

Appeal Decision

Hearing held on 18 January 2017

Site visit made on 18 January 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 28th March 2017

Appeal Ref: APP/Z2505/W/16/3156914

Land to the South of Station Road and North of Wash Road, Kirton, Boston, Lincolnshire.

- 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 Andrew Hall against the decision of Boston Borough Council.
 - The application Ref B/15/0503, dated 20 November 2015, was refused by notice dated 3 May 2016.
 - The development proposed is residential development comprising of up to 30 dwellings and the proposed means of vehicular access at land to the south of Station Road, Kirton.
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Decision

1. The appeal is allowed and planning permission is granted for residential development comprising up to 30 dwellings and the proposed means of vehicular access at Land to the South of Station Road, Kirton in accordance with the terms of the application, Ref B/15/0503, dated 20 November 2015, subject to the attached schedule of conditions.

Application for costs

2. At the Hearing an application for costs was made by Mr Andrew Hall against Boston Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal seeks outline planning permission, with all matters of detail other than access reserved for future consideration. During the course of the original application an indicative amended layout plan was submitted (201414-02 Rev C), and I have had regard to this in my determination of the appeal.
 4. I have taken the site address from the appeal form as this was more precise than the address given in the application form.
 5. The Council confirmed in an email dated 8th December 2016 that they have conceded on their second reason for refusal relating to the character of the area and potential conflict of use between the appeal site and an adjacent industrial area.
 6. The parties submitted an agreed Statement of Common Ground (SOCG) the day before the Hearing, with a paper copy supplied on the day. This sets out a
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site description, planning history, and an agreed policy context and issues in dispute.

7. While the Council's remaining reason for refusal referred to the loss of protected trees, it was established at the Hearing that the Council has no objection on character and appearance grounds to the removal of 2 protected trees. This position was also reflected within the SOCG.
8. A completed legal agreement under s106 of the Planning Act (s106), dated 12 February 2017, was submitted following the hearing. The provision of affordable housing and its compliance with the relevant Regulations, the National Planning Policy Framework (the Framework) as well as Planning Practice Guidance (PPG) is considered below.

Main Issues

9. In light of the above, the main issues are (a) the effect of the proposed development upon highway safety and (b) whether or not a planning obligation is required to make the proposal acceptable with particular regard to affordable housing.

Reasons

Highway Safety

10. The appeal site is a large area of open land located between Station Road and Wash Road. A number of protected trees are located along the boundary with Station Road, as well as along the eastern side boundary.
11. The proposed development would be accessed via Station Road, a suburban road which serves a number of private dwellings along its length. A number of other developments, including housing along Pells Drive are also accessed via this road. To the east is a large roundabout which carries traffic from the A16, a busy road which links between Boston and Spalding and beyond to other major settlements such as Grimsby and Peterborough.
12. Two trees would be felled to create the site access. A section of footpath adjacent to the site leading toward the A16 would also be widened. This would reduce the width of the carriageway to allow for greater visibility for vehicles exiting the proposed development.
13. At the Hearing, the Council conceded that the visibility splays from the proposed access were adequate and in accordance with the visibility criteria set out in Manual for Streets. Parties also agreed on the figures within the Council's appeal statement in respect of traffic generation from the proposed development. However, and in spite of a lack of objection from Lincolnshire County Council Highways, the Council considers that the proximity of the roundabout and the A16 as a major road gives rise to a significant risk to safety of all users in respect of stopping sight distances.
14. The distance between the proposed access and the A16 would be less than the stopping sight distance recommended by Manual for Streets and the Council also consider that an even greater distance should be achieved due to the proximity of the A16, which is operated at the national speed limit. However, on entry to Station Road the speed limit changes to 30mph and while the distance between the proposed site access and the roundabout is relatively

short, the kerb radius from the northern arm of the A16 is as such that I do not consider that vehicles would exit the A16 from the north at any great speed. Given the volume of traffic along the A16, I also do not consider that high speeds would be possible when crossing the roundabout from Kirton.

