

Appeal Decision

Site visit made on 17 February 2017

by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC

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

Decision date: 16 March 2017

Appeal Ref: APP/N2535/W/16/3164065

Church Farm, Church Lane, Harpswell, Gainsborough DN21 5UY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr G and Mrs P Kealey against the decision of West Lindsey District Council.
 - The application Ref: 134170, dated 16 March 2016, was refused by notice dated 27 May 2016.
 - The development proposed is described as the development of 7 sustainable homes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal process a unilateral undertaking (UU) under s.106 was submitted by the appellants. This provides for a minimum Standard Assessment Procedure rating of 90 as established in the Government's Standard Assessment for Energy Rating of Dwellings Published on behalf of DECC by the Building Research Establishment (BRE).
3. The s.106 UU also requires that each dwelling shall be constructed so that, other than from renewable and low carbon energy sources, the maximum energy demand for each dwelling shall be no more than 5,000kw hours per annum. It sets out that for 10 years following completion the owner shall provide evidence that this 5,000kw hours per annum target is met. If the target is not achieved then, within 3 months, the owner will submit details of remedial measures to ensure that the target will be met in successive years. The owner shall, at its own cost, use reasonable endeavours to implement such measures within 3 months of submission of the details.
4. The s.106 UU also requires that within 12 months of fibre optic broadband being made available to the boundary of the property it will be made available in each house. In addition, the undertaking would not allow occupation of a dwelling unless it has at least one electric vehicle charging point.

Main Issue

5. The main issue in this case is whether or not the proposal would represent sustainable development, having regard to local and national planning policy and legislative requirements; and,
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- (a) the fall-back position for the site;
- (b) the accessibility of the site; and,
- (c) the setting of St Chad a grade I listed building and the setting of Harpswell Hall, a Scheduled Ancient Monument (SAM).

Reasons

The Fall-back Position and Accessibility of the Site

6. The West Lindsey Local Plan Review (2006) (the Local Plan) is the current development plan. Policy STRAT 12 seeks to resist open market housing in the countryside. However, policy STRAT 14 makes a specific allocation for much of the appeal site. This policy under allocation Hp(M)1 makes provision for 0.70ha at Church Farm, Harpswell for a 'Bio-mass Renewable Energy Demonstration Project with the Conversion of Existing Buildings & Limited New Build into Live / Work Units'. This type of development, and hence the policy, appears to broadly accord with the Framework which seeks to support small-scale rural offices and facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.
7. Indeed, the appellants set out that the site has planning permission for 7 live/work units (mixed B1/C3 uses) and a biomass boiler with associated infrastructure to provide heating and hot water to these units following appeal APP/N2535/A/09/2103793/NWF (this related to planning application Ref: 121144 and was dated 2 September 2009).
8. The Council claims in its Appeal Statement that this '*decision had lapsed*'. However, the appellants take the view that this is an extant permission and refer to a letter from the Council dated 12 September 2012, which confirms that there has been '*a material start to planning permission 121184 and appeal APP/N2535/A/09/2103793/NWF in line with condition 1*'. The situation is not entirely clear, and not simply because of the different reference numbers and disagreement between the parties. I also note that conditions 5 and 14 are not claimed as discharged and are not referred to in the letter of 12 September 2012 – both conditions relate to the bio-mass boiler and the latter required actions '*prior to the commencement of development*'.
9. However, it is clear that this earlier scheme was for a materially different proposal than that before me. The Appeal Decision sets out that '*The site is in a rural area, poorly related to services and facilities, where new residential development would not normally be accepted in terms of national guidance and development plan policy. However, the majority of the site is specifically designated in the West Lindsey Local Plan Review under policy STRAT14 for mixed use.*' It goes on to explain that specific allocated mixed use as I have set out at paragraph 6 above.
10. Even if I take the earlier scheme to represent a fall-back position, that permission has not been built out and notwithstanding the appellants' assertion that it could be built out and the B1 element subsequently altered under permitted development rights, it seems there is limited likelihood of its implementation. This is particularly the case having regard to the s.106 Obligation and renewable energy associated with the 2009 permission which, as noted in paragraph 12 below, seems to directly link the energy scheme and housing. The appellants, in their Design and Access Statement, explain that

there are some difficulties associated with the biomass boiler, not least related to obtaining the bio-mass fuel. Further, it seems that the appellants are concerned that there are issues relating to financing the live/work units.

