
Appeal Decision

Hearing Held on 25 February 2020

Site visits made on 24 and 25 February 2020

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/Y2003/W/19/3233292 Land at Station Road, Ulceby, 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 P Strawson (MF Strawson Limited) against the decision of North Lincolnshire Council.
 - The application Ref PA/2018/2525, dated 10 December 2018, was refused by notice dated 5 July 2019.
 - The development proposed is the residential development of up to 90 dwellings, formation of access and provision of public open space.
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Decision

1. The appeal is allowed and planning permission is granted for the residential development of up to 90 dwellings, formation of access and provision of public open space at Land at Station Road, Ulceby, Lincolnshire in accordance with the terms of the application, Ref PA/2018/2525, dated 10 December 2018, subject to the conditions in the schedule to this decision below.

Application for costs

2. An application for costs was made by Mr P Strawson (MF Strawson Limited) against North Lincolnshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application that led to this appeal was in outline with all matters reserved except for access. I will consider the appeal on this basis and treat the submitted details as indicative insofar as they relate to matters reserved for future determination.
4. The policies and supplementary guidance which support the planning obligations which accompanied the proposal were not supplied to me prior to the hearing. However, the Council provided these, by agreement, after the hearing. As these either form part of the adopted development plan, or are readily available pieces of local planning guidance with which both parties are familiar, I consider that no prejudice would occur to the interests of any parties as a result of me taking them into account in my assessment of the merits of the appeal.

5. At the hearing it emerged that a Traffic Regulation Order¹ (TRO) had been made in November 2019. Amongst other things the TRO puts in place a 30mph speed limit along Station Road in the vicinity of the appeal site. The Council provided a copy of the TRO after the hearing, and I sought the appellant's comments on it. Consequently, my consideration of the TRO as part of my assessment of the appeal's merits would not prejudice the interests of any parties.

Main Issues

6. I consider the main issues in this case to be firstly, the effect of the proposed development on the character and appearance of the site and its surroundings; secondly, the effect of the proposed development on highway safety; and thirdly, the effect on the overall planning balance of other considerations including the District's housing supply.

Reasons

Site, surroundings and proposed development

7. Situated on the edge of Ulceby, the appeal site, an undulating arable field bounded in the main by hedgerows with some mature trees, is roughly L-shaped. Whilst the appeal site is situated in a wider pattern of arable fields, it is also related to the settlement of Ulceby as it wraps around the dwellings at Gower Close, Southfield Close and Willow Close. The scale and massing of these houses taken together with their boundary treatments which comprise tall fencing of an inherently domestic appearance constitute an abrupt and hard edge to the settlement, which taken together with the telecommunications mast in an adjacent field, dilute the landscape character of the appeal site. In arriving at this view, I am mindful of discussions at the hearing regarding the potential extension of the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB). However, this initiative is at a relatively early stage, and it is not clear that any expansion of the AONB would encompass the appeal site or indeed the immediately inter-visible landscape wherein pylons, transport infrastructure, the refinery, and the intensive arable character of fields are evident signs of human influence.
8. The proposed development would introduce residential development to the appeal site of up to 90 dwellings, which would be accessed from Station Road, with a footway, and courtesy crossings provided at the front of the site. Whilst details of site layout are reserved for future determination, both the description of development and a planning obligation that accompanies the proposal make provision for public open space and the installation of play equipment.

Policy Background

9. The appeal site is outside of the settlement boundary of Ulceby and is thus in the open countryside for the purposes of the development plan. Policies CS2, CS3 and CS8 of the North Lincolnshire Core Strategy (adopted June 2011) (the Core Strategy); and Policy RD2 of the North Lincolnshire Local Plan (adopted May 2003) (the Local Plan) seek to control development in the open countryside. Whilst the policies set out the exceptional types of development which could be permitted on sites outside of settlement boundaries, the appeal

¹ The North Lincolnshire Borough Council (Various Roads) (Restricted/De-restricted Roads and Speed Limits) (Consolidation) Order 2013 (Various Roads, Ulceby and Thornton Curtis) (Amendment No 14) Order 2019

scheme does not fall into any of these categories. Consequently, the proposed development would clearly conflict with the above-cited policies, insofar as taken together and amongst other things, they seek to control development in the open countryside.

10. At the hearing, discussions revealed that emerging development plan documents seek to retain the existing settlement boundary for Ulceby. Be that as it may, the emerging development plan is at a very early stage of preparation, and as such carries only very modest weight in the overall planning balance.