15. There is a wide grass verge between the northern arm of the A16 carriageway and Station Road. At my site visit I saw that there are a number of structures within this verge, including signage and a green cabinet which would limit visibility of any queuing traffic along Station Road. Nonetheless, these structures are low level and I do not consider that they obstruct the sightlines to any great extent.
16. Due to the width of Station Road itself, which would be reduced by the proposed access, larger vehicles accessing and exiting the development would need to use both sides of the carriageway in order to turn. I accept that the length of such vehicles would reduce the available road space, however I do not consider that the flow of traffic would be exacerbated to any significant degree as the regularity of any such vehicles, including large refuse vehicles which are 9m in length, would not be frequent.
17. Moreover, the additional levels of traffic generated by the development of 5% overall, with an average of 15 journeys or up to 22 journeys at the 85th percentile during peak periods along Station Road, is not considered to be excessive. Based on these figures, it follows that it would not be often that vehicles would need to queue to turn right into the appeal site and I do not consider that any queues generated from the development in combination with existing users of Station Road would be likely to extend out so as to impede the safe flow of traffic on the A16 at the roundabout.
18. On the basis of all of the above, I therefore consider that stopping sight distances would be acceptable in spite of them being slightly below the recommended distance given in Manual for Streets. Risks to waiting traffic along Station Road would also be minimal.
19. I also have no evidence before me that the short distance between the proposed access and Pells Drive as a staggered junction distance would give rise to any safety implications. Pells Drive is a small cul-de-sac and I note that staggered junction geometry is recognised in the Manual for Streets.
20. Concern was raised in respect of the future capacity of the A16 in light of other development proposals, including major development to the south of Boston which has necessitated the creation of a new junction. However, as set out in the Council's statement, the A16/Station Road roundabout has sufficient capacity and recent traffic growth including the current proposals would not be expected to create capacity problems for the A16.
21. The Council also contend that a 14% increase in traffic along Station Road is an amenity issue in respect of severance and risk of injury. It is anticipated that the development would give rise to an additional 44 pedestrian movements and 7 cycle trips per day.
22. In respect of accessibility, the A16 does create a divide between the proposed site and the centre of Kirton with its local services and facilities. The walking distances are also at the upper limit of what is deemed to be acceptable. However, pedestrian links are well established and I note the presence of a

dedicated cycle path and pedestrian footpath alongside the A16 leading into the village centre. There is also a signalled pedestrian and cycle crossing on the A16 to the southern side of the roundabout which provide access into Kirton. The widening of the pavement along part of Station Road would also improve pedestrian access and safety, particularly for vulnerable users including children and the elderly.

23. Accident statistics have been provided but much of the data relates to incidents within the centre of Kirton. No accidents have been recorded at the pedestrian crossing and the 3 recorded accidents in the vicinity of the appeal site relate to the northern arm of the A16 only, during the late evening period and involved a single car. Therefore there is no evidence to suggest that pedestrians and cyclists from the proposed development would be at risk.
24. As an alternative, access from the appeal site could be gained via Wash Road. However, given the commercial premises along this highway there would be likely to be conflict with residential and business traffic, including HGV's. Furthermore, I consider that turning right onto the A16 would be more difficult, as there was no roundabout or other formal traffic control. While I do not consider these issues to be significant, in light of a lack of harm in respect of access from Station Road, I find that such an alternative access would not offer any particular benefits in respect of highway safety.
25. I therefore conclude that there would be no adverse impact in respect of highway safety from the proposed development. The development would therefore accord with saved Policies G1 and G6 of the Boston Borough Local Plan 1999 (LP) which requires that development has a satisfactory means of pedestrian and vehicular access as well as seeking to preserve neighbour amenity in respect of traffic generation. The development is also in accordance with paragraph 32 of the National Planning Policy Framework (the Framework) which states that development should achieve safe and suitable access for all people and should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
26. While the Council also cited conflict with saved Policy H2 in their decision notice, this contains no specific criteria in respect of highway safety and as such I consider that on this matter there is no conflict. However, I will come back to this in the 'Other Matters' section of my decision, below.