11. In this respect, I have considered the appellants point that in, terms of renewable energy, technology has moved on. I have some concerns regarding the implementation of the s.106 UU for this appeal proposal, for instance the installation of fibre optic broadband to each dwelling once it has been provided to the site boundary relies on another organisation's actions and there could be dispute about what is meant by site boundary. Moreover, the energy consumption arrangement relies on monitoring and enforcement which would place a heavy burden on the Local Planning Authority. Notwithstanding those matters, it seems likely that for each of the proposed dwellings alternative renewable energy sources might well be more cost effective and result in the buildings being similarly heat efficient as those in the 2009 scheme.
12. That said, the STRAT 14 Hp(M)1 allocation description and what appears to have been the content of the s.106 Obligation, goes significantly beyond creating energy efficient homes. Indeed the s.106 Obligation referred to in the earlier appeal decision, is said to require '*the setting up of a management company to deal with the renewable energy demonstration project, the supply of energy, the management of the estate and the supply of fuel*¹'. Although the appellants state that the s.106 Obligation did not require supply of energy to local properties (as suggested by the Council), it seems to me likely that the s.106 Obligation bio-mass boiler was not a simple undertaking in respect of the new dwellings only. Whilst neither side has furnished me with the s.106 Obligation document, I consider one of the key reasons in terms of both policy requirements and the previous Appeal Decision, would be lost were I to allow this appeal, a situation which would not be the case were the earlier permission implemented.
13. The second strand of the Policy STRAT 14 designation relates to live/work units. The main Policy STRAT 14 text is clear that it relates to mixed-use allocations. Although the current proposal for seven residential properties is proposed to be served by fibre optic broadband, facilitating some home working, this relies on such a service being brought to the site boundary which, aside from the concerns mentioned above, may be some time off and act as a disincentive to homeworkers from the outset. In any event, as the appellants note homeworking is an increasing phenomenon, but can take place in accessible locations and does not, on its own, justify use of less accessible locations as homeworkers still need to access services and facilities. Moreover, it is clear that mixed B1 use is not being sought.
14. I agree with the Council that the site is not accessibly located. In fact little seems to have changed since the earlier appeal decision where the Inspector stated '*the site is in a rural area, poorly related to services and facilities, where new residential development would not normally be accepted in terms of national guidance and development plan policy*'. I saw that Harpswell is a modest hamlet with few houses and limited facilities, those primarily being the church and open access land associated with the Scheduled Ancient Monument.
15. The site is in reasonably close proximity (the appellants indicate 1.3 km) to Hemswell Cliff where there are a greater number of facilities and employment

¹ Paragraph 7 of APP/N2535/A/09/2103793/NWF

opportunities, such that some trips could be made by bicycle or bus. However, the likelihood is that future occupiers of the proposed dwellings, which would not have the benefit of being mixed live/work units, would have a heavy reliance on the use of the private car for transport. I appreciate that business areas such as Hemswell Cliff require housing, but note that the Council has explained that it has recently allowed a large housing site of up to 170 dwellings in that location.