Character and Appearance

11. As a result of the proposed development, the settlement footprint of Ulceby would extend further along Station Road and at a greater depth beyond that highway than the housing on the immediately adjacent site. Residential development of the appeal site would undoubtedly alter its character, from a field free from built development to one with buildings upon it. In this way, the appeal scheme would differ from the immediately adjacent residential development, which relates to a site that was occupied by buildings prior to construction of the houses. Nevertheless, the substantial dwellings and prominent boundary treatments of that immediately adjacent site provide a clear and influential context for the appeal site, and a hard and abrupt transition from the countryside to the settlement. As a consequence, residential development of the appeal site would not appear unduly out of place; and moreover, the proposed development would be at relatively low density which could allow the most prominent landscape features at the site, namely the hedges and mature trees, to be retained and strengthened. In this respect the appeal scheme could also provide a softer edge to the settlement than currently exists.
12. I readily accept that on entering Ulceby from the direction of Ulceby Skitter, the proposed development would be visible. However, taken together the topography of adjacent fields, the existing mature hedgerows and trees within those fields, and the retention of boundary planting on the appeal site coupled with the strong potential to incorporate additional and extensive landscaping as part of its development, mean the proposed dwellings would not be widely visible - either in terms of their extent along Station Road, or in terms of the overall depth of development behind it. Moreover, residential development of the appeal site would entail only a limited linear extension of built development along Station Road beyond the housing present on the other side of the carriageway. Consequently, this aspect of the scheme, taken together with its limited wider visibility, mean that it would not materially diminish the gap between Ulceby and Ulceby Skitter, or result in the merging of these settlements.
13. In longer range publicly available views, such as from Brocklesby Road, the appeal scheme could be glimpsed in gaps in the high hedgerows which are the principal boundaries adjacent to the highway. However, the appeal scheme would be appreciated in the immediate context of existing residential development and within an undulating landscape which would serve to limit its visual implications. These aspects of the site and its surroundings, taken together with my observations set out above, mean that the proposed

development would not appear as a disproportionate extension to the settlement, and would not overwhelm its existing character.

14. Taking these matters together, I consider that the proposed development at the densities anticipated and subject to appropriate design details at the reserved matters stage could readily assimilate with its surroundings. On this basis, I therefore conclude on this main issue that the proposed development would not cause any material harm to the character and appearance of the site or its surroundings. In these terms the proposed development would not conflict with Policy RD2 of the Local Plan or Policy CS2 of the Core Strategy, which, taken together and amongst other things, seek to ensure that development is not detrimental to the character or appearance of the open countryside or a nearby settlement, is locally distinctive and designed to a high standard.

Highway Safety

15. The proposed development is supported by a Transport Assessment² (the Assessment), which is informed by traffic speeds in the vicinity of the appeal site observed by an Automatic Traffic Counter between 8 to 15 March 2018. Although I note that there could be seasonal variation in traffic flows, and sometimes that vehicle movements through Ulceby could be related to tidal changes at the Humber Ports, I consider that the duration of the observations provides a reasonable basis for assessment.
16. Moreover, it is speeds at the upper end of those observed (that is the 85th percentile speeds) that are used to determine the appropriate visibility splays for the junction to the site, which the submitted plans show can be achieved. Critically, the recorded speeds on which the Assessment is based pre-dated the implementation of the recent TRO, which has restricted speeds in the area of Station Road adjacent to appeal site to 30mph. Although I note comments at the hearing that the TRO may be yet to yield fruit in terms of reducing traffic speeds through the area, it nevertheless has the potential to achieve a reduction in traffic speeds in comparison to those recorded at the time of the Assessment's observations.
17. At the hearing, speeds recorded by the monitoring system at Station Road adjacent to Gower Close were discussed, including occasions when very excessive speeds have been observed. However, I have been supplied with no substantive evidence to suggest that those very excessive vehicle speeds are commonplace, and due to this I consider that they would not constitute an unacceptable risk affecting the day-to-day operation of the proposed junction. In arriving at this view, I am mindful that the local highway authority had no objection to the proposed junction in highway safety terms and that aspects of its design could be secured by condition.
18. I am mindful of references made both in written correspondence and at the hearing to accidents that have occurred along Station Road- nevertheless the substantive detail of these is not before me. The Assessment includes details of two relatively minor events within 200m of the appeal site over the period of 2013 to 2017 and sourced from the Crashmap database. Consequently, on balance, it has not been demonstrated that Station Road in the vicinity of the appeal site is unduly hazardous.

