
Appeal Decision

Site visit made on 23 February 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th June 2021

Appeal Ref: APP/B2002/W/20/3263475

Land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR

- 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 YPG Developments Ltd against the decision of North East Lincolnshire Council.
 - The application Ref DM/0260/20/FUL, dated 26 March 2020, was refused by notice dated 30 October 2020.
 - The development proposed is described on the application form as 're-submission of application DM/0971/17/FUL, due to lack of determination of the application, to create 68 dwellings and 18 apartments'.
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Decision

1. The appeal is allowed and planning permission is granted for Resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works at land at corner of Hewitt's Avenue and Humberston Road, New Waltham DN35 9QR in accordance with the terms of the application Ref DM/0260/20/FUL, dated 26 March 2020, and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by YPG Developments Ltd against North East Lincolnshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council have described the development as 'Resubmission of DM/0971/17/FUL for the erection of 68 houses and 18 apartments with new access and associated landscaping and works'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.
4. The proposal has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations and is considered not to be EIA development. An Environmental Statement is therefore not required.
5. Both parties agree that the proposal is like a previous application ref. DM/0971/17/FUL which was granted planning permission, with the only difference between them being that the appeal scheme would not provide any affordable housing. I have therefore determined the appeal on this basis.

Main Issue

6. The main issue is whether the proposed development is economically viable having regard to the provision of affordable housing in accordance with the relevant policies of the adopted development plan for the area.

Reasons

7. The appeal site is an undeveloped piece of overgrown grassland located next to a busy roundabout serving the intersection between Hewitt's Avenue, Taylor's Avenue and Humberston Road (the A1031). Beyond the appeal site, to the rear and side, is a much larger area of open agricultural land. Towards the middle of the front of the site is a separate fenced-off area with a gate facing the footpath which contains an electrical substation.
8. According to the evidence before me, the appeal site is set within a much larger area of land that is allocated for housing under Policy 13 of the adopted North East Lincolnshire Local Plan (NELLP). The evidence also indicates that it is in a high value area as defined by Policy 18 of the NELLP which also states that in such areas the proportion of affordable housing units required to be provided is 20% on developments of more than 10 units subject to viability considerations including the submission of a site specific Financial Viability Statement in accordance with Policy 6 of the NELLP. The proposal would provide a total of 86 units comprising a mixture of four and five bedroomed dwellings and one-bedroom flats. Consequently, the appeal scheme is required to provide approximately 17 affordable housing units subject to viability considerations to comply with Policy 18.
9. The appellant has submitted several site-specific Financial Viability Appraisals (FVAs). The first FVA dated March 2020 (the Forman Report) included assumptions such as using the standard RICS Building Costs Information Service (BCIS) build cost data, no abnormal costs and that any external area costs would be dealt with via a percentage increase on the BCIS baseline levels. These additional external area costs were assumed to be 15% for dwellings and 10% for apartments producing an average construction cost of approximately £1,311 per sqm. It estimates the total build cost to be approximately £12,245,928. It also includes an assumed benchmark value for the developer return being approximately 20% for the market housing and approximately 6% for the affordable housing giving a blended profit rate of approximately 18.9%.
10. The Forman report found: that if the proposal was to provide 20% affordable housing, the increased percentage return on gross development value would be approximately 11.67%; that if the proposal was to provide 10% affordable housing, the return would be approximately 13.42%; and that if the proposal provided no affordable housing, the return would be approximately 16.44%. Consequently, its overall conclusion was that these returns were all lower than the benchmark meaning that it was not viable to provide any affordable housing.
11. In response to this the Council commissioned an independent review of the Forman Report by Bidwells, dated June 2020, (Bidwells no.1 report) which concluded that the provision of 20% affordable housing - equating to the delivery of approximately 13 no. units on site combined with a commuted sum payment of approximately £166,000 in lieu of 4 no. units - would generate a developer return of approximately 22.46% thereby exceeding the benchmark value meaning that the provision of 20% affordable housing would be viable.