16. The STRAT 14 policy designation refers to conversion of existing buildings. However, given the earlier permission did not provide for converted buildings I have not attached material weight to this discrepancy. Thus, the lack of conversion elements does not count against the current proposal.
17. Having assessed the proposal, and having particular regard to the whole of the description of the allocation, I am not satisfied that the proposal would accord with Policy STRAT 14. As such, this is not a case where, for decision-taking, paragraph 14 of the National Planning Policy Framework (the Framework), would require approval without delay because of accord with the development plan. The proposal, because it is for open market housing would also fail to accord with policy STRAT 12.
18. In this case the location of the proposed housing would result in the need for future occupiers to travel by private car for services and facilities. I do not consider that installing electric car charging facilities would overcome this concern. There is no mechanism to ensure that future occupiers would use such vehicles. The poor accessibility of the site is such that I do not consider that it would be environmentally sustainable despite the measures aimed at improving the environmental efficiency of the proposed dwellings. Whilst future occupiers might assist in keeping the local church open, it seems to me that a development of the size proposed is not likely to be significant in sustaining this type of facility. Thus, I do not attach much weight in this regard.
19. In addition to the Local Plan, the Council refers to the emerging Central Lincolnshire Plan (emerging CLP). This is a joint authority plan, which includes the West Lindsey District area.
20. The emerging CLP has been through three rounds of consultation and is awaiting examination by an Inspector. Whilst I appreciate that more weight can be afforded to this document than when my colleague considered the previous appeal, because of the consultation processes it has been through, it remains the case that the emerging CLP may still be altered and particularly so in terms of allocations and housing. Thus, I can only attach a little weight to its policies.
21. In terms of this appeal the Council draws attention to the fact that this site would no longer have a specific allocation in the emerging CLP. The Council therefore draws attention to policies LP2 and LP55 which establish a settlement hierarchy and limit development in hamlets, the hierarchy category for Harpswell, to uses which would not include open market housing.
22. I have not accorded significant weight to the emerging CLP, but it does nothing in terms of adding positive weight in the planning balance for this proposal. However, I have considered the appeal in respect of the current Local Plan. In so doing, and having regard to the possible fall-back position and the

Framework, I conclude that the lack of accessibility is not sustainable and counts against the scheme. The scheme is not policy compliant and has no benefit of being live/work units nor does it offer a special green energy project beyond the requirements of the site.

The Setting of St. Chad and the SAM

23. St. Chad is a grade I listed church. It dates from the late C11th, with subsequent phases of work in the C13th and C14th and restoration in C19th. It is constructed of limestone which, in part, is coursed. The roof has plain tiles and stone coped gables. There is a west tower and the nave has a south aisle and porch. The windows vary in date and detail but each demonstrates high quality and detail, with tracery and hood moulds. Its special architectural and historic interest is in its great age, high quality craftsmanship, social value as a place of celebratory and commemorative events, and as a focal point for the community and parish which it serves. The setting of the church is established by its relationship to the churchyard, circulatory routes, the village and, given the respective dates, associative links to the SAM which is Harpswell Hall to which I turn next.
24. Harpswell Hall is a post-medieval house and gardens overlying medieval remains. The monument includes the earthwork and surviving extent of the buried remains of Harpswell Hall. The most notable feature of the site at present is the ornamental water-filled moat which encloses three sides of a rectangular island. The house and garden features are also significant. From the sunken garden area there is a broad avenue of some 250m, which the list entry record explains was originally lined with trees along the south side. This avenue provided a vista of the village church beyond its eastern end.
25. I am mindful that the information I have before me is largely that of the SAM list description which has been expanded upon a little more in the appellants' appeal statement. However, having regard to the consultation response from Historic England, it appears further information may be available given that works were undertaken in 2013 relating to new foul drainage for which consented excavations took place, the details of which were awaiting publication at the time of the Historic England letter. Whilst I appreciate that permission was granted for dwellings on the appeal site, that approval clearly predates the most recent investigations and, indeed, the advice of the Framework.
26. The Framework makes it clear that an applicant is required to describe the significance of any heritage asset affected, including the contribution made to their setting. In this case I am not satisfied that adequate assessment has taken place such that the impact can be properly assessed. Indeed Historic England notes that the originally-provided Design and Access Statement failed to consider the potential impact on the nationally important SAM. It goes on to make it clear that any non-designated remains of historic settlement preserved within the development site would make a positive contribution to the significance of both this nationally important SAM and the grade I listed church, and the understanding of settlement in Harpswell.
27. In particular, there is limited evidence relating to the SAM, and significantly to the relationship between the SAM and the listed church. For instance, no cartographic evidence is provided and there is limited specialist assessment. In this regard I note that the Parish Council draws attention to *'old maps which*