² Produced by ADC Infrastructure, dated 14 November 2018

19. The Assessment uses the industry standard TRICS data, derived from national level statistics relating to vehicle movements arising from developments, in modelling the transport effects of the appeal scheme. Based on the TRICS data, the Assessment finds that the proposed development would generate up to 67 vehicle movements at the AM and PM peak hours, and these would be distributed east and west at the appeal scheme's junction with Station Road - so not all of those projected vehicle movements would be travelling through Ulceby at those times. On this basis, I consider that, whilst the proposed development would undoubtedly increase vehicle movements along Station Road, it would not do so to a degree that would have a material effect on its day-to-day operation.
20. Station Road is used as a diversionary route for the A180 should road traffic accidents require closures. I am mindful that when the diversionary route is in place this can cause congestion through Ulceby, including HGVs. However, it emerged at the hearing that the use of Station Road as a diversionary route is a relatively infrequent occurrence. Moreover, any traffic arising from the use of Station Road as a diversionary route would not be a direct consequence of the proposed development; and the relatively limited traffic movements that the appeal scheme would cause would not materially worsen conditions when the diversionary route is in place. Although some consider that the Road has been used as a 'rat-run' since recent changes to major junctions in the vicinity have been implemented, I have been supplied with no substantive evidence as to the extent to which this may have affected traffic flows through the settlement. Although I am mindful of the view expressed at the hearing regarding the potential transport impacts of the emerging free ports proposals, which may affect the Humber Ports, this initiative is at a relatively early stage of development and as a result any potential effects it may have on the use of Station Road are currently unclear. These considerations lead me to the view that neither the current day-to-day use of Station Road; nor its occasional use as a diversionary route carry weight against the proposed development in the overall planning balance.
21. I accept that private motor vehicles would be the principal form of transport for future occupants of the proposed dwellings including any affordable houses; and that some of the existing footways along Station Road may be less suitable for use by those with mobility impairments. Nevertheless, I am mindful that the train station at Ulceby Skitter is within a reasonable walking distance, and along a footway which is well lit, and thus would be accessible to some of the future occupants of the appeal site. Furthermore, bus services are available from stops a short distance from the appeal site. Moreover, the proposed development would see the extension of the existing footway to the entrance to the appeal site, which albeit with some crossings of the road, would facilitate some trips into Ulceby to access the services there. I am also cognisant of the Travel Plan³, which accompanies the proposal, and seeks to promote the use of sustainable transport for the future occupants of the proposed dwellings - and compliance with the recommendations of an up-to-date travel plan is a matter that can be secured by condition.
22. Although I note the relative infrequency of the available bus and train services, I am nevertheless conscious of the National Planning Policy Framework (the Framework) which recognises that opportunities to maximise sustainable

³ Produced by ADC Infrastructure Limited dated 29 August 2018

transport solutions will vary between urban and rural areas⁴. The Framework also sets out that it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location⁵; and for the reasons given above, the appeal scheme clearly accords with this aim.

23. Accordingly, these considerations lead me to the conclusion on this main issue that the proposed development would not cause materially adverse effects to highway safety. The proposed development would not therefore conflict with Policy T2 of the Local Plan or the Framework, which taken together and amongst other things seek to ensure that developments avoid unacceptable impacts to highway safety, do not cause severe residual cumulative impacts on the road network, are provided with a satisfactory access, and are served adequately by the existing highway.

Other Considerations

24. A signed and sealed agreement⁶ pursuant to s106 of the Town and Country Planning Act 1990 (as amended) accompanies the appeal submission and includes several planning obligations. The obligations include contributions toward education, affordable housing and leisure provision; and to secure the use of part of the site as public open space with the provision of play equipment; and to ensure the long-term maintenance of the sustainable drainage system. The obligations in these regards are proportionate to meet the needs arising from residential development of the anticipated scale and nature of the appeal scheme; and seek to ensure the continued management of its surface water drainage, which would be necessary to mitigate its effects in these regards. Moreover, I am also mindful that the description of the proposed development in this case includes the provision of public open space.
25. Moreover, taken together Policies CS9, CS27 of the Core Strategy, Policy H10 of the Local Plan, and the *Provision of Open Space in New Housing Developments* and *The Developer Contributions to Schools* Supplementary Planning Guidance (adopted February 2006 and April 2006 respectively) require developments to meet reasonable costs of new infrastructure and improvements to existing infrastructure made necessary by a proposal – including, amongst other things, affordable housing, maintenance payments, utilities, education, community facilities, leisure and recreation provision.
26. For the above-given reasons, I consider the aforementioned obligations to be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to it – and in arriving at this view I am mindful that no evidence has been supplied which queries either the necessity or the viability of these obligations. Accordingly, I consider that these obligations meet the relevant statutory⁷ and national policy⁸ tests and are therefore material considerations in my assessment of the appeal.
27. One of the obligations contained in the agreement relates to a highways contribution to secure a sum payable for the implementation of a TRO on

⁴ At paragraph 103

⁵ At paragraph 108 (a)

⁶ Dated 1 November 2019

⁷ Provided by Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

⁸ Set out in paragraph 56 of the Framework

Station Road plus all requisite signing and lining and other ancillary highway works to reduce the speed limit to 30mph. However, as set out above, a TRO which secures these measures is already in place. Consequently, this particular obligation is not necessary to make the development acceptable in planning terms and thus does not meet the relevant statutory and national policy tests. However, the agreement makes specific provision⁹ for any obligation I find to be prohibited by law to be severed from it, without affecting the other obligations it contains. Accordingly, on this basis I conclude that the highway contribution can be severed without affecting the validity of the other obligations that the agreement contains.