Planning Obligation

27. While the appropriate LP policy in respect of affordable housing was not saved, both parties agree that the proposal generates a need for 30% affordable housing. The failure to secure affordable housing within a scheme for 30 units would be contrary to the aims of paragraph 47 of the Framework, with regard to the need to meet local needs for affordable housing and paragraph 50, which identifies a preference for meeting affordable housing needs on-site. The provision of affordable housing is also a key aspect of the social element of sustainable development, as set out at paragraph 7 of the Framework. I am therefore satisfied that the provision of affordable housing is a necessary requirement.
28. In the event of the appeal being allowed, the Council suggested that planning permission should be subject to a condition that sought to secure the proposed affordable housing on the site. The appellant also considered a condition to be

a suitable mechanism to secure this. However, the PPG advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances such as in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would be put at risk¹.

29. A discussion took place at the Hearing whereby the Council were clear that no such exceptional circumstances exist. Rather, the Council considered that a condition is a reasonable response to the grant of outline planning consent and that the details could then be expected to be provided alongside any reserved matters application. It was also put to me that such a condition represents a pro-growth mechanism which would not delay otherwise acceptable development. Extracts from a recent Appeal Decision² were also provided whereby the Inspector considered that a condition would be effective in securing affordable housing and to dismiss the appeal due to a lack of such an obligation would not be consistent with the need to boost significantly the supply of housing.
30. The PPG is explicit and I do not consider that the proposed development, given its modest scale and straightforward nature, is the more complex and strategically important development to which the exception applies. In respect of the Council's pro-growth argument, I am mindful that the PPG is also clear that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed as well as ensuring that such agreements are undertaken in a timely manner and in the interests of transparency.
31. On this basis, the circumstances of this case are as such that I do not consider that the Council's position is reasonable or effective and without an obligation securing affordable housing, the proposed development would be in conflict with the Framework.
32. Moreover, while I accept that the Inspector in the abovementioned appeal took a different view, I do not possess full details of all of the considerations that applied in that case. In light of the advice contained within the PPG, I do not consider that it should be seen as setting a precedent for all applications where affordable housing is a consideration.
33. In light of the above, the parties were given the opportunity to submit a planning obligation to deal with this matter following the close of the Hearing. I have reviewed the obligation, submitted as a unilateral undertaking, and in considering that the planning obligation is necessary to make the development acceptable in planning terms, I am satisfied that this is both directly and reasonably related to the proposal.
34. Accordingly, on this matter I now conclude that the planning obligation meets the three tests stated in paragraph 204 of the National Planning Policy Framework (the Framework) and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment) Regulations 2015.