identify ancient trackways from Middle Street, that would likely have run near & through the site' and I saw walling to the rear of the church which may well have a relationship to the site. As such, I am not satisfied that there is adequate information upon which to assess the scheme before me and its impact on the setting of the heritage assets identified. Therefore, I find that, in the absence of adequate assessment, I cannot conclude that the proposal would not harm the setting of the SAM and/or the church of St. Chad, a grade I listed building. I note that a better assessment of the heritage assets need not preclude development but might inform how it should be designed.

28. In terms of the assessment of the impact of the proposed development, the levels significantly change within the site (and are noted on plan with sections within the site) but there is no contextual 'streetscene' information to include areas beyond the site or the listed church. Further, the design approach seems to largely relate to the environmental efficiency of the buildings and former layout, with little to explain the how the design would relate to the setting and thus significance of the heritage assets.
29. Whilst I appreciate that some of the farm buildings are not particularly attractive they are subservient because of their subdued colour and utilitarian form when seen in views from the SAM. I do not share the appellants' view that it is necessary to remove the agricultural buildings and replace them with housing so as to improve the setting of the heritage assets.
30. In this regard I find that the proposal fails to accord with national advice contained within the Framework. Moreover, I cannot satisfactorily address my statutory duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that I have special regard to the desirability of preserving the setting of the listed building. The proposal also fails to accord with policy LP25 of the emerging CLP and whilst this is only afforded limited weight it follows the Framework in setting out the information needed to make an assessment of development proposals.

Conclusion on the Main Issue

31. I have concluded that the fall-back position does not attract significant weight, the site is not readily accessible such that future occupiers would be reliant on private vehicles, and I have inadequate evidence regarding the setting of heritage assets on which to make an informed decision. I have found that the proposal fails to accord with the provisions of the development plan and the Framework and conclude that, on the basis of the evidence before me, the development of seven dwellings on the site, even constructed to high energy efficiency standards, would not amount to sustainable development.

Other Matters

Other Policies

32. The appellants refer to other policies within the Local Plan. Policy STRAT 3 classifies Harpswell as a Small Rural Settlement where Policy STRAT 8 allows for windfall and infill housing. However, this only supports rural affordable housing, housing for essential agricultural need or a single dwelling none of which apply in this case. The appellants also draw attention to Policy STRAT 9 which relates to previously-developed sites. However, this is not applicable

here as the Framework makes it clear that land that is or has been occupied by agricultural buildings is excluded from being considered as such.

Housing Land Supply

33. I note that the Council maintains it has a 5 year housing land supply and yet the appellants maintain that the Council cannot demonstrate a robust 5 year supply because the supply relies on draft local plan allocations. However, the appellants do not base their case upon this matter, as confirmed in their final comments. Even if I were to assume that the Council could not demonstrate a 5 year housing land supply, I would still not be able to properly assess the effect on the setting of the heritage assets in this case. As such, being clear about the 5 year housing land supply situation would not alter the outcome of this appeal.
34. Rather in such circumstances I would have to conclude that, for the purposes of the Framework, the adverse effect of not being able to properly assess the impacts on the heritage assets cited would significantly and demonstrably outweigh the benefits of providing seven dwellings, having assessed the proposals against the Framework as a whole because heritage assets are a finite resource and the scheme proposed might well be irreversible in terms of the harm that could arise. I note that even with the benefit of a more rigorous assessment it might be that the paragraph 14 test contained within the Framework is not the 'significantly and demonstrably outweighs' test because the designated heritage assets are included within 'footnote 9' such that specific policies in the Framework indicate that, in certain circumstances, development should be restricted.

Final Conclusion

35. Having had regard to all matters raised, I conclude that the appeal should fail.

Zoë H R Hill

Inspector