28. The proposed development could supply up to 90 dwellings, which due to their relatively low density could provide a mix of dwelling types and sizes including a number of affordable houses secured through the planning obligation. In this latter regard I am particularly mindful of the references both in the appellant's statement and the Council's Officer Report to the need for, and the historic undersupply of, affordable housing: matters established in the most recent version of the District's Strategic Housing Market Assessment. In these ways, the proposed development would make an important contribution in support of the Government's objective of significantly boosting the supply of homes and help to address the needs of groups with specific housing requirements- including through the provision of affordable housing.
29. The proposed development would also supply public open space and play equipment, which, whilst necessary to make the proposed development acceptable in planning terms would nevertheless be available for use not only by its future occupants but also by the residents of the appeal site's surroundings. Both the construction of the appeal scheme and the use of local services by its future occupants would yield economic benefits, as would local finance considerations including the New Homes Bonus payments, which the Council would be eligible to receive as a result of the delivery of the proposed dwellings. Landscaping and other aspects of the proposal have the potential to secure measurable net gains for biodiversity, in comparison to the current use of the appeal site as an intensively farmed arable field, which the Council's ecological consultee considers to have "limited biodiversity value" at present¹⁰- and such measures could be secured by condition. Taken together, these clear benefits of the proposed development weigh in its favour to a considerable degree.
30. Some consider that the proposed development would place undue pressure on local services, including the school; and that the extent of services in Ulceby would not meet the day-to-day needs of the occupants of the proposed development – particularly as there has been a number of residential permissions¹¹ relating to sites in the settlement in recent years. However, I have been supplied with no substantive evidence that the proposal, which could provide a mix of dwellings and thus include a range of household types, would lead to rises in class sizes at the local school of a scale which would threaten the effectiveness or quality of its educational provision.

⁹ At point 2.7

¹⁰Per the North Lincolnshire Council Inter Office Memo dated 17 April 2019

¹¹ Council references: PA/2017/2136; PA/2017/2080; PA/2017/1680; PA/2017/1024; PA/2017/1450; PA/2016/1259; PA/2016/796; PA/2014/1311

31. Moreover, in addition to the school, Ulceby has a reasonable range of local services including, amongst others, a convenience store with post office services, a nursery, a veterinary clinic, GP branch surgery services available on Tuesday afternoons, a public house, a takeaway, a tea room, and a hairdressing salon. I readily accept that these services would not meet all the day-to-day needs of the proposed development's residents; however, they would nevertheless provide some local facilities, which whilst situated in the main to the other end of the settlement to the appeal site, would be within a reasonable walking distance. As a result, not all journeys from the appeal site to those services would be by the private car. Neither for this reason would unsustainable demand for car-parking, particularly at the convenience store or in relation to the school, be an inevitable concomitant of the proposed development. Although I note the views expressed regarding the adequacy of play facilities in the settlement, I am mindful also that the planning obligation secures the delivery of public open space with play facilities as part of the proposed development, which would augment Ulceby's provision in this regard.
32. The site is within Flood Zone 1; nevertheless, I am mindful that proposed development of a greenfield site could have effects on surface water run-off. Furthermore, both written representations and oral submissions at the hearing cited incidents in Ulceby related to the sewerage system and surface water drainage. In these regards, I note that trial pitting¹² conducted to inform the Flood Risk and Drainage Assessment (FRDA) found that the soil type is not suited to the provision of soakaways. I acknowledge also that the type of soil recorded on the Wallingford Procedure Winter Rainfall Acceptance Potential (WRAP) map of the site appears to differ from that actually observed during the trial pitting procedure- and some have questioned whether the FRDA adequately considers the current run-off rate of the site as a result.
33. However, whilst soakaways are not feasible, the FRDA recommends an attenuation system linking to existing drains across the site, which would substantially limit the rate of surface water run-off. Moreover, the FRDA makes it clear that the proposed measures would be designed to contain full 1 in 100 year flooding events, including a 10% allowance for urban creep and a climate change volume allowance. Consequently, should the existing surface water run-off be in excess of any assumptions based on the WRAP soil type, it is clear that the proposed drainage solutions for the site would be of a generous capacity which would ensure that the risk of flooding would not be increased elsewhere as a result of the proposed development. In arriving at this view, I am mindful that neither the Lead Local Flood Authority, nor the Environment Agency, nor the North East Lindsey Drainage Board, nor Anglian Water objected to the proposal on the basis of its flooding and surface water drainage aspects. Moreover, the attachment of planning conditions would ensure that appropriate measures are incorporated within any final design for the site.
34. Interested parties made comments regarding issues with the sewerage system in the local area, which I have taken into account. Nevertheless, Anglian Water supplied information demonstrating, subject to the appropriate measures being undertaken by the development, that sufficient capacity exists to handle the drainage of foul water from the proposed development. On this basis, it has

¹² as documented in Appendix E: Soakage Test Results of the appellant's Flood Risk and Drainage Assessment Ramm Sanderson (November 2018)

