP that requires good design of development that addresses the health, wellbeing and amenity of the local community.

Human Rights Implications

25. The committee's role is to consider and assess the effects that the proposal will have on the rights of individuals as afforded by the Human Rights Act (principally Articles 1 and 8) and weigh these against the wider public interest in determining whether or not planning permission should be granted. This is a balancing exercise and matter of planning judgement. In this case, having considered the information and facts as set out within this report, should planning permission be granted the decision would be proportionate and not in breach of the Human Rights Act (Articles 1 & 8) and the Council would have met its obligation to have due regard to its public sector equality duty under Section 149 of the Equality Act 2010.

RECOMMENDATIONS

That planning permission be granted subject to the following conditions:

1. The development hereby permitted shall cease on or before 31 December 2021 and by the date all portable buildings, plant and machinery associated with the use hereby permitted shall have been removed, the well capped and the land returned to its previous use as agricultural land.

   Reason: To provide for the completion of the exploratory operations in the interests of the amenity of the area.

2. The development hereby permitted shall be retained in accordance with the following documents and plans, unless modified by the conditions attached to this planning permission:

   - Planning Application Form (date stamped received 17 April 2019);
   - Document Reference: 20271/A5/P7/VY/SO – 'Planning Statement' (date stamped received 17 April 2019);
   - Drawing No: Drawing No: ZG-ER-NK-SWC-PA-03 – 'Security& Welfare Compound Layout' (date stamped received 12 June 2019); and
   - Drawing No: ZG-ER-NK-SWC-PA-04 – 'Temporary Security & Welfare Compound Indicative Floor Space Plan (date stamped received 08 May 2019).

   Reason: To ensure that the development is retained in all respects in accordance with the approved details.

3. No development shall commence until a full security lighting scheme, including details to minimise light spillage and any mitigation measures shall first been submitted to and approved in writing by the Mineral Planning Authority. The lighting shall be maintained and retained in accordance with

the approved details for so long as the development hereby permitted is required or on completion of restoration of the site whichever may be earlier.

Reason: In the interest of visual amenity.

4. The construction and restoration of the site hereby permitted shall only be carried out during the following hours:

Monday to Friday 07:00 to 19:00 hours;
Saturday 07:00 to 13:00 hours; and

No construction or restoration operations shall occur on Sundays, bank holidays and public holidays.

5. All plant and machinery including the diesel generator shall be adequately maintained and silenced in accordance with the manufacturer's recommendations at all times.

Reason: To protect the amenity of nearby residential properties.

Informatives

Attention is drawn to:

(i) E-mail from Environmental Health, West Lindsey District Council dated 7 June 2019 related to contaminated land;

(ii) Anglian Water Planning Applications – Suggested Informative Statements and Conditions Report Reference: 14750/1/0059041 dated 5 June 2019; and

(iii) In dealing with this application the Mineral Planning Authority has worked with the applicant in a positive and proactive manner by processing the application efficiently so as to prevent any unnecessary delay. This approach ensures the application is handled in a positive way to foster the delivery of sustainable development which is consistent with the requirements of the National Planning Policy Framework and as required by Article 35(2) of the Town & Country Planning (Development Management Procedure)(England) Order 2015.

Appendix

These are listed below and attached at the back of the report	
Appendix A	Committee Plan

Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Planning Application Files: 139434, 141306 and 141307	Lincolnshire County Council, Planning, Lancaster House, 36 Orchard Street, Lincoln, LN1 1XX http://lincolnshire.planning-register.co.uk/
National Planning Policy Framework (2012) National Planning Policy Guidance (2014) Guidance: Extension of certain planning permissions: guidance (2020)	The Government's website www.gov.uk
Business and Planning Act 2020 Written statement HCWS1586 (May 2019)	https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-23/HCWS1586/
Lincolnshire Mineral and Waste Local Plan Core Strategy and Development Management Plan (2016) Central Lincolnshire Local Plan (2017)	Lincolnshire County Council's website www.lincolnshire.gov.uk North Kesteven District Council's website www.n-kesteven.gov.uk

