
Appeal Decision

Site visit made on 25 October 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 5th December 2016

Appeal Ref: APP/E2001/W/16/3155063

Land to the rear of Village Hall, 21 East End, Walkington, East Riding of Yorkshire HU17 8RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Clappison, Mr J Clappison and Mr R Cook against the decision of East Riding of Yorkshire Council.
 - The application Ref 15/02120/OUT, dated 29 June 2015, was refused by notice dated 22 March 2016.
 - The development proposed is described as the erection of 14 dwellings following the demolition of an existing dwelling.
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Decision

1. The appeal is allowed and outline planning permission is granted with all matters, other than access, reserved for the erection of 12 dwellings following the demolition of an existing dwelling (access to be considered) at Land to the rear of Village Hall, 21 East End, Walkington, East Riding of Yorkshire HU17 8RX in accordance with the terms of the application, Ref 15/02120/OUT, dated 26 June 2015, subject to the attached schedule of conditions.

Procedural Matters

2. The application was made in outline with all matters apart from access reserved for future determination. A block plan showing the position of the proposed access and an illustrative layout was submitted with the application which I have had regard to in the determination of this appeal.
 3. During the consideration of the application the proposed number of dwellings to be erected on the site was reduced from 14 to 12. The Council also changed the description of application Ref 15/02120/OUT to 'Outline - erection of 12 dwellings following the demolition of an existing dwelling (access to be considered)'. The site address was also changed from that contained on the application form to 'Land to the rear of Village Hall, 21 East End, Walkington, East Riding of Yorkshire HU17 8RX'. These are a more accurate description of the proposed development and site address which I have therefore used in the determination of this appeal.
 4. The application was determined in advance of the Inspector's decision on the proposed allocation of the site (WAL-C) within the Submission Allocations Document of the East Riding Local Plan. Following the Inspector's Report on the Examination of the East Riding Local Plan: Allocations Document, the
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Council accept that the site now forms part of the residential allocation within that plan. Consequently, the Council have confirmed that the grounds for refusal in relation to prematurity fall away. I therefore do not address this matter in the reasoning below.

Main Issues

5. The main issues are:

- The effect of the proposed development on highways and pedestrian safety.
- The effect of the proposed development on the vitality of the Post Office/Store.

Reasons

Highway safety

6. The appeal site predominantly comprises an elongated grass field to the north of East End that is bounded by mature hedging. It contains an unoccupied bungalow (No 21) which is proposed to be demolished to accommodate the proposed development. Access would be off East End via the existing access to the bungalow which is provided with a dropped crossing and located between the Village Hall to the west and 'The Cheviots' to the east. This existing junction would be widened and provided with kerb radii. The proposed indicative layout would provide for parking spaces/garages to serve each plot with 6 visitor spaces being provided within the site.
7. The appellant has produced a plan which indicates that visibility of approximately 2.4m by 35m can be achieved to the west and 2.4m by 47m to the east. I have no evidence to indicate that these visibility splays may be incorrect. In order to accommodate the revised junction and visibility splay to the west an existing on-street parking bay on East End in the vicinity of the Village Hall would be removed.
8. I note that the Council's Highway Management Officer considers that the proposed visibility splays are acceptable and are commensurate with the speed of vehicles using this stretch of East End. From my observations on site I concur with this view. The visibility splay to the west may, on occasions, be slightly compromised by the on-street car parking area outside the Post Office/Store. However, taking into account the vehicle speeds on this part of East End and the amount of traffic likely to be generated by the proposed development I do not consider that this would compromise highway safety to an unacceptable extent.
9. I have taken into account the concerns of some residents regarding the visibility for pedestrians crossing the proposed junction. Although the proposed access road would slope to the north, I consider that there would be adequate inter-visibility between pedestrians and vehicles, particularly as vehicle speeds are likely to be low on the approaches to the junction. As such, I do not consider that the safety of all users of the highway would be unacceptably compromised.
10. The Council suggest that the allocation of WAL-C in the Local Plan also included 'The Cheviots' which the Inspector examining the Submissions Allocation Document considered as an opportunity to achieve a wider access point and

improve visibility. However, in my view, my colleague expressed these comments as a view of opportunity as oppose to a necessary highway requirement. It is the appellant's discretion whether to include The Cheviots within the application and having chosen not to I am obliged to determine this appeal on the basis of the submitted access arrangements.