- not been demonstrated that the proposal would lead to adverse impacts in these regards.
35. The submitted plans show an area edged in blue, beyond the boundary of the appeal site which is also in the same ownership. Some have suggested that further development may be proposed on the land so identified; however, my assessment of the appeal scheme is based on the plans and other materials submitted which all relate to development of the land edged in red on the submitted location plan. Accordingly, as there are no proposals before me relating to the land edged in blue, the extensiveness of that parcel of land of itself, does not weigh against the proposed development.
36. It is clear that the outlook would change from the windows of dwellings that face toward the appeal site as a result of its residential development. Nevertheless, matters of the proposed development's scale, layout and appearance are reserved for future determination. Moreover, the relatively low density of the proposed development means that its landscaping and layout could avoid unduly enclosing or overbearing on any available outlook from neighbouring dwellings. Similarly, careful design at the reserved matters stage would ensure that harmful effects in respect of the availability of sunlight or daylight could be avoided. The proposal would introduce residential sounds, on a site immediately adjacent to an existing residential area- consequently, it would assimilate readily with the prevailing noise environment and would cause no material harm in this respect. Although I note generalised concerns regarding litter and dog fouling, I have no substantive evidence before me to suggest that the proposed development would lead to a material increase in such incidents. Accordingly, none of these matters weigh against the proposed development in the overall planning balance.
37. Some have questioned the economic viability of the scheme and referred to the length of time that some dwellings in the area have been on the market. However, neither the evidential basis of these statements nor an analysis of the factors that may have influenced the length of time properties have been on the market have been supplied. Furthermore, the marketing of any dwellings coming forward on the appeal site is a commercial matter that is not instrumental in a planning decision of this nature. These matters do not therefore weigh against the proposed development.
38. I note references to sightings of deer on the appeal site. However, whilst the proposed development would change the nature of the site from its current agricultural use it relates to only a relatively small part of a much wider pattern of arable land. As a consequence, I consider that deer populations would have a plentiful supply of alternative habitat. Similarly, the proposed development would only result in a very small reduction in the overall amount of arable land in the area. The retention and strengthening of landscaping, alongside other biodiversity measures to be secured by condition on this permission, and by careful design at the reserved matters stage would ensure that any impacts to bats, owls, birds of prey and game birds are appropriately mitigated. Consequently, these considerations do not weigh against the proposed development.
39. Some respondents claim that ex-offenders reside in the wider area, whose activities could pose a risk to the future occupants of the site. I also note comments that emergency services vehicles encounter difficulties in accessing

Ulceby, and that the proposed development could lead to a higher number of incidents which would require their attendance. However, generalised concerns of this nature do not carry any weight against the proposed development, and in arriving at this view I note that there were no objections to the proposal from either the local constabulary or the Fire and Rescue Service. Although I am mindful of the view that the indicative layout for the scheme could lead to incidences of anti-social behaviour, the precise layout of development is a matter reserved for future determination to which such considerations will be more relevant.

Planning Balance

40. The Framework establishes¹³ that where the policies which are most important for determining an application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole – the so-called ‘tilted balance’. The Framework makes it clear that instances where the policies most important for determining an application are out-of-date include applications for housing where a local planning authority cannot demonstrate a 5 year supply of deliverable sites.
41. Whilst I acknowledge that the housing supply position in the District is dynamic, with another update due shortly, it is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing sites. The latest Council assessment¹⁴ finds that there is currently only a 4 year supply of deliverable housing sites - a shortfall of some 450 dwellings.
42. Although I am mindful of the outline nature of the scheme, the proposed development could nevertheless make a considerable contribution toward the District’s housing supply. Moreover, as set out above, it would deliver economic, social and environmental benefits that carry considerable weight in the proposed development’s favour.
43. On the other hand, the proposed development would conflict with the above-cited policies of the development plan¹⁵, insofar as they seek to restrict residential development outside of settlement boundaries; however, I have found no conflict with those policies insofar as they seek to protect the character and appearance of the countryside. These policies, taken together with Policy T2 of the Local Plan insofar as it is relevant to highway safety, and with which I have found no conflict, are the most important for determining the application. I note the Council’s view that Policies CS2, CS3, CS8 and RD2 are restrictive of all forms of development, not just residential proposals. Nevertheless, as the restriction set out in those policies acts as a constraint on housing supply and there is a confirmed housing undersupply position in this case, they are clearly out of date for the purposes of the Framework. The ‘tilted balance’ is therefore engaged; and the weight I attach to the policy conflicts in this case does not significantly and demonstrably outweigh the proposed development’s considerable benefits. In such circumstances, the Framework indicates that development should be permitted.

