
Appeal Decision

Site visit made on 8 August 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: 30th August 2017

Appeal Ref: APP/D2510/W/17/3172321

Furze Lane, Legbourne, LN11 8LS

- 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 Legbourne Ltd against the decision of East Lindsey District Council.
 - The application Ref N/100/01940/16, dated 20 September 2016, was refused by notice dated 13 January 2017.
 - The development proposed is outline application for residential development with access and associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with access to be considered. Plans which indicate the access and a layout for 30 dwellings were submitted as part of the application. Revised plans have also been submitted as part of the appeal. These plans (reference CAL021716-02F, CAL021716-03F and CAL021716-04F) show how the site could be developed for up to 29 dwellings with a change in arrangement so that they overlook the public footpath and adjacent countryside. Landscaping is also indicated on the revised plans.
3. As the application is in outline with layout, landscaping, appearance and scale reserved for future consideration the plans are largely indicative and as such I am satisfied that no party would be prejudiced by my having regard to the amended plans in my determination of the appeal.

Main Issues

4. The main issues are the effect of the proposed development upon (a) the character and appearance of the area and (b) highway safety.

Reasons

Character and Appearance

5. The appeal site comprises of a field in a rough 'half hexagonal' shape. It fronts Furze Lane to the south-east and there is a public footpath which runs along the western boundary of the site. To the north, east and southern boundaries, the site is bordered by a tall and mature hedgerow. Open views into the site are gauged from the west as vegetation is limited along this side.

6. Legbourne is a large village which has a linear character, extending along Station Road for around 1.7km. The appeal site is located close to the junction of Station Road and Furze Lane. To the west are open agricultural fields. Legbourne Grange Farm is located beyond this and further west development is more concentrated, being within the village centre including some in-depth developments accessed from Station Road.
7. To the north of the appeal site is Froghill Fisheries which comprises of lakes and associated restaurant, parking, log cabins and an area for caravans and camping. To the east is Furze Farmhouse.
8. I consider that the site is physically detached from the built up part of Legbourne by open fields and a farmstead to the north of Station Road. This area is identified as a protected open frontage under saved Policy ENV24 of the East Lindsey Local Plan Alteration 1999 (LP) and while the appeal site is not included as part of this designation, Furze Lane is effectively a continuation of the open frontage into the wider countryside. I therefore find that, as an undeveloped agricultural field, the appeal site makes a positive contribution to the rural character and setting of this settlement.
9. The proposals would comprise of a further in-depth development to the north of Furze Lane. The loss of this area to built development of up to 29 dwellings would appear as an isolated and incongruous pocket of development which would be at odds with the open and rural character of the area. The appeal site is not designated in terms of its landscape value, either at a national or local level, however the development of the site for dwellings would constitute an outlying limb which would have an urbanising effect and would intrude and encroach into the countryside, causing harm.
10. The site is in proximity to Froghill Fisheries and Furze Farmhouse. I also note that permission has previously been granted on the site for stabling, a hay store and ménage as well as associated parking. However, these existing developments are low density rural enterprises which are consistent with the rural character of the area. Moreover, I have limited information regarding the form of the stables and I have no details regarding whether consent for the stabling etc is still extant. However from the description the nature of the development would appear to be a rural enterprise. All these examples are markedly distinct to the proposals before me which would effectively create a small housing estate.
11. Based on the findings of the Landscape and Visual Impact Assessment (LIVA), I acknowledge that the existing boundary vegetation restricts views into the site, and in this context, the visual impact of the new houses would therefore be relatively localised. Although landscaping is a reserved matter, I also note that new planting is also proposed along the western boundary of the site, adjacent to the public footpath in order to provide screening.
12. Nevertheless, such impacts would still be experienced from vantage points both from looking east along Station Road from Legbourne as well as at the junction of Station Road and Furze Lane. Furthermore, even with additional planting, I find that coverage would not be so dense as to negate seasonal impacts and I consider that it would be likely that there would be much clearer views of the development during the winter months when trees are not in leaf. The

incongruous nature of the development would therefore be more prominent and dominant during this time.

13. To the south of Furze Lane, opposite the appeal site, consent has been granted to develop the land at Manor House Farm for a total of 33 dwellings. There can be no doubt that this scheme will transform the character of this part of Station Road. However, this is in an area where Station Road changes direction, travelling south east as a continuation of development along Station Road following the established pattern of development in Legbourne. Based upon the approved plans I therefore consider that this scheme would be less intrusive into the countryside than the appeal proposals before me and would not justify the erosion and encroachment into the landscape to the north of Furze Lane.
14. It is on this basis that I consider the development would be materially harmful to the rural character of the area and would not accord with LP Policy A5 which does not detract from the distinctive character of the locality. Again, while the proposal is not located in a designated or valued landscape, I find that the proposal would also conflict with Paragraph 17 of the National Planning Policy Framework (the Framework) which recognises the intrinsic character and beauty of the Countryside.

