



Appeal Decisions

Site Visit made on 12 May 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal A Ref: APP/V2635/W/20/3263738

Land at Manor Farm, KING'S LYNN, PE32 1QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by D & K Marsham against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref 19/00694/RMM, dated 29 March 2019, sought approval of details pursuant to condition No 1 of a planning permission Ref 15/10888/OM granted on 4 August 2016.
- The application was refused by notice dated 2 July 2020.
- The development proposed is described as residential development for 40 dwellings, associated estate road access onto Back Street and demolition of existing farm buildings.
- The details for which approval is sought are: Appearance, landscaping, layout and scale.

Appeal B Ref: APP/V2635/W/20/3263737

Land at Manor Farm, Back Street, Gayton, KING'S LYNN, PE32 1QR

- 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 D & K Marsham against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/01831/F, dated 11 October 2019, was refused by notice dated 2 July 2020.
 - The development proposed is residential development comprising of 2 detached 4 bed two storey dwellings and 4 semi-detached 3 bed two storey dwellings.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The appeal evidence refers to appeal ref: APP/V2635/W/20/3263738 as "Appeal A" and appeal ref: APP/V2635/W/20/3263737 as "Appeal B". I have adopted this referencing in my decision.
4. Appeal A and Appeal B are linked in that, together, they comprise a proposal for 46 dwellings on an allocated site. Appeal A relates to reserved matters for 40 dwellings on a site reduced in size from the extant outline permission for 40

dwellings. The reserved matters for which approval is sought are appearance, layout, landscaping and scale. Appeal B seeks full planning permission for 6 dwellings on the remainder of the original site. Consequently, the combined proposals seek the erection of 46 dwellings on a site where the principle of development for 40 dwellings has been established.

5. The evidence indicates that the appeal site lies within the zone of influence of one or more European sites¹. I am required to assess the implications of the proposals on the conservation objectives of the designated areas. I have sought and received further comments from the main parties on this issue. I return to this matter later in my decision.
6. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal and I have taken into account any resulting submissions when making my decision. The references to 'the Framework', including any paragraph numbers, made within my decision are to this revised version.
7. A legal agreement prepared under the provisions of Section 106 of the Town and Country Planning Act 1990 (the S106 Agreement), was entered into in relation to the outline planning permission. This provides for delivery of affordable housing (8 no. units); open space provision, management and maintenance; provision and management of retained woodland; provision of a sustainable drainage scheme; and education and library contributions. A separate S106 Agreement dated 19 April 2021 has been submitted in relation to Appeal B to secure the provision of an additional affordable house. I have taken these agreements into account in reaching my decision.

Main Issues

8. For Appeal A the main issues are: (i) the effect of the density of the proposed development, with particular regard to the character and appearance of the surrounding area; (ii) whether the proposed development would provide satisfactory living conditions for future occupiers, with regard to the provision of garages; and (iii) whether the proposed development would provide a safe and secure environment, with particular regard to boundary treatments.
9. These main issues are also relevant to Appeal B insofar as combined, the two schemes seek development of the entirety of the allocated site. In addition, for Appeal B the main issue is whether or not development of the appeal site in isolation from the remainder of the allocated site G41.1 would be appropriate.

Reasons

Appeals A and B – density and character and appearance

10. The Council is concerned that the proposed density of development of the Appeal A site, and consequently the entire allocation site when combined with Appeal B proposals, would be greater than, and not in keeping with, the density of the village as a whole and would therefore result in development that does not respond well to its setting. The appellants' evidence sets out that

¹ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

the proposed density of the combined proposals for 46 dwellings would be less than that of adjoining developments on Birch Road (and surrounding streets) and St Nicholas Close. It is argued that the proposed development would therefore be reflective of and consistent with its surroundings and would optimise the use of the land as required by paragraphs 124 and 125 of the Framework.

