



Appeal Decision

Site visit made on 22 July 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2021

Appeal Ref: APP/Y2003/W/20/3248436

**Land East of Scotter Road/South of Scotter Road, Scotter Road,
Messingham, North 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 Philip Jackson (on behalf of Jackson Philips Asset Solutions) against the decision of North Lincolnshire Council.
 - The application Ref PA/2019/339, dated 19 February 2019, was refused by notice dated 15 January 2020.
 - The development proposed is outline planning consent for 0.75 ha (up to 24 dwellings) residential development with all matters reserved.
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Procedural Matters

1. The appeal has been submitted in outline with all matters reserved for future consideration, with the only plan submitted a site location plan identifying the appeal site.
2. In light of the recent Government publication on 6 August 2020 entitled "*Changes to the current planning system*", an opportunity was provided to the Council and the appellant to address the impact of the consultation document on the main party's respective cases. Both parties have responded and I have addressed the responses received in my reasoning to the appeal decision.

Decision

3. The appeal is dismissed.

Application for costs

4. An application for costs was made by Mr Philip Jackson (on behalf of Jackson Philips Asset Solutions) against North Lincolnshire Council. This application is the subject of a separate Decision.

Main Issues

5. In determining the planning application, the Council has contended within the reasons for refusal that the proposed development would be beyond the defined settlement boundary without a justified reason for a rural location, and would introduce a significant level of built form into the rural landscape, to the detriment of its open character and appearance.
6. In addition to the reasons for refusal, the Council identified within the submitted Committee Report that a series of Section 106 obligations would be required in order to address the impacts of the development on local

infrastructure including towards education and open space, as well as to address requirements for the provision of affordable housing.

7. As a consequence, the main issues are;

- whether the proposed development would be in an appropriate location for new housing and would accord with the spatial policies of the development plan, and the effect on the character and appearance of the area; and,
- whether the proposed development would satisfactorily address the delivery of affordable housing, and the infrastructure requirements of future occupiers of the proposed dwellings.

Reasons

8. The appeal site comprises a gently sloping open area of land to the south of Messingham and is set to the east of Scotter Road. The site wraps around the southern and eastern boundaries of the residential property identified as Holly Bank and is contiguous with the southern boundary of the residential curtilages of Nos. 54-64 Eastfield Road which is demarcated by a hedgerow and fencing. The Scotter Road boundary is fenced with only very limited vegetation, and the appeal site is utilised as rough grassland for the grazing of horses and sub-divided into smaller parcels. Access to the land is taken from Scotter Road.

Spatial policy considerations

9. The appeal site occupies a location just beyond the development limits of Messingham and for the purposes of planning policy and the development plan, the site is regarded as being set within the open countryside. The development plan is comprised of the North Lincolnshire Core Strategy 2011, (the Core Strategy), and the saved Policies of the North Lincolnshire Local Plan 2003 (the Local Plan).
10. In refusing outline planning permission, the Council has referred to Policies CS2, CS3 and CS8 of the Core Strategy and saved Policy RD2 of the Local Plan within the Notice of Decision. These policies seek to deliver the Council's spatial strategy with development to be focussed within defined development limits and exert control over development outside the defined limits and in the open countryside to that which requires a countryside location or contributes to the sustainable development of the tourist industry. The development plan indicates that outside development limits housing development will be strictly limited subject to certain exceptions, including uses such as for the purposes of agriculture, forestry, or to meet a special need associated with the countryside.
11. The appeal proposal does not purport to address any of the exceptions which would allow residential development to be permitted outside of development limits, and as a consequence the proposed development would fail to accord with the aforementioned spatial policies of the development plan.

Character and appearance

12. The appeal site does not possess any specific landscape designation, and I note it has not been suggested by the Council that it has any particular landscape attributes to warrant protection over and above its intrinsic landscape value. However, it is the impact on this value and the site's occupation of a prominent

location on the southern approach to Messingham along Scotter Road, which is critical.

13. The rear of the line of dwellings on Eastfield Road provides an existing visible suburban backdrop to the site, but the openness and absence of development from the appeal site in the foreground is a key visual factor in defining the character and value of the landscape on the southern edge of the settlement. The site is not screened from the south by any existing development, and whilst I appreciate that a scheme of landscaping might conceivably mitigate in part the visual impact of the development itself in time, this does not address the adverse impact on the existing landscape value of the land, or the positive contribution made by the existing site to the spaciousness and character of the countryside through the absence of development.
14. I have noted the references which have been made to the development having a 'significant urbanising effect', and the appellant's contention that this comment would suggest that the Council would seek to resist all such proposals beyond development limits on greenfield land. However, I disagree with this characterisation of the Council's comments which I regard as merely seeking to draw upon the distinction and differences between the existing absence of development and that which would be anticipated to result in the event the site was developed for up to 24 units. Irrespective of whether or not all matters are reserved, it is entirely reasonable that the Council should consider the potential impact of future development on the character and appearance of the area, in the same manner that the appellant has sought to promote the potential for a landscaping scheme as mitigation.
15. For the above reasons, the proposed development would result in a prominent intrusion into the open countryside beyond the edge of Messingham as experienced from Scotter Road, and from which despite the possibility of landscape mitigation, there would still be a significant adverse visual impact.
16. I am therefore satisfied that the proposed development would have an adverse impact on the character and appearance of the countryside in this location. This would conflict with saved Policies RD2, H5 and DS1 of the Local Plan and Policies CS5 and CS8 of the Core Strategy. These policies seek to ensure that development would be of a high standard of design, would not be detrimental to the character or appearance of the open countryside, and conserves and retains existing features which make an important contribution to the character of the site and surrounding area. The development would also conflict with paragraph 170 of the Framework, which seeks a contribution to and enhancement of the natural and local environment, and a recognition of the intrinsic character and beauty of the countryside.

