
Appeal Decision

Site visit made on 27 September 2016

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Appeal Ref: APP/Y2620/W/16/3154446

Brick Kiln Farm, Rudham Stile Lane, Fakenham, Norfolk NR21 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr P Picken against the decision of North Norfolk District Council.
 - The application Ref PO/14/1212, dated 12 September 2014, was approved on 13 January 2016 and planning permission was granted subject to conditions.
 - The development permitted is residential development for a maximum of 78 dwellings, extension to existing allotments, public open space, surface water attenuation pond and foul sewage pumping station.
 - The condition in dispute is No 1 which states that: *"Application for approval of all reserved matters must be made not later than the expiration of one year beginning with the date of this permission. Approval of these reserved matters (referred to in condition 2) shall be obtained from the Local Planning Authority in writing before any development is commenced. The development hereby permitted shall be begun not later than the expiration of one year from the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved."*
 - The reasons given for the condition are: *"In order to comply with the District Council's Uplift requirements, whereby the affordable housing uplift requirement has been waived (sic) subject to an early delivery of the scheme, to encourage quick delivery so as not to undermine the viability and deliverability of the wider F01 allocation and to accord with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004."*
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Decision

1. The appeal is allowed and the planning permission Ref PO/14/1212 for residential development for a maximum of 78 dwellings, extension to existing allotments, public open space, surface water attenuation pond and foul sewage pumping station at Brick Kiln Farm, Rudham Stile Lane, Fakenham, Norfolk NR21 8JR granted on 13 January 2016 by North Norfolk District Council, is varied by deleting all of the conditions and substituting for them the conditions set out in the attached schedule.

Background

2. The application as originally submitted was for a minimum of 84 dwellings but an amended site plan was submitted to the Council and the description was amended with the parties' agreement to a maximum of 78 dwellings. The amended proposal was publicised and was subject to consultation. I have used the amended description in my decision.
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3. The application is for outline permission with all detailed matters except means of access reserved. An illustrative layout plan was submitted with the application which shows a possible layout and I shall consider that plan on this basis.
4. The appeal is against condition 1 of the outline permission which requires the submission of applications for approval of reserved matters within 1 year of the date of the permission and commencement of development within 1 year of the date of the last approval of reserved matters. The standard time limits imposed by S92 of the Town and Country Planning Act (1990) are 3 years and 2 years respectively.
5. Since the outline permission was granted the Council has approved variations to other conditions. I shall consider those varied conditions as well as the condition which is subject to the appeal.

Main Issues

6. The main issues in the appeal are whether the time limits for submission of reserved matters and commencement of development imposed by condition 1 are necessary and reasonable having regard to the achievement of a comprehensive development of the site in conjunction with adjoining land and affordable housing requirements.

Reasons

7. The site is a poultry farm containing a number of buildings and structures and is to the north of the built up area of Fakenham. It is 2.9 ha in area and forms part of an area of land of 85 ha which is allocated for mixed use development in the North Norfolk Site Allocations Development Plan Document (DPD) (2011). That development is to include approximately 800 – 900 dwellings, employment land, a primary school, public open space and community facilities.
8. Policy F01 of the DPD sets out the detailed requirements relating to the allocated land. These include the approval of a Development Brief to address access and sustainable transport, layout, landscaping and other matters. The requirements of the policy include retention of the existing allotments which adjoin the appeal site, demonstration that there is adequate foul sewerage capacity and prior approval of a scheme of mitigation to minimise potential impacts on the North Norfolk Coast SAC/SPA and Ramsar site. The Council has prepared a draft Development Brief which has been subject to public consultation following which changes are being considered. The draft document can carry only limited weight because of its status. The document includes a Development Framework plan¹ which indicates how the land east of Water Moor Lane is expected to be developed. The owner of the majority of that land has also prepared a similar Development Framework plan and the Council expects a planning application to be submitted for that land shortly.
9. The illustrative masterplan provided by the appellant allows for an extension of the allotments. The layout includes a road connection towards the western boundary of the site. There is an existing route along the south-eastern boundary and the final layout could include a footpath/cycleway connecting to that route. For these reasons the illustrative masterplan demonstrates