11. The Council does not refute the appellants' calculations of density and I accept the figures stated. However, density as a numerical calculation is a poor measure of the compatibility of a proposal in its spatial context.
12. The position of the appeal site, to the north of Back Street and between Birch Road and St Nicholas Close is within the south eastern extent of the village of Gayton. There is a wide variety of dwelling types, ages and scales in the surrounding area, mostly of two storey height interspersed with occasional single storey properties. From my observation, the appeal site has a greater affinity with development on Back Street and St Nicholas Close than that within Birch Road and its wider estate (known locally and hereafter referred to as 'The Willows'). This is because the bulk of the proposed built form would be separated from The Willows by the proposed retained woodland and open space area. The site would be served by an access from Back Street and the proposed dwellings would predominantly back onto properties located along Back Street, the roadside of St Nicholas Close and the public right of way along the eastern boundary of the wider site.
13. Back Street leads away from the central area of the village and, with some agricultural land to the south and north, the linear, non-estate nature of development along this street, combined with primarily set back frontages and relatively deep rear garden areas, both here and within St Nicholas Close, a sense of spaciousness prevails, consistent with the position at the edge of the village. Development here is somewhat wider grained than that of The Willows, and I therefore consider that the predominant character and appearance of the site's immediate surroundings is semi-rural.
14. I acknowledge that the appellants have given careful consideration to the appeal proposals in order to present an overall scheme that they believe addresses deliverability, saleability, village need, variety of dwelling type and the form and character of the surrounding area. I also appreciate that Council officers recommended approval of the applications to the planning committee. However, it was within the committee's gift to make a decision on the applications contrary to the officer recommendations, thus this consideration has had no bearing on my decision.
15. The Council has accepted with the outline permission that the site is capable of supporting 40 dwellings consistent with Policy G41.1 of the Council's Site Allocations and Development Management Policies Plan 2016 (DM), which requires at least 23 dwellings. Whilst there is no upper limit in terms of numbers of dwellings set out within DM Policy G41.1, proposals should comply with the development plan as a whole and take into account the effect on the form and character of the area.
16. The reserved matters scheme for 40 dwellings within a smaller site area, and the combined appeal proposals for 46 dwellings across the whole of the allocated site, whilst proposing some similar features and layout to the illustrative layout plan for the outline permission for 40 dwellings, would result

- in a tighter urban grain of development that would be at odds with the prevailing pattern of development in the immediate surroundings. The development would be dominated by hard surfaces. There would be a prevalence of frontages with very little set back that would not be of sufficient depth to provide landscaping capable of adequately softening the impact of the proposals. The effect of the proposed density would be a less spacious layout, highlighted by shorter, narrower plots with tighter spacing between dwellings, reduced set back from the road and limited green frontages.
17. Although the entrance to the site would have a sense of spaciousness, with its retained woodland and open space area, once the corner into the wider development was turned there would be a predominance of hard surfacing and a sense of enclosure that would be generated from the inconsistent building lines and close proximity of many of the proposed dwellings to the edge of the highway. The combination of the above factors of the proposed layout indicates that the density would be too high and would not respond well to its context. This would be to the detriment of design quality and consequently to the character and appearance of the area. As a result, while the proposed layout may be an efficient use of land, it would be so by compromising the quality of the environment.
18. Contrary to the assertions of the appellants, the absence of a local design guide and code does not make the Framework's requirement to make optimal use of the potential of each site an overriding factor. It is clear from paragraph 129 of the Framework that, in the absence of locally produced design guides or codes, the National Design Guide (NDG) and National Model Design Code should be used to guide decisions on applications. Furthermore, paragraph 124 of the Framework sets out criteria to take account of when supporting the efficient use of land, which includes the importance of securing well-designed, attractive and healthy places.
19. The NDG reinforces that well-designed new development should make efficient use of land with an amount and mix of development and open space that optimises density. It advises that good urban design principles combine layout, form and scale in a way that responds positively to the context and that the appropriate density will result from the context.
20. I acknowledge that the proposals would provide adequate levels of parking and amenity space for each dwelling and that there would be a suitable mix of dwelling types and sizes, including policy compliant provision of affordable housing. Nevertheless, and notwithstanding the overall density of dwellings proposed across the site, the constraints of the shape of the site, combined with the overall increase in the number of dwellings proposed, would result in an overly intensive development. All of the above factors lead me to consider that the development proposed, as a whole, would detract from and be out of keeping with the prevailing spacious and semi-rural pattern of development in the immediate surroundings.
21. Overall, I conclude that the density of the proposed development would result in unacceptable harm to the character and appearance of the surrounding area. Consequently, the proposals would conflict with Policies CS06 and CS08 of the King's Lynn and West Norfolk Local Development Framework Core Strategy 2011 (CS), DM Policy DM15 and paragraphs 92(c), 120(b), 124, 126, 130 and 134 of the Framework which, together and amongst other matters, seek that

development optimises density taking into account site constraints and impact on the local area.