¹ Planning Practice Guidance ID 21a-010-20140306

² APP/A2525/W/16/3151299 dated 01 September 2016

Other Matters

35. A number of trees are located within and adjacent to the site, which are protected by 2 separate Tree Protection Orders.³ Local residents have raised concern in respect of impacts upon and loss of trees which would be necessary to facilitate the site access. The submitted Tree Survey identifies that out of the 26 protected trees (plus a number of fruit trees and 4 pollarded limes) the proposed access would affect the category A TPO lime trees T6 – T8 with T7 and T8 would have to be removed and the root protection area (RPA) for T6 would most likely be disturbed. However, at the Hearing it was established that it would in fact be T6 and T7 which would be removed and the RPA for T8 being affected.
36. The affected trees form part of a larger wider group which runs along the northern and eastern boundary of the appeal site. As a group, they have significant amenity value in the local context. However, the majority of trees would be retained and the protection and preservation of these would be secured at reserved matters stage. In respect of T6 and T7, these would be felled, however, I find that the overall amenity value of the group would not be compromised by the loss of 2 trees. Furthermore, I am satisfied that suitable protection measures could be conditioned in respect of T8 to ensure that this tree would not be adversely affected by development of the access within the RPA. I am also mindful that landscaping proposals, as a reserved matter, could also secure additional planting. On this basis, I do not consider that the loss of 2 protected trees would warrant the refusal of the development.
37. Concern has been raised in respect of the compatibility of the proposed residential development with neighbouring uses of the site. This includes noise from the adjacent Graves Park Social Club in respect of evening functions, and the Allium and Brassica Centre in respect of deliveries which can occur out of hours. Both of these businesses are located to the east of the appeal site.
38. However, based on the submitted noise assessment, I do not consider that there would be any significant conflict between these uses and the residential development. Furthermore, I also note that the revised indicative site layout plan indicates that development would be pulled away from the eastern boundary and I am satisfied that any concerns could be addressed as part of the future reserved matters application.
39. Similarly, issues in respect of the use of the sports pitches at the social club and risk of cricket balls or footballs straying into the proposed dwellings, as well as security lighting, affecting the amenity of future occupants of the development would be dealt with at detailed design stage as part of the reserved matters.
40. I am satisfied that concerns with regard to drainage could be adequately dealt with by an appropriate condition. I am also mindful that there are no objections from the Environment Agency and the Internal Drainage Board.
41. It is understood that there is the potential for contamination following a tyre fire in 2003, adjacent to the appeal site. The submitted contamination report is a significant age, nonetheless this was undertaken following the fire and concluded that concentrations of contaminants were within acceptable limits. I

³ Kirton and Frampton Tree Preservation Order No 1 (1957) and Kirton Tree Protection Order No 2 (1969)

therefore consider that this issue could be adequately dealt with by the imposition of a condition.

42. The Parish Council and the Ward Member have raised a general concern in respect of the amount of development within Kirton and it is stated that over 300 houses have been built since 2011. While the South East Lincolnshire Local Plan is at an early stage which limits the weight I can attach to it, I am aware that Kirton is identified as one of 9 Main Service Centres. The Council is currently unable to demonstrate a 5-year housing supply and the Framework seeks to boost significantly the supply of housing. I consider that Kirton is a sustainable settlement with a number of services and facilities and the development of up to 30 dwellings on a site where I have found no demonstrable harm would help to address this shortfall.
43. Finally in respect of Policy H2, it was agreed at the Hearing and within the SOCG that this relates to the supply of housing and, in light of a lack of 5 year housing land supply, was out of date in accordance with paragraph 49 of the Framework and should only be afforded limited weight. Nonetheless, as an adopted development plan policy which seeks to deliver housing on suitable sites, I find no conflict with this policy.

Conditions

44. In addition to the standard conditions relating to the timescales for approval of reserved matters, I have required the development to be carried out in accordance with the approved plans in the interest of certainty, having corrected the references, as agreed in the Hearing.
45. I have imposed conditions in respect of flood mitigation measures and drainage to ensure that there are no adverse impacts upon the living conditions of future residents of the site and local residents. Given the nature of the condition, drainage details are necessary prior to the commencement of the development.
46. A condition in respect of open space requirements and implementation is necessary at outline stage in order to ensure that satisfactory amenity space would be provided, in accordance with Policy H4 of the LP. As previously discussed, a pre-commencement condition in respect of contaminated land is necessary, however I have consolidated and amended the suggested conditions in order to be more precise.
47. I have imposed a condition in respect of the access which is necessary for highway safety reasons. While parties considered that the widening of the footpath would be secured by the plans condition and the suggested highways condition, this relates to land outside of the control of the appellant. Detailed information in respect of detailed layout and finished surface levels are also not given. Accordingly, and having regard to the conditions suggested by the Highways Authority, I have amended the suggested wording of the Council to include reference to the footpaths as a Grampian style condition, requiring full pre-commencement details of the scheme and ensuring that the works to be implemented prior to occupation of any dwelling.
48. Furthermore, as part of the above condition, I have made reference to a no-dig construction method. While this was omitted from the Council's suggested list of conditions, as discussed at the Hearing, it is considered that such measures

are necessary to preserve the character and appearance of the area, in respect of protected trees and the RPA of T8 in particular.