12. The main reason for this was a difference in the assumptions in relation to the build costs and additional external area costs which were lower and based on latest BCIS data giving a total build cost of approximately £11,153,080.
13. Subsequently, the appellant produced a revised FVA dated July 2020 produced by S106 Management (the S106M report) which concluded that the total build costs would be approximately £12,771,407 which includes additional external, infrastructure and abnormal costs of approximately £3,296,358. It also concluded that as a result, the developer return would be approximately 13% which was again lower than the 18.9% benchmark meaning that the provision of affordable housing would not be viable.
14. In reply, the Council again commissioned a review of the S106M report by Bidwells and they produced a second report dated September 2020 (Bidwells no. 2 report). This review carried out an appraisal scenario comparison of a 100% market housing scheme without any affordable housing being provided and concluded that the developer return would be approximately 25.9% with the return dropping to approximately 22.46% if 20% affordable housing (comprising 13 units on site with a commuted sum payment of £166,000 in lieu of 4 units) was provided.
15. The Bidwells no. 2 report explains the reasons for this are that the S106M report included: a benchmark land value higher than the purchase price of the land; lower projected sales revenues based on a future dip in the housing market; high financial costs; and the inclusion of higher abnormal development costs equating to approximately £3,296,358. According to the Bidwells no. 2 report no substantive evidence was included in the S106M Report to justify the scale or extent of these increased abnormal development costs. As a result, the Bidwells no. 2 report estimated the cost of external works and infrastructure to be approximately £967,356.
16. The appellant then submitted an addendum to the S106M Report dated October 2020 (S106M addendum report) which made an attempt to find common ground with the Council in relation to the FVA assumptions such as base build costs. It also resulted in a revised abnormal development cost assumption figure of approximately £3,316,056 which included financial breakdown of external costs provided by Modero Ltd. This concluded that the effective return on the development if affordable housing is also provided would be approximately 8.67%.
17. In both the S106M Report and S106M addendum report a sum of over £3,000,000 was included under the heading 'site abnormalities' as infrastructure costs with the largest proportion of this cost – approximately £2,269,087 – being for roads, paths, pavings and surfacings. The appellant's final comments also include a further and more detailed breakdown of these costs with a revised figure of approximately £3,316,386 including costs related to the provision of a pumping station with a total build cost of approximately £13,816,880. The appellant's further affordable housing statement also includes a higher estimate of approximately 13.91% for the likely developer return.
18. Having regard to the Planning Practice Guidance¹ (the Guidance) it is my understanding that abnormal costs normally include those associated with treatment for contaminated sites or listed buildings, or costs associated with brownfield, phased or complex sites. It is also my understanding that site-specific infrastructure costs, could include access roads, sustainable drainage systems, green infrastructure, connection to utilities and decentralised energy.