Appeals A and B - Living conditions

22. I have not been directed to any policy, local or national, that sets a requirement for the provision of garages. Whilst it may be a laudable aspiration to provide garages for all new dwellings, there is, nevertheless, no existing policy basis on which to refuse development where some dwellings are not provided with a garage. There is nothing in the evidence to suggest that the appeal proposals do not comply with the local plan requirements for parking provision in new developments as set out in DM Policy DM17. Furthermore, for the dwellings where garages would not be provided, sheds are proposed which would provide future occupiers with additional storage space and secure cycle parking.
23. I therefore conclude that the proposed development would provide satisfactory living conditions for future occupiers, with regard to the provision of garages. In this respect, the proposal does not conflict with DM Policy DM15 or paragraphs 130 and 134 of the Framework, where they seek to ensure high quality design and a high standard of amenity for future occupiers.

Appeals A and B - Safety

24. The Council is concerned that the proposed development would not provide a safe and secure environment in regard to the provision of rear boundary treatments. This relates to the proposed dwellings where the rear gardens follow the northern boundary of the site. However, during the application process, amendments to the design were proposed in response to initial concerns raised by the Police Architectural Liaison Officer (PALO). Post and rail fencing at 1.2 metres high is proposed to be reinforced by hedgerow in order to secure the rear gardens along the northern boundary of the site.
25. This amendment was considered by the PALO to provide a satisfactory level of security to those properties whilst also allowing for views of the agricultural land beyond. In the absence of any substantive evidence to the contrary, I consider that as long as the proposed hedgerow and fencing were provided prior to occupation of the proposed dwellings, the development would provide a safe and secure environment. This could be ensured by the imposition of a condition were the appeals to be allowed.
26. I, therefore, conclude that the proposed development would provide a safe and secure environment with particular regard to boundary treatments. Thus, the proposal complies in this respect with CS Policy CS08, DM Policy DM15 and paragraph 92(b) of the Framework, which together and amongst other matters seek to achieve safe places.

Appeal B

27. The Appeal B scheme seeks the erection of 6 dwellings on the north eastern corner of the allocated site (G41.1). The proposal would be remote from the proposed access to the site on Back Street. It would be reached via an estate road across an agricultural field. The proposal is clearly not a standalone scheme and is not purported to be so. The appellants accept that if the Appeal A scheme were to be dismissed the Appeal B proposal would also fail. I have

dealt with Appeal A and the combined proposals of Appeal A and Appeal B above.

28. I conclude in relation to Appeal B that development of the Appeal B site, in isolation from the remainder of the allocated site G41.1, would not be appropriate. It would not comply with CS Policies CS02, CS06, CS08, CS09, CS12, DM Policies DM1, DM2, DM15 and G41.4. The proposal would also conflict with paragraphs 119, 124, 130 and 134 of the Framework which, together and amongst other matters seek development that is well-designed.
29. I do not consider paragraph 125 of the Framework (this has replaced paragraph 123 of the 2019 Framework referenced in the Council's decision notice) to be relevant in this case, as there is no evidence to suggest that there is an existing or anticipated shortage of land for meeting identified housing needs in the Borough.

Other Matters

European sites

30. Both main parties consider that the appeal proposals would not result in likely significant effects to the integrity of any European sites. However, the Council has advised that the site lies within the zone of influence of the Norfolk Valley Fens Special Area of Conservation. It has also advised that it consulted Natural England (NE), as statutory consultee, in respect of both appeal proposals. In light of the response of NE, that the applications would not be likely to result in significant impacts on statutory designated nature conservation sites, an appropriate assessment (AA) was not considered necessary by the Council for either of the proposals. I note that a habitats mitigation payment was made in accordance with the Council's Natura 2000 Sites Monitoring and Mitigation Strategy 2015 (the Mitigation Strategy) in respect of the 6 dwellings proposed under Appeal B.
31. The Council confirmed that no payment has been made in respect of the 40 dwellings subject of Appeal A. This is because the habitats mitigation payment requirement did not take place until 1 April 2016, after the approval of the outline proposals. The Council further considered that this matter does not fall within the remit of a reserved matters application and therefore no further consideration was given to it in determination of the Appeal A proposals.
32. I have some concerns regarding the treatment of this matter. The Mitigation Strategy, adopted in consultation with NE, identified that across the borough, new housing developments would, cumulatively, result in likely significant effects to the conservation objectives of nearby European sites. This is largely due to pressures arising from increased recreation activities on and around the identified sites. In response to this, DM Policy DM19 sets out a suite of measures required to monitor recreational pressure and, if necessary, to mitigate adverse impacts in order to avoid any significant effect on the integrity of any European sites. A financial contribution is required from all new housing development to cover monitoring and small-scale mitigation at the European sites. It has therefore been established by the Council that, in the absence of mitigation measures, all new housing will have a likely significant effect on the integrity of the identified European sites.