¹ Development Brief August 2014 Figure 9

- consistency with the requirements of the draft Development Brief and compatibility with the Framework Plan prepared by the adjoining land owner.
10. Anglian Water confirmed that the water recycling centre and the foul sewerage network have capacity to accept the flows from the development. The planning obligation makes provision for financial contribution towards mitigation measures in respect of nearby European designated habitats. These provisions would accord with policy F01 of the DPD although there is no information before me to indicate what the habitat mitigation measures would be or how the contribution has been calculated.
 11. Policy F01 requires compliance with Core Strategy policies including for the required proportion of affordable housing. Policy HO2 of the North Norfolk Core Strategy (2008) requires 45% of housing to be affordable. The proposed provision at 3% is substantially below that figure but the Council has agreed that level of provision taking into account the appellant's submitted viability assessment. The planning obligation includes a mechanism to secure a proportion of any uplift in development profit in the event that the development takes place over a period in excess of 5 years. Any payments under this mechanism would be used towards affordable housing elsewhere in the town as a priority. The mechanism accords with the Council's requirement and would encourage early delivery.
 12. The planning obligation would also secure provision of public open space and contributions towards primary education and library facilities. The Council has expressed concern that the contributions were reduced following the submission of the viability assessment and that this reduction may have implications for the provision of the requisite infrastructure across the allocated area as a whole. However there is no evidence before me to demonstrate that the time limits imposed by condition 1 are necessary in order to secure the requisite infrastructure and affordable housing provision or that the imposition of longer periods would prejudice that provision.
 13. The appellant has pointed out that in addition to reserved matters applications, information is required to be submitted under 13 other conditions. In order to comply with the condition requiring an assessment for potential contamination all buildings and hard surfaces would first have to be demolished and removed. In my view the shortened time limit of 1 year for submission of reserved matters applications is unreasonably restrictive and furthermore it has not been demonstrated to be necessary.
 14. The Council has concern that there are difficulties in developing the site and on this basis that it may remain undeveloped with consequent effects on the ability of the adjoining land owner to achieve its development. Shorter than standard time limits would encourage early development of the site which would in turn encourage delivery of the larger development.
 15. The appellant says that a time limit for submission of applications for reserved matters of 2 years would be acceptable to him and the Council has also suggested this. The appellant would accept a 1 year limit for commencement following approval of the last of the reserved matters. For the reasons given I conclude that the time limit for submission of reserved matters imposed by condition 1 is unnecessary and unreasonable but that the time limit for commencement of development is both necessary and reasonable. For these

reasons I have imposed a condition which requires submission of reserved matters applications and commencement within those time limits.

Other Conditions

16. The Council has granted a further permission² which alters some of conditions attached to the original permission. I have considered the Council's suggested conditions numbered 2 to 23 and have imposed those conditions. In doing so I have had regard to the tests in paragraph 206 of the National Planning Policy Framework. In order to ensure that those conditions better meet those tests I have combined some of those conditions and made some changes to their wording.
17. A condition specifying the approved plans is necessary for certainty. Conditions requiring off-site highway improvement works and other matters relating to access and car parking provision are necessary in the interest of highway safety, to provide access by sustainable means and linkages with the adjacent allocated land. It is also necessary to ensure that the designs of the access and parking requirements are acceptable.
18. It is necessary to ensure fire hydrant provision and that suitable drainage infrastructure is provided to avoid flood risk and safeguard against pollution. It is necessary to ensure that any contaminated land is suitably remediated. It is also necessary to ensure that trees are retained and that the landscaping scheme becomes established. Any necessary ecological mitigation or compensation measures also need to be secured by a condition. Finally a condition requiring renewable or low-carbon energy provision is necessary in order to reduce reliance on non-renewable energy sources or those with high carbon emissions.

Other Matters

19. The Council has invited consideration of the need for a new viability assessment and an amended Section 106 Agreement. These are not matters for my consideration however.