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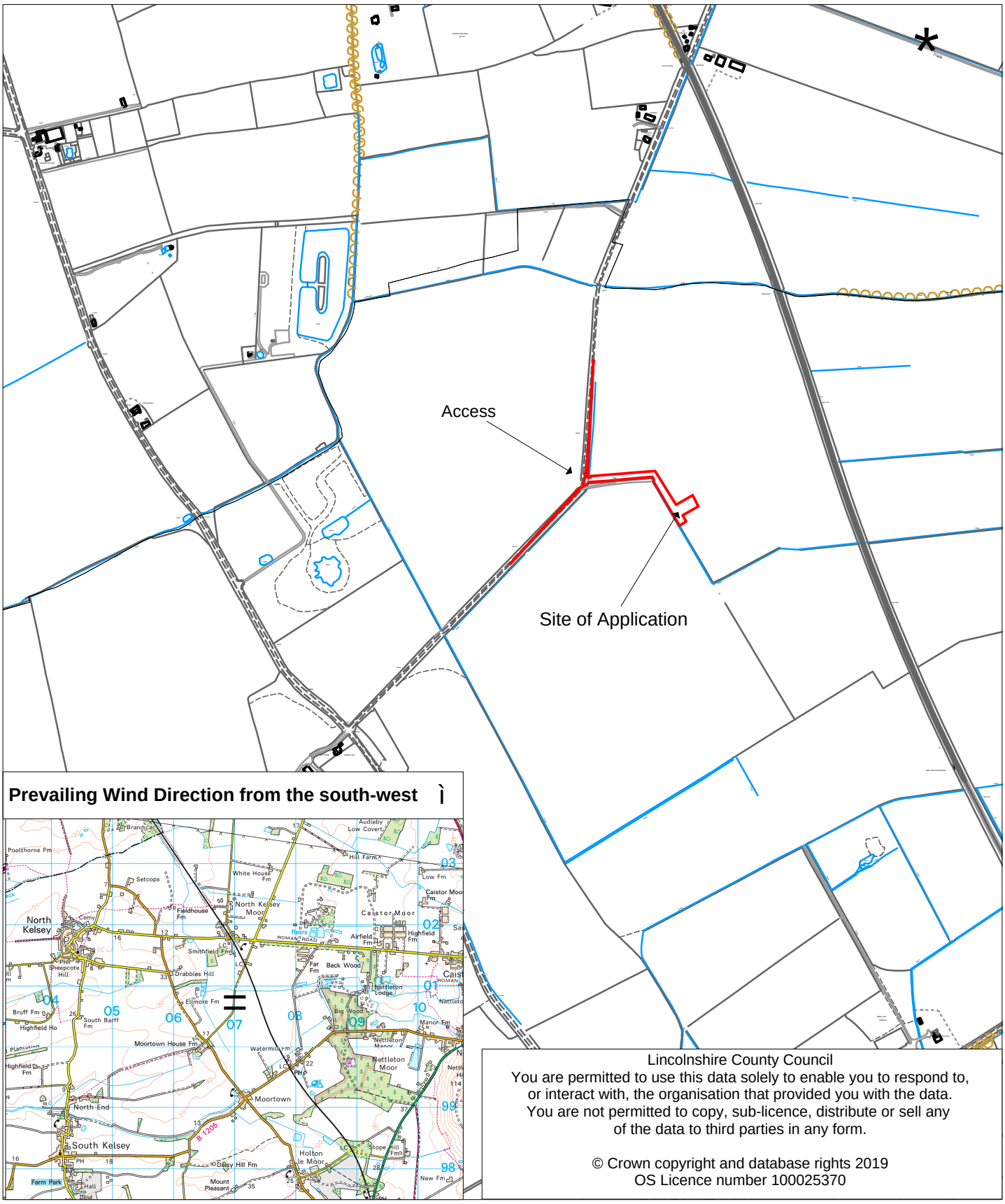
LINCOLNSHIRE COUNTY COUNCIL

PLANNING AND REGULATION COMMITTEE 7 SEPTEMBER 2020



Lincolnshire County Council
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Location:
Land to the east of Smithfield Road
North Kelsey Moor

Description:
To vary condition 1 of planning permission 139434 to extend the period to restore the site

Application No: 141307

Scale: 1:10,000

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