¹ Paragraph: 012 Reference ID: 10-012-20180724

19. Consequently, and having regard to the RICS guidance note², I consider the costs calculated by Modero to be external site-specific infrastructure costs rather than abnormal costs, and that as such should be taken into consideration as part of any site-specific FVA on this particular scheme.
20. The appellant has provided detailed costings for the highway, footpath and junction improvements in order to provide access to the proposed development which amount to just above £2 million. These improvements have been subject to negotiations with the Highway Authority and the Local Planning Authority have had sight of these details and the associated costings as part of an application to discharge conditions (Ref DM/0932/19/CND) on the previously granted planning permission on the appeal site (Ref DM/0971/17/FUL). These details also appear to have been highlighted as part of the original application subject to this appeal as part of the submitted Transport Statement.
21. In their officer report the Council highlight that even so as these details had not been accepted and the related conditions had not been discharged that they would determine the application on the basis of the original layout plan and that this approach had been agreed with the Highway Authority. However, as a result, even though these conditions had not yet been discharged, it is clear the Council had knowledge of these likely site-specific infrastructure costs when they made their original decision.
22. Consequently, it would be reasonable to conclude that they should have had regard to these potential costs when considering the original application particularly when the updated viability assessments which included these same costs were submitted by the appellant. For these reasons and given the detailed costings which show the extent of these identified site-specific infrastructure costs contained within them I give substantial weight to the S106M report and the S106M addendum report in this case. For the same reason, I also afford lesser weight to the Fordham and both Bidwells reports.
23. I acknowledge that the Fordham Report did not include site-specific abnormal costs or site-specific infrastructure costs assumptions within its methodology instead using a broader approach using the standard RICS Building Costs Information Service (BCIS) build cost data with any external area costs being dealt with via a percentage increase on the BCIS baseline levels, as did both Bidwells reports. However, the site-specific infrastructure costs identified by the s106M reports are something which should have reasonably been considered.
24. I note the Council's point that the appeal site is a greenfield one and that as such it would not be expected to have significant abnormal costs associated with a large residential proposal given the assumptions in the Local Plan Viability Assessment update report dated December 2016 (LPVA). However, the generalised assumptions in the local plan viability assessment are area-wide, strategic, and non-site specific.
25. Furthermore, the costs outlined in the Modero report are not abnormal costs but site-specific infrastructure costs which can be taken into account under Policy 18 of the NELLP. Given that these costs also relate to significant highway improvement works to a large and busy junction that is near to a relatively well built-up area, they cannot reasonably be considered to be normal costs associated with delivering a traditional housing development on a greenfield site or that they would constitute a standard level of infrastructure in this case.

² Assessing viability in planning under the National Planning Policy Framework 2019 for England RICS 1st Edition March 2021.

26. Moreover, according to the appellant's evidence, the 20% allowance for external costs as per the LPVA, would likely give an external works cost of approximately £2,046,162 which would be close to the costs calculated by Modero.
27. I also note the Council's point that the proposal could potentially undermine the provision of affordable housing on the other sites within this wider strategic land allocation and therefore, also potentially undermine the adopted development plan's strategic objectives. However, the appeal scheme has been assessed on its own merits taking into account the site-specific viability evidence provided by the appellant with the bulk of the identified costs being related to detailed highway improvements in and around the site and the nearby roundabout. In any case, any future residential development proposals on any other part of this strategic housing allocation would be assessed on their own merits taking into account relevant local plan policies and other considerations such as site-specific viability evidence, on a case-by-case basis.
28. The Council have also stated that their advice from Bidwells was that even when the additional costs on a 100% private scheme are included it produces a profit on GDV of approximately 18.7% and that the scheme as submitted would provide a return of approximately 18.9%. However, neither of the Bidwell's reports includes the likely site-specific infrastructure costs outlined by the appellant.
29. Consequently, I am satisfied that the proposed development would not be economically viable if the required amount of affordable housing was provided. I therefore conclude that the proposed development is not economically viable having regard to the provision of affordable housing in accordance with the relevant policies of the adopted development plan for the area. As a result, it would accord with the requirements of policies 6, 14, 15 and 18 of the NELLP.

Other Matters

30. In their statement the Council raised a concern that no s106 legal agreement had been signed in relation to financial contributions for education and open space management and that this would therefore make the proposal unacceptable due to a lack of necessary infrastructure provision and that public open space areas would not be adequately secured.
31. However, as part of their evidence the appellant has submitted a fully signed s106 legal agreement dated 5 February 2021, stating that contributions will be made with respect to education, public open space and highways. As a result, I am satisfied that the proposal would ensure that all necessary infrastructure would be provided.

Conditions

32. I have imposed conditions as set out in the attached schedule in light of the use of planning conditions set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. Consequently, in the interests of precision and clarity I have undertaken some minor editing and rationalisation of the conditions as contained in the Council's statement.
33. Conditions relating to the commencement of the development, ensuring compliance with the approved plans and external materials are necessary in the interest of clarity and the character and appearance of the area. I have also imposed a necessary condition relating to the submission of surface water drainage to mitigate and minimise any potential flood risk.