Infrastructure requirements

17. The Council initially indicated within the Committee Report that a Section 106 Legal Agreement would be required in order to secure financial contributions towards education provision, existing open space, and Riddings Pool, as well as the provision of two affordable housing units.
18. In addressing the education contributions, the Council has subsequently clarified that contributions towards Primary School education would no longer be sought given the available capacity within the area. However, a Secondary

School contribution amounting to £4,650 per eligible dwelling is indicated as still being required.

19. The Council has provided updated pupil figures for existing secondary places within catchment schools, as well as projections based on January 2020 Census data indicating that large cohorts of primary pupils moving to the secondary sector would result in no spare places in Scunthorpe schools in future for pupils from the proposed development. Even allowing for the indicated offer by one school to take 15 pupils over the Published Admission Number (PAN) for the future cohort, I am satisfied that the figures presents a clear and demonstrable justification of need for contributions from residential development towards secondary places.
20. Despite indicating a cautious willingness to make an appropriate secondary school contribution, the appellant disputes the validity of the requirement for a contribution citing the age of both saved Policy C1 of the Local Plan and the Council's supplementary planning guidance, *SPG8 – Developer Contributions to Schools (2006)*, with the unadopted status of the latter also highlighted. Further concerns are raised regarding the definition of the Messingham catchment area.
21. I recognise that the Local Plan and SPG8 are relatively aged documents, and in certain respects SPG8 in particular is no longer consistent in parts with current local and national policy, such as in the definition of major sites or housing development. However, in this regard the Framework clarifies in the *Annex 2: Glossary* major housing development to be where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more, both conditions being met for this proposal.
22. Despite this, I am not persuaded that the age of the saved Local Plan policy or SPG8 discounts their validity, and in particular the objectives that they are seeking to achieve. I note that Policy CS27 of the Core Strategy provides a more recent re-assertion of the need for planning obligations to secure the necessary infrastructure proportionate to the needs associated with a proposed development's scale and nature, and the Framework also gives a clear indication that there is a continuing expectation that development contributes towards infrastructure including education. For this reason, I do not regard the policies or SPG to be inconsistent with these objectives.
23. I have had careful regard to the issue of catchment areas and note from the Council's submissions that the catchment areas utilised are taken from the definitions on the North Lincolnshire Council website. Whilst the appellant may contend that it is unreasonable to require contributions where cross catchment placements are undertaken, I consider the Council to have provided an entirely reasonable summary of the process of the allocation of school places and that the nomination of attendance at schools within or outside of the catchment area may occur and fluctuate on a yearly basis. I am not persuaded that the requirement for a contribution in this circumstance would be unfair or unreasonable.
24. I also consider that the appellant has sought to conflate the issue of the geographical locations for the threshold requirement for education contributions with the definitions of the catchment areas. However, it is quite clear from SPG8 that the larger urban areas would be likely to have a greater ability to absorb demand from development in contrast with Messingham, and I

regard the assessment of the thresholds and catchment areas to be two clear and discrete exercises with the scale and location of the site within Messingham clearly triggering the need for the obligation in this instance. For these reasons, I am satisfied that a justifiable need for secondary school education contributions has been demonstrated.