¹³ At paragraph 11 and footnote 7

¹⁴ Assessment of Five Year Housing Land Supply – 1 April 2019 to 31 March 2024 updated Jan 2020

¹⁵ Namely Policies CS2, CS3 and CS8 of the Core Strategy and Policy RD2 of the Local Plan

44. Accordingly, in this instance, these considerations justify a decision other than in accordance with the development plan, with which, in terms of the restrictions on development outside of settlement boundaries set out in Policies CS2, CS3 and CS8 of the Core Strategy, and Policy RD2 of the Local Plan the appeal scheme would conflict. Consequently, these considerations lead me to the conclusion that the appeal should be allowed. As I have arrived at this view on the basis of the appeal scheme's individual merits, I consider that my decision would not set a general precedent for other proposals, which would also have to be assessed on their own merits.
45. I am cognisant of the Public Sector Equality Duty imposed by s149 of the Equality Act 2010, which amongst other things, requires me to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. However, for the reasons given above, and subject to careful design at the reserved matters stage, I have found no harm to the residential amenity of adjacent occupants in terms of outlook, the availability of daylight and sunlight, or noise. Consequently, I consider that my decision would not have a detrimental impact on persons who share a relevant protected characteristic and people who do not share it in terms of older persons who may occupy dwellings adjacent to the appeal site. On this basis too, I conclude that the proposed development would not interfere with the rights related to the protection of property enshrined by the European Convention on Human Rights and incorporated into UK law by the Human Rights Act 1998.

Conditions

46. According to the Framework planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions on this basis. Where I have imposed conditions, I have made amendments to their wording in some instances in the interests of clarity.
47. I have attached the standard conditions relating to the determination of reserved matters and implementation befitting the outline nature of the appeal scheme, and which specify the approved plans. As access is a relevant consideration at this stage, I have attached conditions relating to the approval and implementation of the proposed junction, its footways and the highways through the proposed development. Of necessity, to ensure that the proposed development makes appropriate arrangements in these regards, some of these conditions require pre-commencement compliance, and their imposition is therefore clearly justified. I have made amendments to the wording of some of the conditions in the interests of precision and enforceability, as discussed at the hearing, and amalgamated some of them to keep the number of conditions to a minimum.
48. A condition is imposed to secure the provision of and compliance with a construction traffic management plan in the interests of highway safety. As this condition relates to activity throughout the construction phase pre-commencement compliance with it is clearly justified.
49. In order to ensure that below ground services can be adequately accessed and maintained, conditions are attached which would require the location of these to be identified alongside other details, and to restrict developments otherwise

permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) where service strips are located. The conditions also require the Council's approval in terms of any planting which may be present within those identified service strips. Such restrictions are clearly justified in this case to ensure that, where relevant, services could be accessed and maintained in an expedient fashion.

50. Conditions are attached requiring the production and monitoring of an up-to-date travel plan so that opportunities to promote walking, cycling and public transport use are pursued. I have made amendments to the suggested wording in the interests of clarity, precision and enforceability to ensure that the travel plan is submitted in a timely manner.
51. In order that the proposed development would make appropriate arrangements for drainage and not lead to increased flood risk elsewhere it is clearly justified to impose a pre-commencement condition requiring the submission of details of surface water drainage to be submitted to, and approved by, the Council. A condition is also imposed that would ensure that the approved scheme is implemented in a timely fashion.
52. The Phase 1(Desk Study Report)¹⁶ supplied by the appellant did not identify any "contaminants of concern" on the appeal site; nor did it recommend intrusive investigation for contamination. Accordingly, the imposition of a risk-based condition requiring cessation of construction activity should any unexpected contaminated material be found until a method statement detailing how this should be dealt with is submitted to and approved by the Council, is a proportionate and reasonable measure. Imposition of this condition is clearly necessary in the interests of the health and safety of site operatives, the occupants of adjacent dwellings, and the future occupiers of the proposed development; and to avoid the risk of contamination of property, ecological systems, and controlled waters.
53. In order that the proposed development would be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations, a condition is attached which would require the installation of the cabling to facilitate this. I have modified this in the interests of reasonableness to ensure that the proposed development would make appropriate provision for the range of vehicles available and in accordance with the discussions at the hearing.
54. To safeguard the living conditions of the occupants of adjacent properties during the construction phase of the development, it is clearly justified to impose a condition requiring the submission of a construction environmental management plan (CEMP) to the Council for its approval prior to the commencement of the development. For similar reasons, a condition relating to construction working hours is imposed.
55. In order that any impacts to biodiversity are minimised, and that net gains are provided in accordance with the Framework¹⁷, I have attached conditions which firstly, require the development to be carried out in line with the appellant's submitted Ecology and Protected Species Survey¹⁸; secondly, require the

¹⁶ Produced by Humberside Materials Laboratory Limited, Dated November 2018

¹⁷ At paragraph 170

¹⁸ Produced by Scarborough Nixon Associates Limited, Dated March 2018

submission of a biodiversity management plan to the Council for its approval; and thirdly, require the implementation and retention of any approved measures, alongside a report which demonstrates how the management plan has been complied with. I have made amendments to the suggested wording in the interests of precision and enforceability.