34. I have imposed necessary conditions requiring the submission of a written scheme of investigation for a programme of archaeological work, details of how water will be re-used and recycled on the site, a scheme to allow for future inclusion of individual electric car charging points and final details of ecological enhancement measures to the local planning authority for approval in the interest of the historic environment, natural environment and air quality.
35. I have imposed necessary and reasonable conditions requiring the submission of a landscaping scheme and details in relation to the planting of trees, retention of trees and hedgerows, felling of trees; and removal of hedgerows and the submission of an implementation schedule in the interest of the character and appearance of the area.
36. In the interest of highway safety, I have imposed a condition requiring the submission of details to the LPA for approval including the layout of carriageways and footways, the materials to be used for their construction, a highway drainage system, street lighting; final details of off-site highway works and a road safety audit.
37. In addition to these, conditions in respect of the submission of a construction management plan and details of the soundproofing of the proposed dwellings is necessary and reasonable to protect the living conditions of neighbouring occupiers.
38. In the interest of the local environment I have also imposed a condition in relation to the submission of a method statement for a scheme to deal with any potential contamination risk either during or after any construction works.

Planning balance and conclusion

39. The accord of the proposal with the development plan and the Framework when read as a whole is not outweighed by any other consideration. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed, and planning permission is granted, subject to conditions.

C Coyne

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: Proposed Site Plan drawing no. 01-M; Proposed Foul and Surface Water Drainage Layout drawing no. 115-002 Rev D; Landscape GA drawing no. 114-LYR-XX-XX-DWG-L-1000 Rev 6; Landscape GA (open space) drawing no. 114-LYR-XX-XX-DWG-L-1001 Rev 1; Landscape GA (open space-flooded) drawing no. 114-LYR-XX-XX-DWG-L-1002 Rev 0; Illustrative Sections drawing no. 114-LYR-XX-XX-DWG-L-5000 Rev 0; Apartment Block drawing no. 28A; House Type (A) drawing no. R04; House Type (B) drawing no. R05; House Type (C) Drawing no. R06; House Type (E) drawing no. R08; House Type (F) drawing no. R09; House Type (G) drawing no. R10; House Type (I) Drawing no. R12; House Type (K) drawing no. R14A; House Type (L) drawing no. R15; House Type (M) drawing no. R16; House Type (N) drawing no. R17; House Type (O) drawing no. R18; House Type (P) drawing no. R19; House Type (Q) drawing no. R20; House Type (R) drawing no. R24; House Type (S) drawing no. R22; House Type (T) drawing no. R23; House Type (V) drawing no. R25; House Type (X) drawing no. R26; Main Street Scenes drawing no. 29C; Pumping Station drawing no. 30.
- 3) Surface water drainage of the site shall be in accordance with Proposed Foul and Surface Water Drainage Layout drawing no. 115-002 Rev D. The scheme shall be implemented in accordance with these approved details prior to the occupation of any dwelling to which the drainage requirements refer.
- 4) No development shall take place until the applicant has:
 - i) Submitted a Written Scheme of Investigation or Specification for Works, for a programme of archaeological work, to the local planning authority.
 - ii) Received written approval of the Written Scheme of Investigation for a programme of archaeological work from the local planning authority.
 - iii) Implemented or secured implementation of the Written Scheme of Investigation for a programme of archaeological work.Use of the development shall not take place until the applicant has:
 - iv) Published or secured the publishing of the findings resulting from the programme of archaeological work within a suitable media.
 - v) Deposited or secured the deposition of the resulting archive from the programme of archaeological work with an appropriate organisation.
- 5) Before development commences final details on the sites ecological enhancement to follow the principles established in Brooks ecological report, shall be submitted to and approved in writing by the local planning authority. Ecological enhancements shall be carried out in accordance with the details approved.
- 6) Development shall not begin until these details have been approved by the local planning authority:
 - i) Detailed plans to a scale of at least 1/500 showing:
 - a) the proposed layout of the carriageways and footways on the development;
 - b) the wearing course materials proposed for the carriageways and footways;
 - c) cross sections;