25. Having regard to the remaining financial contributions, I have noted the appellant's contention that the Council no longer requires a contribution towards leisure facilities. However, I am mindful that in any event the Council has not provided any detailed justification as to how the indicated figures have been reached for either open space or the contribution towards Riddings Pool, and I have therefore not attached any significant weight to these requests for financial contributions.
26. Turning to affordable housing, paragraph 64 of the Framework highlights that where major development involving the provision of housing is proposed, planning decisions should expect at least 10% of the homes to be available for affordable home ownership, subject to certain caveats and exceptions. The Council's Spatial Policy Team has also highlighted Policy CS9 of the Core Strategy and the Interim Affordable Housing Statement, where there would be a requirement to provide 10% affordable housing. Given the aforementioned reference to the Annex 2: Glossary of the Framework and the definition of major development, there would be a requirement for 10% of this proposal to be provided as affordable housing, which has been agreed as equating to 2 units. I am satisfied that the requirement for affordable housing would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related in scale and kind to the development.
27. In referring to the Government publication, "*Changes to the current planning system*", the appellant has drawn my attention in the White Paper to the potential for increasing the threshold for the requirement of affordable housing from development to either 40 or 50 new homes. However, whilst this provides an indication of the potential direction of travel for Government policy in the future, at this stage the document has only been published for consultation purposes. For the purposes of decision-making, the document is not a statement of Government Policy and I do not therefore attach any significant weight to it. The determination of the proposed development must still be undertaken in accordance with the development plan unless material considerations indicate otherwise, as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004.
28. Despite the above, the appellant has indicated a willingness to meet the requirement for affordable housing, albeit with an indication that this must be subject to viability testing to be submitted at later stages of the planning process. As a consequence, neither a draft nor completed legal agreement has been provided with the appeal.
29. I appreciate the appellant's concerns regarding viability, but the securing of affordable housing and assessment of viability must be undertaken at the time planning permission is granted. In the circumstances of the appeal, there is no mechanism to delay consideration of these fundamental issues of principle to a point further to a grant of outline planning permission, and no detailed evidence has been submitted in any event to substantiate the appellant's

concerns regarding the lack of viability of the proposed development subject to the required contributions. I do not therefore attach any significant weight to this latter concern.

30. In the absence of a planning obligation, national Planning Practice Guidance is clear that only in exceptional circumstances, such as in the case of particularly complex development schemes) should a negatively worded condition be used requiring a planning obligation. On the basis of the appeal submissions, the proposed development would not fit into this categorisation, and in any event neither party has suggested or provided the wording for such a condition or set out exceptional circumstances to justify this approach.
31. On the evidence before me, the need for the contributions sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010. The proposal would fail to secure appropriate financial contributions towards the provision of affordable housing and education and so would be in conflict with Core Strategy Policy.

Planning Balance

32. The Council maintained that at the time of determining to refuse outline planning permission, it was able to demonstrate a 5-year supply of deliverable housing land. This is disputed by the appellant with reference made to a Council statement dated 24 January 2020 in connection with another planning appeal, where it was stated that the supply amounted to only 4 years. I however note that it is now an agreed position that the Council is unable to demonstrate a 5-year supply of deliverable housing land, and in the absence of any detailed evidence from either party on this matter, I see no reason to depart from a current supply figure of 4 years, which represents a considerable shortfall. I have not received any further evidence or update during the appeal to present a contrary position or figure.
33. Having regard to the development plan, the housing policies within the Core Strategy and Local Plan as already detailed, and which are most important for determining the appeal are therefore out-of-date. Paragraph 11d(ii) of the Framework requires that where the policies which are most important for determining the application are out-of-date (including situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
34. In this instance, there is no evidence that the appeal site is subject to designation as a requisite protected area, and therefore "the tilted balance" set out in paragraph 11d)ii of the Framework would be applicable.
35. The provision of additional dwellings to the local housing market would be an undoubted benefit of the proposed development. Whilst the precise quantum of development is unknown at this juncture, I attach moderate weight in support of the proposal based upon the shortfall of supply and the maxima quantum of development, as well as acknowledging the objective of boosting significantly the supply of housing in the Framework.
36. I have also had regard to the appellant's reference to the recent Government consultation document on changes to the planning system and the support for

SME Builders and the desire to increase the rate of new homes development. However, whilst I acknowledge that the possibility of reducing the level of contributions for SME sites for a time limited period, including re-assessing the threshold for the requirement of affordable housing, is under consideration, the consultative status of the document means that it would not attract any more than extremely limited weight as a material consideration in support of the proposed development at this stage.

37. The local economy would have the potential to experience some limited benefit during the construction period and from any expenditure from occupiers in the future. The appeal site occupies an accessible location close to the services and facilities of Messingham, as well as public transport services to Scunthorpe, and this would attract some further moderate weight in support of the proposed development.
38. Whilst I have had regard to the above benefits, the spatial harm which I have found regarding the location of the proposed development combined with the adverse effect on the character and appearance of the countryside must weigh against the benefits in the planning balance. However, although allowing for the more limited weight that must be attached to the out-of-date spatial policies, the failure to make provision for and secure the delivery of affordable housing and a contribution towards education infrastructure as a constituent part of the proposed development represents, even on its own, a significant and decisive adverse impact of the proposal.
39. I have also noted the objections of interested parties on a variety of other matters including highway safety and traffic generation, impact on living conditions, flooding and drainage, and wildlife and habitats, as well as the potential setting of a precedent for further development. However, as a consequence of my conclusions on the main issues and the planning balance, these are not matters which have proved to be central to my decision-making in this instance, and there has not therefore been the need to address them in any detail.
40. I have not found the development to be in accordance with the policies of the development plan or the provisions of the Framework taken as a whole. I am satisfied that despite the benefits summarised above, that these would be significantly and demonstrably outweighed by the adverse impacts. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

41. For these reasons, the appeal is dismissed.

Martin Seaton

INSPECTOR