56. Conditions relating to boundary treatments and the facing materials of the proposed development are relevant to future reserved matters applications and it is not therefore necessary to attach them to this permission.
57. At the hearing, it was suggested that conditions related to the orientation of roofs and layout of the dwellings should be imposed to facilitate the incorporation of renewable energy technologies such as solar panels and ground source heat pumps. However, the layout of the scheme is reserved for future determination. It is not therefore necessary to attach such a condition to this outline permission.

Conclusion

58. For the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

Appearances

FOR THE APPELLANT

Caroline Chave
BA(Hons) DipTP MRTPI

Director, Chave Planning

Nathan Edwards
DipLA CMLI

Director, Urban Wilderness

FOR THE LOCAL PLANNING AUTHORITY

Andrew Law MSc

Acting Group Manager Development
Management

INTERESTED PERSONS

Cllr Richard Hannigan MSc

Deputy Leader of North
Lincolnshire Council and
Ward Councillor

Cllr Martin Birtle

Ulceby Road Safety
Group and Parish Councillor
Ward Councillor

Cllr David Wells

DOCUMENTS submitted after the Hearing

1. Policies CS9, CS27 of the Core Strategy; and Policy H10 of the Local Plan
2. *Provision of Open Space in New Housing Developments* Supplementary Planning Guidance
3. *Developer Contributions to Schools* Supplementary Planning Guidance
4. The North Lincolnshire Borough Council (Various Roads) (Restricted/De-restricted Roads and Speed Limits) (Consolidation) Order 2013 (Various Roads, Ulceby and Thornton Curtis) (Amendment No 14) Order 2019

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: 248-P-01 REV A Application and Ownership Boundaries; 3430 Topographical Survey; ADC1817-DR-002 Rev P2 Access Junction Layout and Swept Path Analysis of Refuse Vehicle.
- 5) No development shall take place until the details of all within-highway works required to provide a footway link from the site to the existing footway to the west, including appropriate crossing facilities, have been submitted to and approved in writing by the local planning authority.
- 6) The within highway works comprised in the approved details pursuant to Condition (5) shall be completed prior to the occupation of the 10th dwelling on the site.
- 7) No development shall take place until details of an effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first residential use of its access and parking arrangements.
- 8) No dwelling served by private driveways and parking spaces shall be occupied until its driveway has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. These details shall include:
 - the proposed method of forming access from the highway including the required visibility splays;
 - the method of constructing/paving the driveway;
 - the provision of adequate drainage features;
 - the provision of suitable lighting arrangements;
 - the provision of suitable bin collection facilities;
 - where relevant the provision of street name plates that shall include the words "Private Drive";
 - the provision of measures to prevent the migration of any loose surfacing materials on to the adopted highway.

- 9) No development shall take place until details of
- (i) the location of the vehicular access;
 - (ii) the layout, drainage, construction, services and lighting of the proposed access road and footway, including the junction with the adjacent highway;
 - (ii) the number and location of vehicle parking spaces on the site; and
 - (iii) the location of any service strips
- have been submitted to and approved in writing by the local planning authority.
- 10) The development of the dwellings hereby permitted shall not commence until the access road's junction with the adjacent existing highway has been constructed in accordance with the approved details pursuant to Condition (9).
- 11) No dwelling shall be occupied until that part of the access road and footway which provide access to it shall have been constructed in accordance with the details pursuant to Condition (9). The access road as constructed shall be retained thereafter.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification), no development shall take place within any service strip identified in the details pursuant to Condition (9). Any planting or landscaping within identified service strips shall incorporate species the written details and timing of planting of which shall be agreed in writing with the local planning authority prior to planting. Any planting or landscaping in identified service strips shall be planted in accordance with the approved written details.
- 13) The final travel plan shall be submitted to and approved in writing by the local planning authority prior to first occupation of the development hereby approved. All conditions and requirements of the approved travel plan, once approved, shall be implemented prior to the first occupation of the dwellings hereby approved and retained thereafter.
- 14) The approved travel plan pursuant to Condition (13) shall be subject to monitoring on an annual basis for a period of three years from the date of its approval. The monitoring report on the impact of the travel plan shall be submitted to the local planning authority by the first of January each year following the approval of the travel plan. All amendments to the approved travel plan identified as a result of the monitoring process shall be implemented and retained.
- 15) No development shall take place until a Construction Phase Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide details of:
- i) All traffic movements associated with the construction phase, including delivery vehicles, staff/construction vehicles and any abnormal load movements;

- ii) The siting of contractor parking and welfare facilities;
- iii) The storage of materials; and
- iv) Traffic management requirements on the adjacent highway;

The approved Construction Phase Management Plan shall be implemented, reviewed and updated as necessary throughout the construction period for the development.