Conclusion

20. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

² Ref PF/16/0200

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission. The development hereby permitted shall take place not later than 1 year from the date of approval of the last of the reserved matters to be approved.
- 2) The reserved matters shall relate to:
 - a) access into and from the site and circulation within the site for pedestrians and cyclists with links to the surrounding access network and circulation within the site for motor vehicles;
 - b) layout including proposed or indicative surface water drainage and foul water disposal system features and routing;
 - c) appearance;
 - d) scale; and
 - e) landscaping.
- 3) Except where required by other conditions attached to this permission or as part of any approval of reserved matters the development shall be undertaken in accordance with the following plans: 220714/01 (Existing Tree Constraints Plan), 101 Rev 12 (Site Location Plan) and 742/03/002 Rev A (Potential Off-Site Highway Improvement Scheme)
- 4) There shall be no residential occupation of the development hereby permitted until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a Private Management and Maintenance Company has been established.
- 5) No development shall take place until detailed plans and specifications of the following have been submitted to and approved in writing by the local planning authority:
 - a) roads, footways and cycleways;
 - b) visibility splays;
 - c) access arrangements; and
 - d) parking provision.

Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of on-site parking provision for construction workers for the duration of the construction period have been submitted to and approved in writing by the local planning authority. The approved provision shall be provided and maintained for the duration of the construction period.
- 7) No development shall take place until a Construction Traffic Management Plan and Access Route has been submitted to and approved in writing by

- the local planning authority. The Plan shall include proposals to ensure that construction traffic uses the Access Route and shall include provision for addressing any abnormal wear and tear to the highway. Construction traffic shall be managed in accordance with the approved details for the duration of construction.
- 8) No development shall take place until details of on-site wheel cleaning facilities for construction vehicles have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented and brought into use upon commencement of development. For the duration of construction all traffic associated with the construction of the development shall use the approved wheel cleaning facilities.
 - 9) No development shall take place until a detailed scheme for off-site highway improvement works to Rudham Stile Lane has been submitted to and approved in writing by the local planning authority. The approved works shall be completed before any dwelling is occupied.
 - 10) The driveway length in front of any garage shall be at least 6 metres as measured from the garage doors to the highway boundary.
 - 11) Notwithstanding the provisions of Classes A and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), any garage accommodation provided on the site shall be provided with minimum internal dimensions of 3m x 7m and shall include a vehicular opening of at least 2.2m and no more than 2.4m wide.
 - 12) No development shall take place until a scheme for the provision of two fire hydrants on the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be provided before any dwelling is occupied.
 - 13) Notwithstanding any details provided in the submitted Flood Risk Assessments no development shall take place until details of surface water drainage and sewage disposal works have been submitted to and approved in writing by the local planning authority. The scheme as approved shall be fully implemented and subsequently maintained in accordance with the timing, phasing and adoption and maintenance arrangements embodied within the scheme.
 - 14) No development shall take place, with the exception of the demolition and removal of existing buildings, until the results of further investigation/characterisation and sampling of surface soils including in the areas around and underneath the former fuel filling tanks and a Remediation Method Statement have been submitted to and approved in writing by the local planning authority. The investigations shall be undertaken following clearance of the site. The development shall not be occupied until the approved remediation measures have been implemented in full and a validation and verification report has been submitted to and approved in writing by the local planning authority.
 - 15) If, during development any contamination which was not previously identified is found to be present no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the local planning authority. The approved remediation measures shall be implemented in full before any dwelling is occupied.

- 16) No development shall take place until an Arboricultural Method Statement including details of measures for the protection of trees which are to be retained within and adjoining the site in accordance with BS 5837: 'Trees in Relation to Construction' has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 17) The approved landscaping scheme shall be carried out not later than the next available planting season following the commencement of development. Any new tree, hedge or shrub which within a period of ten years from the date of planting dies, is removed or becomes seriously damaged or diseased shall be replaced during the next planting season with another of a similar size and species.
- 18) No development shall take place until a Construction Environmental Management Plan (CEMP) prepared in accordance with BS 42020:2013 'Biodiversity – Code of Practice for Planning and Development' has been submitted to and approved in writing by the local planning authority. The Plan shall be informed by the results of the Ecological Constraints and Opportunities Assessment by Enims dated June 2014. Development shall be carried out in accordance with the approved CEMP and any necessary mitigation or compensation measures shall be carried out in accordance with the CEMP and thereafter maintained.
- 19) No development shall take place until details of a scheme including a timetable for the provision of at least 10% of the energy needs of the development from decentralised and renewable or low-carbon energy sources has been submitted to and approved in writing by the local planning authority. The approved scheme shall be provided in accordance with the approved timetable and made ready for use before the dwelling(s) to which they relate are occupied. The scheme shall thereafter be retained.