11. Although the proposal would result in the loss of one on street car parking bay I observed that there is provision for on-street parking on the south side of East End directly opposite the Post Office/Store. In addition, the proposed indicative layout suggests that four visitor car parking bays would be created on the access road in close proximity to the junction with East End. These would likely be located within the part of the access road that is proposed to form part of the adopted highway and as such they would be available for public use.
12. Consequently, I do not consider that the loss of the single on-street car parking bay would increase the demand for on-street parking elsewhere to the extent that highway safety would be compromised, particularly as four new bays are likely to be created on the proposed access road and in relatively close proximity to the Post Office/Store.
13. The Council have not referred to conflict with any of the policies contained within the Development Plan. On the basis of the evidence submitted and from my observations on site I consider that the proposed development will not have an adverse effect on the safety of users of the highway in the vicinity of the appeal site.

Vitality of Post Office/Store

14. The Council suggest that the parking arrangements in the vicinity of the proposed access are likely to have a knock-on effect on the vitality of the Post Office/Store. However, I have no evidence to support or substantiate this view.
15. The proposed development would provide the potential for additional customers who would be located in close proximity and within walking distance of the Post Office/Store. Given the availability of on-street parking in the vicinity I do not consider that the loss of one on-street parking bay and the creation of four bays in the vicinity of the junction would have a significant impact on the vitality of the Post Office/Store. Although parking restrictions are proposed in the vicinity of the junction, the comments of the Council's Highway Management Officer suggest that these would only extend to the existing parking bay outside of the Village Hall and the existing availability of on-street parking outside of the Post Office/Store would remain.
16. In my view, the potential for additional customers would likely assist in maintaining the viability of the Post Office/Store. Against the background above, I have no demonstrable evidence to suggest that its vitality would be compromised nor have the Council identified any planning policies relating to the vitality of the Post Office/Store that proposed development may be in conflict with.

Other matters

17. Although the majority of the site lies outside of the Walkington Conservation Area I note that the proposed access position on East End abuts its boundary.

Whilst the Council have found no impact on the setting of the nearby Conservation Area, I have nonetheless had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and its setting. In this respect, given that the proposed dwellings would be positioned to the rear of the Village Hall and therefore would not be readily visible in views from within the Conservation Area, I am satisfied that the proposed development would preserve those interests.

Unilateral Undertaking

18. The appellant has provided a signed Unilateral Undertaking which was originally dated 13 October 2016 and subsequently resigned and dated 28 November 2016. This provides for development not to commence until an agreement pursuant to section 38 and/or section 278 of the Highways Act 1980 has been entered into and also provides for a proportionate contribution to be payable towards the costs of a Traffic Regulation Order. This relates to the provision of parking restrictions in the vicinity of the kerb radii of the proposed junction.
19. There is some dispute between the main parties as to whether submitted Unilateral Undertaking can be considered to be robust. A Deed of Variation was provided to the Council in an effort to address some of the concerns raised. However, the appellant advises that the Council refused to execute the Deed of Variation. Consequently, the appellant has subsequently invited the appeal to be determined on the basis of the submitted Unilateral Undertaking dated 28 November 2016. The appellant considers the Unilateral Undertaking to be robust.
20. For any weight to be given to this the provisions need to be in accordance with the tests set out in paragraph 204 of the National Planning Policy Framework (the Framework). I consider that covenants contained within the Unilateral Undertaking relating to the highway matters are directly related to the development and are necessary to make the development acceptable in planning terms, particularly given their relevance to highway and pedestrian safety and the need to ensure that the wider allocation of site WAL-C can be accessed. Consequently I find that the Unilateral Undertaking would meet the tests in the Framework.
21. Although I find that the Unilateral Undertaking would meet the necessary tests I have considered the views of both parties as to whether its terms are sufficiently enforceable to be considered robust.
22. Although the provisions of the obligation do not relate to the full extent of the application site, I agree with the appellant that it binds sufficient land encompassing the access to the site as well as land through which any internal access roads would need to be constructed to the boundary of the site with the remaining part of allocation WAL-C. I also agree that demolition work would not give rise to a planning need for the proposed obligation and in this case I consider that it is adequate for the commencement of development to be triggered by the carrying out of a material operation as specified in Section 56(4) of the Town & Country Planning Act 1990 (as amended).
23. Whilst I note the Council's concerns that the obligation does not prevent the occupation of any of the dwellings until the Estate Road has been adopted, I

agree with the appellant that in this case such requirement may prohibit the residential use for a substantial period. In any event the obligation prevents the commencement of development until the Highways Agreement has been entered into. Therefore, in my view, the Council has adequate control through the Highways Agreement to control the mechanism for the delivery and adoption of the Estate Road.