- 16) No development shall take place until a detailed surface water drainage scheme for the site shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and take into account the submitted Flood Risk and Drainage Assessment, produced by Ramm Sanderson dated November 2018 (Reference: RSE_1756_01_V3).

The drainage scheme shall demonstrate that surface water run-off generated up to and including the 1 in 100 year critical storm (including an allowance for climate change) will not exceed the run-off from the existing site. It shall also include details of how the resulting completed scheme is to be maintained and managed for the lifetime of the development so that flood risk, both on and off the site, is not increased. SuDS must be considered.

Reference should be made to North Lincolnshire Council's SuDS and Flood Risk Guidance Document.

Should infiltration not be feasible at the site, alternative sustainable drainage should be used, focusing on above-ground solutions. Consideration must be given to the management of overland flows across the development in exceedance conditions.

- 17) The surface water drainage scheme shall be implemented in accordance with the approved submitted details required by Condition (16) above, completed prior to the occupation of any dwelling on site, and thereafter retained and maintained in accordance with the approved scheme for the life of the development unless otherwise agreed in writing with the local planning authority.
- 18) Any contamination that is found during the course of construction of the approved development shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 19) Prior to first occupation of the dwellings hereby approved a scheme for the provision of the necessary cabling to support electrical vehicle charging shall be submitted to and approved in writing by the local planning authority.

The scheme shall be designed to take account of good practice guidance as set out in the Institute of Air Quality Management's *Land-Use Planning and Development Control: Planning for air quality*

and contemporary electrical standards including:

- Electrical Requirements of BS7671:2018
- IET Code of Practice on Electric Vehicle Charging Equipment installation 2018

or any subsequent updates to those documents issued prior to the production and implementation of the scheme.

No dwelling shall be occupied until that part of the cabling that provides electric charging facilities to it shall have been installed in accordance with the approved scheme.

- 20) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide the details of:

Noise and vibration

- (a) The works, and the method by which they are to be carried out;
- (b) The noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including any noise limits; and
- (c) A scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures;

Light

- (a) Specified locations for contractors' compounds and materials storage areas;
- (b) Areas where lighting will be required for health and safety purposes;
- (c) The location of potential temporary floodlights;
- (d) Sensitive receptors likely to be impacted upon by light nuisance;
- (e) Proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors;

Dust

- (a) Site dust monitoring, recording and complaint investigation procedures;
- (b) Receptors and the related risk of dust impact at all phases of the development, including when buildings and properties start to be occupied;
- (c) Provision of water to the site;
- (d) Dust mitigation techniques at all stages of development;
- (e) Prevention of dust trackout;

- (f) Communication with residents and other receptors;
- (g) A commitment to cease the relevant operation if dust emissions are identified either by regular site monitoring or by the local authority;
- (h) A 'no burning of waste' policy;

The approved CEMP shall be adhered to throughout the construction period for the development.

- 21) Construction and site clearance works shall take place only between 0700hrs and 1900hrs Mondays to Fridays and 0700hrs and 1300hrs on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

HGV movements associated with the site clearance and construction phases of the development hereby approved shall not be permitted outside these hours during the construction phase without prior written approval from the local planning authority.

Installation of equipment on site associated with the site clearance and construction phases of the development hereby approved shall not be permitted outside these hours without prior written approval from the local planning authority.

- 22) Development is to be carried out in accordance with the recommendations set out in the submitted Ecology and Protected Species Survey (Produced by Scarborough Nixon Associates Limited) (Dated March 2018).
- 23) Prior to commencement of the construction of the dwellings hereby approved, a biodiversity management plan shall be submitted to the local planning authority for its approval in writing. The plan shall include:
- (a) details of bat boxes and bat bricks to be installed on 15% of houses;
 - (b) details of swift boxes and sparrow terraces to be installed on 15% of houses combined;
 - (c) details of nesting sites to be installed to support a variety of other species, including house martin and garden birds;
 - (d) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
 - (e) provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland;
 - (f) prescriptions for the retention, planting and aftercare of native trees, shrubs, hedgerows and wildflowers of high biodiversity value;
 - (g) details of wetland habitat to be created and managed as part of sustainable drainage;
 - (h) details for the sensitive management of retained ditches;
 - (i) appropriate phasing mechanisms to ensure that significant areas of habitat are created and are properly established before each phase of construction;

- (j) procedures for the monitoring and ongoing management of habitats on the site;
 - (k) measures to avoid light, noise and water pollution, fly-tipping and other factors that would harm habitats and species;
 - (l) prescriptions for the provision of a wildlife gardening leaflet for each new resident;
 - (m) proposed timings for the above works in relation to the completion of the dwellings.
- 24) The biodiversity management plan shall be carried out in accordance with the approved details pursuant to Condition (23), and the approved features shall be retained thereafter. Prior to occupation of the 50th dwelling hereby approved, a report shall have been submitted to the local planning authority for its approval in writing, providing evidence of compliance with the biodiversity management plan.

*****End of Conditions*****