Highway Safety

15. Furze Lane is a rural unclassified road. It forms the junction with Station Road and is located on the outer edge of a 90degree bend. At present there is a right hand turn lane to allow passage into this road. Station Road is also denoted as an 'A Road,' the A157, and forms a through road connecting Louth and Mablethorpe. Within Legbourne, and including the junction, the speed limit is restricted to 30mph.
16. The Council and the County Council Highways Authority are concerned in respect of forward visibility for vehicles turning right into Furze Lane from the A157. It is considered that the visibility falls short of the distances required by the Manual for Streets (MfS) states that in a 30mph area, the required distance is 43metres. This is due to the presence of a hedge which runs alongside the footway adjacent to the Queens Head Public House, which is located on the inside of the 90degree bend on the A157.
17. The appellant contends that, based on evidence within the Speed Survey Results and Forward Visibility Plans (Drawing Nos 16-294-TR-003 and 16-294-TR-005), forward visibility can be demonstrated in order to meet these standards. Moreover, in respect of overtaking vehicles, it is held that there would be a forward site stopping distance of 38.0m which would accord with the MfS guidelines based upon the average recorded speed of 28.5mph.
18. At my site visit I took the opportunity to turn right into Furze Lane, as well as driving the approach from Station Road, turning left into Furze Lane. Road conditions were wet and I noted that through the duration of my visit, the carriageway was in reasonably frequent use by cars, agricultural vehicles and heavy goods vehicles.
19. While I note the submitted plans do, on paper, appear to indicate that visibility can be achieved, I do not consider that these drawings are

demonstrable of the circumstances of the junction on the ground. Specifically, at my visit when turning right, visibility was severely restricted by the bulk, width and height of the hedgerow within the Queens Head. This is within separate, private, ownership to the appeal site and the County Highway Authority.

20. The increase in vehicular movements from the development is likely to be 15 two-way trips during the morning and evening peak times. While in itself this is not a significant increase in respect of impact upon the general highway network, in light of the road conditions at this junction, I consider the risk to future occupiers of the development would be substantial. I accept that overtaking and parked vehicles on this stretch of the road would be unlikely and that such manoeuvres would be inherently dangerous in this location and such occasions would be rare and that there have been no recorded accidents at the junction. However, the intensification of use of this junction by vehicles turning right into Furze Lane to access the development would give rise to significant risk.
21. Moreover, based on the submitted surveys as well as the Transport Statement, it is held that speeds are generally less than the 30mph speed limit and that the A157 has low, predominantly local traffic movements. However, based upon the information before me the speed survey was undertaken during the Christmas period. I cannot therefore be certain whether this represents a true reflection of the conditions and I am mindful that as one of the primary access roads to the coastal resort of Mablethorpe, traffic levels in the summer months could be higher. I appreciate that my own visit represents a snap-shot in time, however traffic levels did appear to be greater than as stated which adds to my overall concern.
22. Section 154 of the Highways Act 1980 can require the Highways Authority to serve notice on the owner of a hedge to lop or cut a hedgerow in order to remove the obstruction. However, this is in circumstances where this would overhang the highway. In this instance, the presence of the hedgerow within the curtilage of the public house caused the obstruction and I do not consider that this would be a reasonable or enforceable measure to overcome the harm I have identified.
23. My attention has been drawn to a number of appeal decisions whereby the Inspectors' applied the MfS standards and found no harm to Highway Safety.¹ In these decisions, it is clear to me that the various Inspectors' assessed the proposals based upon the MfS as well as upon their own observations. Based on my own judgement on the merits of the case, I consider that, in spite of the drawings indicating that the MfS standards can be achieved, the specific circumstances of this case give me great cause for concern.
24. Paragraph 32 of the Framework states that development should only be prevented on transport grounds where the residual cumulative impacts are severe. I note that the appellant does not consider the effects to be so severe as to warrant an objection on this basis. However, I consider the effect would be significant and in any case I am mindful that the courts have held that the Framework addresses matters of highway capacity and

¹ APP/F1610/A/14/2225029, APP/Z2205/W/16/3150078, APP/E2530/A/10/2136072 and APP/C2708/W/16/3144209

congestion in the context of the severe residual cumulative impact of the development envisaged in its third bullet-point, rather than highway safety considerations in themselves.²

25. Overall I consider that the development would cause harm to highway safety. The development would conflict with LP Policy TR3 which seeks to ensure that the access and layout of roads are safe and functional. The development is also contrary to paragraph 32 of the Framework which requires safe and suitable access to the site for all people.

Planning Balance

26. Following on from the determination of the application, the Council now consider that they are able to demonstrate a 5 year supply of housing. This is disputed by the appellant who considers that the 'pipeline sites' which have been factored into the Council's calculations are not deliverable and that the Council is only able to demonstrate a 4.92 year supply.
27. Accordingly, the appellant considers that the application should be determined in accordance with paragraph 14 of the Framework. This sets out a presumption in favour of sustainable development and requires that where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
28. Cited benefits include boosting the supply of housing within a sustainable location and I consider that such economic and social benefits attract weight in favour of the proposed development.
29. Weighed against these factors, however, I have found that there would be unacceptable risk in respect of highway safety and harm to the rural character and appearance of the area which would be in conflict with the development plan and the Framework. In light of the nature and scale of social and environmental harm I have identified, I consider that these are factors that attract very significant weight.
30. Reference is made to a number of appeal decisions whereby Inspectors have held that in any case, achieving a 5 year housing supply should not be regarded as an upper limit. I do not disagree with that stance. Nonetheless, I have found conflict with the development plan and the Framework and based upon the appellant's figures, the shortfall would only be minimal.
31. Even if I were to conclude there is a shortfall in 5 year supply and that relevant policies for the supply of housing should not be considered up-to-date, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The proposals cannot, therefore, be considered to be the sustainable development for which the Framework presumes in favour.
32. My attention has also been drawn to a number of other appeal decisions whereby different Inspector's have concluded that harm to character and appearance of the countryside, including land designation as an Area of

² *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC 4076

Outstanding Natural Beauty, would not significantly or demonstrably outweigh the benefits.³ While I do not have the full details of the circumstances of these cases, I note from the information before me that the individual Inspectors' found only limited harm to character and appearance. These schemes were also in areas a greater shortfall and were for a greater number of dwellings. I therefore do not consider these to be comparable to the proposals before me.

Conclusion

33. For the reasons above, taking into account all other matters raised, I dismiss the appeal.

C Searson
INSPECTOR

³ APP/F1610/A/13/2196383, APP/F1230/W/14/3002790 and APP/N1350/A/14/2217552