
Appeal Decision

Site visit made on 13 March 2018

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 28 March 2018

Appeal Ref: APP/Y2003/W/17/3181762

Land adjacent to Maple Lea, Gainsborough Road, Kirton in Lindsey

- 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 Gelder Ltd and Mr Barnard against the decision of North Lincolnshire Council.
 - The application Ref PA/2017/511, dated 30 March 2017, was refused by notice dated 26 July 2017.
 - The development proposed was originally described as 'proposed new development of 16 No. 3/2 bed houses/bungalows along with associated hard and soft landscaping'.
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Decision

1. The appeal is allowed and planning permission is granted for sixteen three/two-bedroom houses/bungalows for affordable housing with associated hard and soft landscaping at land adjacent to Maple Lea, Gainsborough Road, Kirton in Lindsey in accordance with the terms of the application, Ref PA/2017/511, dated 30 March 2017, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Gelder Ltd and Mr Barnard against North Lincolnshire Council. This application is the subject of a separate Decision.

Procedural matters

3. I have taken the site address and description of development from the Council's decision notice as these are more accurate than those set out on the application form.
4. A signed and completed S106 planning agreement (S106) has been submitted with the appeal. The agreement includes provisions to secure the provision of the proposed dwellings as affordable housing in perpetuity and to provide a financial contribution in respect of recreation. I will return to this matter.

Main Issue

5. The main issue for the appeal is whether the proposal would comply with policies for the location of new development.

Reasons

6. The parties agree that the appeal site is situated outside of the development limits for Kirton in Lindsey. Policy CS3 of the North Lincolnshire Local Development Framework Core Strategy June 2011 (Core Strategy) is

concerned with development limits and includes amongst other things that development outside the defined boundaries will be restricted to that which is essential to the functioning of the countryside, including uses such as that related to agriculture, forestry or other uses which require a countryside location or that which will contribute to the sustainable development of the tourist industry.

7. The appeal scheme is for the provision of 100% affordable housing. The main parties refer to Core Strategy Policy CS9 which is concerned with affordable housing and includes, amongst other things, that planning permission will be granted for the release of small rural exception sites within or adjacent to the development limits or within rural settlements for 100% affordable housing where a local need has been clearly identified. Saved Policy RD2 of the North Lincolnshire Local Plan May 2003 (Local Plan) is concerned with development in the open countryside. The policy sets out development which would be permitted in the open countryside including affordable housing to meet a local need.
8. In respect of local housing need, the main parties refer to a 2009 local parish survey. This revealed that there was an identified need of affordable housing for 34 households in Kirton in Lindsey, all requiring family properties. I have also had regard to the Councils appeal statement which quantifies current need as being for 31 households and the Planning Officers report which refers to their being 44 households active on the current housing waiting list that live in Kirton in Lindsey.
9. The Council has confirmed that since 2009, 3 new affordable housing units have been developed in Kirton in Lindsey and that planning permission for dwellings on the Gleadells Mill Site would bring forward 5 affordable dwellings. In addition, planning permission has also been granted in respect of allocated site KIRH-2 in the North Lincolnshire Local Development Framework Housing and Employment Land Allocations Development Plan Document March 2016 (DPD) which includes provision for 4 affordable units. Whilst some progress has been made towards meeting the identified need, this falls well short of the stated need for affordable housing in the settlement.
10. I have taken into account the other housing allocations made in Kirton in Lindsey through the DPD. In respect of allocated site KIRH-1, the evidence before me is that it could bring forward about 100 dwellings, but whilst a planning application has been submitted, the applicant for that scheme has suggested that the site will be unviable if affordable housing is provided. It is not clear therefore as to whether this site would contribute to meeting affordable housing need.
11. In respect of allocated site KIRH-3, whilst a planning application has been submitted for up to 302 dwellings, and up to 20% could be affordable, I am not aware of any planning permission being granted or whether there is any agreement as to the level of affordable housing provision which would be made.
12. To conclude on this matter, the evidence before me is that there remains significant unmet affordable housing need in the settlement. The appeal scheme would bring forward 16 affordable housing units which would make a significant contribution to meeting the unmet affordable housing need for Kirton in Lindsey.

13. Whilst the appeal site is outside of the development limit and the proposal conflicts with Core Strategy Policy CS3, the provision of affordable housing accords with saved Local Plan Policy RD2 and Core Strategy Policy CS9. I consider that overall the appeal scheme complies with the development plan policies for the location of new development.