49. As the site lies in an area of archaeological importance relating to Bozon Hall and its associated settlement, it is necessary to impose a condition in respect of archaeological works. Due to the scope and nature of the works, it is necessary that this is pre-commencement. Finally, in light of the Planning Obligation, and my discussion above, I have omitted the condition in respect of affordable housing as this is not reasonable or necessary.

Conclusion

50. I have found that the development complies with relevant Local Plan policies and there are no specific policies within the Framework that indicate that development should be restricted in this case.
51. Therefore, in accordance with paragraph 14 of the Framework, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions discussed above.

C Searson
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Atkinson
David Sagstad
Ian Hall

Barton Willmore
Development Planning Ltd
Appellant's relative and joint site owner

FOR THE LOCAL PLANNING AUTHORITY:

Paul Edwards
Ian Turvey
John Taylor
Cllr Michael Cooper

Development Control Manager
Turvey Consultancy Limited
Senior Planner
Borough Councillor

INTERESTED PERSONS:

Cllr Colin Brotherton
Cllr Alison Austin

Borough Councillor and Ward Member for Kirton
Borough Councillor and Chair of Planning
Committee

Ian Turner
Jon Clubb
John Fitzgerald

Chairman Kirton Parish Council
Chairman Graves Park Social Club
Future resident of Kirton

PLANS AND DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appellant's written application for costs.
- 2 Additional plans relating to visibility splays from and to site access, and illustrating the length of highway available for vehicle queues
- 3 Completed Statement of Common Ground
- 4 Appeal Decision Ref: APP/A2525/W/16/3151299 (partial copy – pages 1, 5-10).
- 5 Copy of Policy H4 from the Boston Borough Local Plan 1999

Schedule of Conditions

- 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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (i) Site Location Plan – 1:2500.
 - (ii) Block Plan Ref: 201414-01 B
 - (iii) Visibility Splay Plan Ref: DPL SK008 B
- 5) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment prepared by ARP Associates (Ref' 800/371r2 dated February 2016) and in particular the following mitigation measures:
 - Finished floor levels shall be set no lower than 1.0m above existing ground level;
 - Flood resilient construction shall be incorporated throughout the development as stated;
 - All dwellings shall be a minimum of two storeys.

The mitigation measures shall be fully implemented prior to occupation.

- 6) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall:
 - (i) Provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;
 - (ii) Provide attenuation details and discharge rates which shall be restricted to 1.4 litres per second per hectare;
 - (iii) Provide details of the timetable for and any phasing of implementation for the drainage scheme; and
 - (iv) Provide details of how the scheme shall be maintained and managed over the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with

the approved phasing. The approved scheme shall be retained and maintained in full in accordance with the approved details.

- 7) The detailed layout shall incorporate an area or areas of public amenity open space/children's play area comprising not less than 7.5% of the gross site area. The area(s) of public amenity open space which shall include the provision of play equipment shall be laid out in a manner to be agreed in writing by the Local Planning Authority and made available for use before 50% of dwellings constructed on the application site are first occupied. This area shall not at any time be incorporated within the curtilage of a dwelling.
- 8) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 10 days of the report being completed and approved in writing by the local planning authority.
- 9) No development shall commence until a detailed scheme for highway works comprising of details of visibility splays and off-site highway improvement works to the footpath, as shown on drawing number DPL SK008 Rev B has been submitted to and approved in writing by the Local Planning Authority. This shall include for no-dig construction in the root protection area of protected tree T8. Thereafter, no dwelling shall be occupied before the off-site works and first 50 metres of estate road from its junction with the public highway, has been completed.
- 10) 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 by the applicant and approved in writing by the local planning authority.