24. I accept that a Traffic Regulation Order (TRO) may not be made. However, the obligation provides that the Council has the control to request any contribution in writing and for payment to be made within 14 days of such request. In the event that a TRO is not made or the development not commenced then those matters which the obligation relates to will not be relevant.
25. I have taken into account the other concerns of the Council and whilst the Unilateral Undertaking may not be in exactly the format required by the Council, in the absence of prior dialogue of the matter and a reluctance to consider a Deed of Variation I am obliged to consider it in the form it was submitted. On balance, I consider that the Unilateral Undertaking would meet the necessary tests and is sufficiently robust to be considered enforceable.

Conditions

26. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the government's Planning Practice Guidance. As a result, I have amended some of them for clarity and eliminated one for the reasons set out below.
27. I have attached conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters. I have specified the approved plans in the interests of certainty.
28. I agree that conditions are required to implement the identified ecological mitigation measures and provide bat boxes on the site. In order to ensure that the site can be safely accessed and the dwellings occupied I agree that conditions are required regarding the provision of the construction, servicing details and lighting of the Estate Roads.
29. In the interest of highway safety, conditions are required regarding the provision of parking for vehicles within the curtilage of the dwellings and provision is for the on-street visitor parking bays. In the interests of the character and appearance of the area conditions are required to ensure that any trees/shrubs that are planted pursuant to the details of landscaping that may die, are removed or become diseased are replaced with like trees/shrubs and that trees identified for retention are adequately protected during demolition and construction works.
30. Part of the site has previously been used for domestic purposes and has contained a number of former outbuildings. However, I have no evidence of the former use of the majority of the site. I note the appellant's willingness to accept the Council's suggested conditions which includes those relating to investigations to assess the extent to which any contamination may exist on the site. In this instance, I consider that the imposition of the Council's suggested conditions relating to contamination to be reasonable. However, in

the interests of precision and certainty I have amended the Council's suggested condition No 14.

31. Given the location of the site within a prehistoric and Romano-British Landscape with crop marks visible to the south of the site I agree that a scheme for the investigation and valuation of archaeological remains is necessary. However, I do not consider that the full extent of the Council's suggested condition is necessary as elements of this are repetitive. In any event the scheme of investigation is required to be prepared, and site works undertaken, by a suitably qualified archaeologist or archaeological organisation which would be required to be submitted for the approval of the local planning authority. As such, many of the elements of the Council's suggested condition are likely to be competently included within such scheme. I have also amended the suggested condition to require that the local planning authority is advised of the start date of investigations and provided a date by which such notification shall be made. I have not included the elements relating to the Burial Act 1857 as this is dealt with by means of the requirements of that legislation rather than the Planning Acts.
32. In the interests of certainty and to ensure that the development makes an adequate contribution to the provision of affordable housing, I agree that a condition is necessary that requires the details of such provision as part of a reserved matters submission. Also, I agree that such reserved matters details should also make appropriate provision for open play space within the site or contribution to its provision elsewhere.
33. I consider that the Council's suggested conditions Nos 9 and 20 can be amalgamated into one condition requiring the submission of a Construction Environmental Management Plan in the interests of ensuring that there is no unacceptable harm to the living conditions of nearby residents. However, I have included within the amalgamated condition a requirement for working hours to be submitted and measures to control the deposition of material on the highway, in the interests of highway safety.
34. In order to protect the character and appearance of the area I agree that a condition is necessary requiring details of ground and finished floor levels. In order to ensure adequate drainage of the site I agree that a condition is required regarding details of foul and surface water drainage. It is clear from the decision that planning permission is granted for 12 dwellings and therefore the Council's suggested condition No 21 is not necessary.

Conclusion

35. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out in accordance with the following approved plans: Location Plan JC/007/32; Site Survey Site 2 CC06-4; Indicative Layout Plan/Block Plan JC/007/32 Rev D (in so far as it shows the details of access); Proposed Block Plan JC/007/30; Proposed Level Plan JC/007/31A; Existing and Proposed Sections JC/007/24A.
- 5) The development hereby permitted shall be undertaken in accordance with the ecological avoidance, mitigation and management measures for bats and nesting birds detailed in Section 4.3 of the Ecological Appraisal Report (Curtis Ecology, June 2015) and Section 7 of the Bat Survey Report (Curtis Ecology, 24 August 2015) submitted with the application. Any variation thereto shall be agreed in writing by the local planning authority before such change is made.
- 6) Prior to the first occupation of the dwellings hereby permitted, one Schwegler 1FF, one Schwegler 1FD and two Ibstock Enclosed Bat Box B shall be erected on the site in accordance with the detail provided in Section 7.1.3 and 7.1.4 of the Bat Survey Report (Curtis Ecology, August 2015).
- 7) No development shall commence until details of the layout, drainage, construction, services and lighting of the proposed residential streets including the junction with the existing publicly maintainable highway, East End (the B1230), have been submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details.
- 8) Unless otherwise agreed in writing by the local planning authority, no dwelling shall be occupied until that part of the street which provides access to it has been constructed and lit from the junction with the public highway in accordance with the approved plans.
- 9) No dwelling shall be occupied until its access has been provided and space has been laid out within its curtilage for a motor car(s) to be parked in accordance with the details to be submitted to and approved in writing by the local planning authority pursuant to condition No 1 above. The vehicle parking facilities shall thereafter be so retained and not used for any other purpose.
- 10) If within a period of 5 years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged

or defective, another tree or shrub of the same species, size and maturity as that originally planted shall be planted in the same position, unless the local planning authority gives its written consent to any variation.

- 11) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved Arboricultural Report by Mark Feather dated May 2015. Paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the first occupation of the dwellings:
- (a) No retained tree shall be cut down, uprooted or destroyed, nor shall be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any such pruning undertaken shall be carried out in accordance with British Standard 3998 (Tree Work).
 - (b) If any retained tree is removed, uprooted, destroyed or dies, another tree of such size, species and maturity shall be planted in the same position at such time as may be specified in writing by the local planning authority.
 - (c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the British Standard 5837:2012 (British Standard for Trees in Relation to Design, Demolition and Construction Recommendations) before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority.
- 12) No development shall commence until an investigation and risk assessment of land contamination has been completed by competent persons and a report of the findings has been submitted to and approved in writing by the local planning authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site and an assessment of the potential risks to human health, controlled waters, property and ecological systems. Where unacceptable risks are identified, an appropriate scheme of remediation to make the site suitable for the intended use shall also be submitted to and approved in writing by the local planning authority.
- 13) Unless otherwise agreed in writing by the local planning authority, no dwelling shall be occupied until the approved scheme of remediation has been completed and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority. The verification report shall include a description of the works undertaken, a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source and copies of relevant waste management documentation for any contaminated material removed from the site.
- 14) In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the

development, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the local planning authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.

- 15) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The scheme shall provide for:
- a) The identification and evaluation of the extent, character and significance of archaeological remains.
 - b) An assessment of the impact on the proposed development on the archaeological remains.
 - c) Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings.

The scheme shall be prepared, and site work undertaken, by a professionally qualified archaeological organisation or archaeologist. The local planning authority shall be notified in writing within 3 days of the commencement of the archaeological works and shall be afforded access to the site for the purposes of monitoring such works.

- 16) The details to be submitted in accordance with Condition (1) above shall include provision of affordable housing within the site (unless a binding agreement has been entered into with the Council to secure the provision of all or part of the requisite elsewhere) in accordance with the Council's policies relating to affordable housing. Such housing shall be provided in accordance with the approved details.
- 17) The details to be submitted in accordance with Condition (1) above shall include details of a scheme for the provision of open play space (including children's, youth and adult) within the site (or a commuted sum in lieu of on-site provision) as part of the development. The submitted scheme shall include a programme of implementation and arrangements for its future maintenance. The open play space shall be provided in accordance with the approved scheme unless otherwise agreed in writing by the local planning authority.

- 18) The details to be submitted in accordance with Condition (1) above shall include details of the proposed finished floor levels of the dwellings in relation to the existing and proposed levels of the site and surrounding land. The dwellings shall be constructed in accordance with the approved levels.
- 19) The details to be submitted in accordance with Condition (1) above shall include details of the works for the disposal of foul and surface water. No dwelling shall be occupied until the approved works have been carried out. There shall be no piped discharge of surface water from the site until any works to provide a satisfactory outfall have been completed in accordance with the approved details.
- 20) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period and shall provide for:
 - a) The provision of temporary vehicle parking, loading, off-loading and manoeuvring facilities for the contractors carrying out the demolition, building and construction works on the site.
 - b) Measures to control the emission of dust, dirt, site lighting and noise during demolition and construction.
 - c) A scheme for recycling/disposing of waste resulting from demolition.
 - d) Measures to control the deposition of any mud, dirt or other material arising from the demolition/construction operations on the public highway.
 - e) Proposed working hours for demolition and construction works.

No demolition, building and construction works shall be commenced until the temporary vehicle parking, loading, off-loading and manoeuvring facilities have been provided and made available for use in accordance with the approved details. The approved temporary vehicle parking, loading, off-loading and manoeuvring facilities shall be retained for use by contractors during the construction of the development.
- 21) A minimum of 6 visitor car parking spaces shall be provided on site and retained for public use at all times. Such spaces shall not be used for any purposes other than the parking of motor vehicles.