Other matters

14. The National Planning Policy Framework (the Framework) states in paragraph 49 that policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The Council state that the housing supply is about 3.9 years.
15. In regards to the accessibility of the appeal site to services and facilities, from the undisputed figures provided by the appellant in respect of distances to services and facilities from the appeal site and from my observations during my site visit, which included noting the close proximity of the primary school and local topography, I am satisfied that the appeal site is in an accessible location for affordable housing. Consequently, the relative accessibility of the allocated sites to services and facilities is not a factor which weighs against the appeal scheme.
16. Interested parties have raised concerns about the appeal scheme in terms of its effects on foul and surface water drainage and I have had regard to the comments made regarding existing problems in the area. I have considered the appellants flood risk assessment and note that there are no technical objections to the appeal scheme on these grounds from the relevant statutory bodies. Additionally, there is also no alternative technical assessment before me. Consequently, I am satisfied that the provision of surface and foul drainage system and future maintenance can be adequately addressed by way of planning conditions.
17. I saw during my site visit that the access would be outside of the 30 mph speed limit and that there are no existing footways or street lighting at the point of the proposed access. However, the proposed access onto Gainsborough Road would include the provision of a new footpath link and provides for adequate visibility. Subject to appropriate planning conditions to also include the provision of a scheme for street lighting, I am satisfied that the access can be developed without detriment to highway safety. Whilst I have had regard to the comments concerning congestion and parking problems relating to the primary school, given the proposed parking provision within the appeal site, I do not consider that the appeal scheme would give rise to harm in this regard.
18. I have considered the comments relating to the availability of previously developed land and that the appeal scheme would give rise to a loss of a green field site. In reaching my decision I have also had regard to the previous appeal decision¹ on the site. There is no substantive evidence before me as to any capacity issues in respect of medical facilities or in respect of school places, nor that the development would give rise to any increase in crime. I note the concerns that the appeal scheme would lead to further development, but any such scheme would be the subject of a planning application. I have also

¹ APP/Y2003/W/16/3160399

considered the effects of the appeal scheme on ecology but consider that this could be adequately addressed by way of planning conditions.

S106 agreement

19. The S106 includes obligations relating to affordable housing and a contribution towards recreation facilities of £7,171 to upgrade and improve facilities at Barnard Meadows in Kirton in Lindsey. I am satisfied that the tests set out in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations) are met in that the obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
20. CIL Regulation 123(3) prevents the pooling of more than 5 planning obligations made since 6 April 2010 towards a specific infrastructure project, or particular type of infrastructure. The Council has stated that one development has made a contribution towards the recreation facility at Barnard Meadows during this time. On the basis of the available evidence, I therefore find that the open space contribution sought complies with Regulation 123(3). I take the provisions of the S106 into account.

Conditions

21. I have had regard to the conditions suggested by the Council in terms of the tests set out in the Framework and the guidance contained in the Planning Practice Guidance (PPG). I have edited and combined a number of the suggested conditions in the interests of clarity. I impose conditions in respect of timescale and specifying the approved plans as that provides certainty. I attach conditions to safeguard trees and hedgerows and to require the submission, implementation and maintenance of a landscaping scheme in the interests of the character and appearance of the area.
22. I also impose a condition in respect of an assessment and remediation of any contamination to prevent pollution and to protect public health. I attach conditions in respect of archaeology in the interests of the historic environment. A condition is attached regarding the approval of external facing building materials in the interests of the character and appearance of the area.
23. To safeguard the living conditions of existing residents and future occupiers, I attach a condition in respect of the provision of boundary treatments and conditions in respect of construction hours and specifying a Construction Environmental Management Plan (CEMP). In the interests of biodiversity a condition is attached requiring a biodiversity management plan. I also attach conditions regarding the provision of the site access, access road and parking spaces and the provision of a footway link in the interests of highway safety. Conditions are attached to ensure that adequate surface water and foul drainage is provided to prevent flooding and pollution.
24. The PPG² advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. In this case, I am not convinced that exceptional circumstances have been demonstrated in respect of preventing development in service strips to justify the removal of permitted development

² 1. ID 21a-017-20140306

rights. I have also not applied a condition in respect of HGV deliveries as that should be addressed through the CEMP.

Conclusions

25. The appeal scheme would provide 16 affordable dwellings which would help to meet the identified need for affordable housing in Kirton in Lindsey. Whilst there is conflict with Core Strategy Policy CS3, I find that the appeal scheme does not conflict with the development plan when read as a whole. Furthermore the relevant policies for the supply of housing are out of date and in this case there are no adverse impacts which significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework taken as a whole.
26. For the above reasons and having had regard to all matters raised, the appeal succeeds.