- d) the highway drainage system;
- e) the proposed locations of street lighting columns, all services and ducts for services, within the carriageways and footways;
- f) Final details on the off-site highway works in relation to the new footway and signalled crossing on Humberston Road and works on Hewitt's Avenue, including access to the site works as detailed in the Transport Assessment and shown on plan 001B by Vectio Consulting. Details shall also include lane priority changes on Hewitt's Avenue.
- g) A Stage 1 and 2 Road Safety Audit (RSA) must be provided. The RSA should take into consideration the proposed access on Hewitt's Avenue and the proposed signalised crossing on Humberston Road. The Road Safety Audit must be undertaken by a fully qualified independent Road Safety Auditor.

All works shall be carried out in accordance with the details approved and the off-site footway and signalled crossing and access works shall be completed and be provided in accordance with the approved details prior to the occupation of any dwelling.

- 7) Prior to the development commencing, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. It shall include:
 - i) Contact details of the person with responsibility for the implementation of the CMP;
 - ii) The expected number, types and size of vehicles during the entire construction period;
 - iii) Delivery hours, including their management;
 - iv) Visitor, construction and contractor parking areas;
 - v) Materials storage area;
 - vi) Wheel cleaning facilities, including their location;
 - vii) Noise, vibration and dust mitigation measures;
 - viii) Construction traffic management plan;
 - ix) Details of expected delivery schedules and how this will be managed to eliminate waiting on the public highway (i.e. call ahead or pre-booking scheduling system), if required;
 - x) Hours of working with no construction work carried out on or before 08:00 or after 18:00 Mondays to Fridays, before 08:00 or after 13:00 on Saturdays and at any time on Sundays or Bank Holidays.

Once approved, the Plan shall be adhered to at all times during construction.

- 8) Before development commences details on all external materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the materials approved.
- 9) No development shall commence until final details of the soft and hard landscaping of the site to follow the principles shown on landscaping plan 114-LYR-XX-XX-DWG-L-1000 Rev 6 shall be submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) the number, species, sizes and planting positions of all trees and shrubs to be planted and hard surface finishes;

- b) a plan including details of all trees to be retained, any to be felled, hedgerows to be retained, any sections of hedgerow or trees to be removed;
 - c) measures for the protection of trees and hedges during construction work including a schedule for implementation.
- 10) The landscaping shall be completed in accordance with the approved details under condition no. 9 within 24 months of development commencing or within such longer period as may be first agreed in writing with the local planning authority by way of a phasing plan. Such tree planting shall be protected in accordance with the approved details during all construction works. All trees, hedges, shrubs and bushes shall be adequately maintained for a period of 5 years or until all construction is complete, whichever is the longer. During that period all losses shall be replaced in the next planting season.
- 11) No development shall take place until an updated Travel Plan to provide additional measures to the Interim Travel Plan by Vectio Consultants has been submitted to and approved in writing by the local planning authority. Such measures shall include financial incentives and an amended travel plan coordinator role. The development shall then be occupied in accordance with the measures approved.
- 12) Before development commences details on the soundproofing of the properties to follow the principles of the submitted noise report shall be submitted to and approved in writing by the local planning authority. The soundproofing shall be installed in accordance with the details approved prior to the occupation of the dwelling to which it relates and shall be so retained thereafter.
- 13) Prior to occupation of any dwelling, final details of how water will be reused and recycled on site shall be submitted to and agreed in writing by the local planning authority. Once approved, the details shall be adhered to at all times following first occupation.
- 14) The development shall not commence until a scheme to allow for future inclusion of individual electric car charging points for each property has been submitted to and approved in writing by the local planning authority. The approved works for each individual unit shall be implemented on site before that unit is first brought into use and shall be retained thereafter for the lifetime of the development.
- 15) If during redevelopment contamination not previously considered is identified, then the local planning authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the local planning authority. Remediation shall be undertaken in accordance with the details agreed.