33. Whilst I accept that the outline permission was granted prior to the adoption of the Mitigation Strategy and thus no payment was required at that time, it does not follow that adverse effects on integrity could be excluded in respect of the 40 dwellings. The adoption of the Mitigation Strategy amounts to a change in circumstances since the approval of the outline application. The evidence now indicates that a likely significant effect would result from the proposed development. However, there is no scope to consider matters other than the reserved matters that are before me. This does not mean that this matter can be ignored, rather, because adverse effects on integrity cannot be excluded, and there is no means available at reserved matters stage to secure an appropriate contribution towards the agreed mitigation measures, had I found the proposals acceptable in respect of the main issues I would have had no option other than to dismiss Appeal A on these grounds. It would also have been necessary to carry out an AA in respect of Appeal B and to reach a conclusion on the mitigation measures proposed. However, as the appeals are being dismissed on other grounds, I do not consider this matter any further.

S106 agreements

34. A S106 agreement was entered into in relation to the Appeal A proposals at outline stage and I do not need to revisit it here. Other than to note that provision has been made for the delivery of 8 affordable houses.
35. A S106 agreement has been entered into in relation to the Appeal B proposals taking into consideration the development of the allocated site as a whole. The additional 6 dwellings to the 40 approved at outline stage have triggered the need for a further affordable house, making the total number across the site to be 9 affordable houses.
36. As the provision of affordable housing would be a benefit of the proposed development required to be weighed in the planning balance against any identified harms, it is necessary for me to reach a conclusion on the effectiveness or otherwise of the obligation for the provision of an additional affordable house.
37. I am satisfied that there is a development plan policy basis for seeking the provision of affordable housing within the proposed development and that the obligation meets the requirements of CS Policy CS09. The provision of such would satisfy the provisions and tests set out within the Framework and the Community Infrastructure Levy Regulations 2010. In these respects, the delivery of affordable housing is a benefit of the proposal which I return to in the planning balance.

Neighbourhood Plan

38. I am aware of the emerging Gayton and Gayton Thorpe Neighbourhood Plan. However, from the evidence before me, this plan is still at a very early stage. As such, I cannot attribute the plan any more than very limited weight at this stage.

Other concerns

39. I note the concerns raised by interested parties including existing drainage and flooding issues and pressure on local services. However, given my findings in relation to the main issues, I have not considered these matters further.

Conclusion

40. The appeal schemes would provide an additional 6 dwellings and secure the delivery of the 40 already granted outline permission. The development of the site would provide a meaningful boost to housing supply in a location where occupiers would have access to local services and facilities. These are social benefits which I afford moderate weight, commensurate with the overall scale of development proposed. Nine of these homes would be affordable, secured through the S106 agreements. This would be a public benefit to which I attribute considerable weight.
41. The provision of public open space in excess of policy requirements would be a social benefit to which I afford moderate weight. The proposals would provide a footpath link to the east of the site and the potential to link with other future developments, such as a new school. The footpath link is required by policy and as I cannot be assured of suggested links to other developments, I afford these matters only limited weight. The proposal would provide economic benefits, including by reason of the creation of jobs during the construction phase, additional household expenditure and revenue resulting from the payment of the New Homes Bonus and CIL receipts. I note that the 40 dwellings granted outline permission are not subject to CIL payments. I attribute moderate weight to these benefits.
42. The Council can demonstrate a supply of housing land of more than five years, but this is not a maximum and does not diminish the value of new housing. Nevertheless, the appeal proposals would result in unacceptable harm to the character and appearance of the area. This is a matter I give significant weight. Overall, the benefits of the proposed development would be outweighed by the harm I have identified. The proposals would conflict with the development plan as a whole and there are no other considerations including the provisions of the Framework which outweigh this finding.
43. Therefore, for the reasons given, both Appeals A and B are dismissed.

S Tudhope

INSPECTOR