Philip Lewis

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A1/001 Rev B, A1/002; and A1/003.
- 3) No development shall take place until a tree and hedgerow protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.
- 4) No development shall take place until a scheme for landscaping has been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out within twelve months of development being commenced. Any trees or plants which die, are removed or become seriously damaged or diseased within five years from the date of planting shall be replaced in the next planting season with others of similar size and species to those originally required to be planted.
- 5) Before the development commences on site, a scheme for the maintenance of communal landscape areas, including the grassed frontage to the pumping station, the planted quadrants set within the communal parking and the swale adjacent to the access road, shall be submitted to and agreed in writing by the local planning authority. Thereafter the approved scheme shall be adhered to.
- 6) 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 14 days of the report being completed and approved in writing by the local planning authority.
- 7) No development shall take place until an archaeological mitigation strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the following:

- i) the proper identification and assessment of the extent, character and significance of archaeological remains within the application area;
- ii) measures to ensure the preservation by record of archaeological features of identified importance;
- iii) methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts;
- iv) post-fieldwork methodologies for assessment and analyses;
- v) report content and arrangements for dissemination, and publication proposals;
- vi) archive preparation and deposition with recognised repositories;
- vii) a timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy;
- viii) monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record Office of the commencement of archaeological works and the opportunity to monitor such works; and
- ix) a list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.

The archaeological mitigation strategy shall be carried out in accordance with the approved details.

A copy of any analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the North Lincolnshire Historic Environment Record within six months of the date of completion of the development.

- 8) No above ground construction works shall take place until details have been submitted to and approved in writing by the local planning authority of the make, type and colour of all external facing materials for the development and only the approved materials shall be used.
- 9) Before any dwelling is first occupied, details of the positions, design, materials and type of boundary treatments to be built shall be submitted to and approved in writing by the local planning authority. The agreed boundary treatments shall be installed before the dwellings are occupied and once built it shall be retained.
- 10) No development shall take place until a biodiversity management plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
 - i) details of measures to avoid harm to nesting birds, hedgehogs and any other protected or priority species present, during vegetation clearance and construction works;
 - ii) details of nest boxes and bat roosting features to be installed;
 - iii) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
 - iv) provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland;

- v) prescriptions for the planting and aftercare of native trees, and shrubs of high biodiversity value;
- vi) details of wetland habitat to be created as part of a sustainable urban drainage system; and
- vii) proposed timings for the above works in relation to the completion of the buildings.

The approved management plan shall be implemented in full and the approved features shall be retained thereafter.

- 11) No development shall take place until details of:
 - i) the layout, drainage, construction, services and lighting of the proposed access road, including the junction with the adjacent highway and the method of constructing the vehicular access to the site;
 - ii) the number and location of vehicle parking spaces on the site;have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full and be maintained thereafter.
- 12) No development shall take place until a scheme for providing a footway, including a suitable crossing point to the existing facilities on Gainsborough Road, have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first occupation of any dwelling on the site and be maintained thereafter.
- 13) No other works shall be commenced on the site until the access road junction with the adjacent highway, including the required visibility splays, has been set out and established.
- 14) No dwelling on the site shall be occupied until the access road has been completed to at least base course level and adequately lit from the junction with the adjacent highway up to the access to the dwelling and the vehicle parking spaces serving it have been completed and, once provided, the vehicle parking spaces shall be retained.

No works shall be commenced on the penultimate dwelling on the site until the access road has been completed.
- 15) No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the local planning authority. This shall be based on the submitted Flood Risk Assessment and Drainage Strategy Ref; 10/4736 Rev B dated 4 July 2017 and proposed Drainage Layout, drawing no: 10-4736, 500, Rev A dated 4 July 2017. Discharge from the site must not exceed 3 litres/second at any time.

The drainage scheme shall be implemented in accordance with the approved details, shall be completed prior to the occupation of any dwelling on the site, and thereafter retained and maintained in accordance with the scheme for the lifespan of the development.
- 16) No development shall take place until a scheme for the disposal of the foul water has been submitted to and approved in writing by the local

planning authority. No dwelling shall be occupied until it is connected to the approved drainage system.

- 17) Site clearance, construction works or installation of equipment, shall take place only between 0700 and 1900 on Monday to Friday and between 0700 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 18) No development shall commence on site until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. This shall include details of mitigation measures for the control of pollution including noise, vibration, dust and light. All construction work shall be carried out in accordance with the approved CEMP.