

Appeal Decision

Site Visit made on 24 August 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/Y2003/W/21/3272134

Farmyard to rear of Haywood House, High Steet, Burringham, DN17 3NQ

- 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 E Fowler against the decision of North Lincolnshire Council.
 - The application Ref PA/2020/1732, dated 3 November 2020, was refused by notice dated 26 February 2021.
 - The development proposed is an outline application for residential development (9 no. houses).
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Decision

1. The appeal is allowed, and outline planning permission is granted for residential development (9 no. houses) at Farmyard to rear of Haywood House, High Steet, Burringham, DN17 3NQ in accordance with the terms of the application, Ref PA/2020/1732, dated 3 November 2020, subject to the conditions in the Schedule attached to this Decision.

Applications for costs

2. An application for costs was made by Mr E Fowler against North Lincolnshire Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The appeal application was made in outline with all matters reserved.

Main Issues

4. The main issues are
 - whether the proposal would harm the open countryside by virtue of the location of the site outside the settlement boundary, and
 - whether foul water drainage arising from the proposal can be appropriately dealt with.

Reasons

Countryside location

5. Policies in the North Lincolnshire Local Development Framework Core Strategy, adopted 2011 (the Core Strategy) and saved policies in the North Lincolnshire Local Plan (the Local Plan) determine how development needs

will be met in the area, setting a hierarchy of suitable locations, and restricting development outside the defined limits of settlements.

6. The appeal site is adjacent to but not within the settlement boundary of Burringham, accessed from South View Avenue, but to the immediate rear of properties fronting onto High Street. At present, there are agricultural buildings on the site which would be removed. Opposite the site, residential dwellings extend along South View Avenue to some distance beyond the appeal site boundaries.
7. As such, the site does not appear to lie within an open countryside location, relating more closely to the built form of Burringham than the open countryside beyond, and I do not consider that development of it would introduce harmful character impacts or, given the existing development on the site and that which surrounds it, urbanise the existing rural landscape.
8. Nevertheless, the site does lie outside the settlement boundary, and is not for a form of development which relates to agriculture, forestry or to meet a special need associated with the countryside. The proposal is therefore clearly contrary to saved Policy RD2 of the Local Plan and Policies CS2 and CS8 of the Core Strategy which amongst other things control the location of new residential development.

Drainage

9. Despite the concerns of third parties over the ability of the current drainage system to deal with the foul water drainage associated with the site, no technical evidence has been produced to substantiate this reason for refusal. In contrast, the appeal proposal is supported by a drainage strategy, and there are no objections from Council drainage officers or other relevant technical consultees. My attention has also been drawn to the conclusions of the Inspector in a relatively recent appeal on the same site for a much larger development, who concluded that it could be satisfactorily drained.
10. As such, I am satisfied that the proposal could be satisfactorily drained and does therefore accord with saved Policies DS14 and DS16 of the Local Plan and Policy CS19 of the Core Strategy. These policies seek, amongst other things, to ensure that foul sewage and surface water drainage can be properly dealt with without causing increased risk elsewhere. Policy DS14 of the Local Plan also explicitly allows for this to be dealt with through the imposition of conditions.

Other Matters

11. The site lies within Flood Zone 3, and a number of third-party representations have raised concerns over flood risk relating both to the site itself and elsewhere as a result of developing the site. The appellant has carried out both sequential and exception tests, submitted a Flood Risk Assessment and proposed mitigation, all to the satisfaction of the Council, the Environment Agency, the Lead Local Flood Authority and the Scunthorpe and Gainsborough Water Management Board. I agree with the conclusions of those tests and the position taken by those parties on the approach to, and likely effectiveness of the drainage strategy and mitigation proposed.

12. As such, I am satisfied that the proposal is acceptable in terms of flood risk and accords with the development plan in that regard.
13. Third parties have also raised concerns over traffic and highway safety. Whilst I acknowledge these, again I note the lack of technical objection, the ability to ensure appropriate final design at reserved matters stage and through the use of conditions, and the relatively limited size of the development proposed. Turning to third party concerns over access to services, there are various facilities and services close to the site, and settlements with a greater range of facilities and services are within easy reach.

Planning Balance

14. Both parties agree that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. As such, the provisions of the Framework at paragraph 11 apply. In this context, the provision of nine dwellings in a location which does not cause harm to, or loss of open countryside, is a significant benefit arising from the proposal.
15. Having considered the main issues in the appeal I do not find that there are any adverse impacts of the proposal which would significantly and demonstrably outweigh the benefits of granting planning permission when assessed against the policies in the Framework as a whole. In reaching this conclusion I note in particular the relationship of the site to the built environment and the lack of technical objection to the proposal. As such, the presumption in favour of sustainable development applies, and this is a material consideration which weighs in favour of the proposal.
16. I note concerns raised by third parties that housing need for the area is perhaps being met elsewhere on other large sites. However, I have not been presented with detailed evidence on this point and the Council has not sought to rely on it to suggest that their supply of deliverable housing sites is otherwise sufficient.
17. I have found that although the proposal would be contrary to development plan policies concerning the spatial distribution of housing sites and development in designated open countryside, it would not in fact cause the harm alleged in the decision notice. I also find no development plan, or other harm relating to the drainage of the site.
18. Therefore, despite the conflict I have identified with the development plan, I am satisfied that there are material considerations, the particular characteristics of the site, its relationship to the settlement, details around drainage and the need for housing, which outweigh that conflict and indicate that a decision be taken other than in accordance with the development plan.

Conditions

19. Having had regard to the conditions suggested by the Council, the requirements of the Framework and the Planning Practice Guidance (the PPG) I have imposed the conditions set out by the Council in their statement and report to committee. I am satisfied that they are necessary to control the timing of the development, ensure the satisfactory layout, appearance

and design of the completed development, to properly control access, parking, and highway safety issues, to ensure that drainage, flooding, land contamination and remediation issues are properly identified and remediated, to ensure the appropriate protection of any archaeological remains which may be found and to ensure that neighbouring residential amenity is protected during the construction phase and to deliver biodiversity net gain. I am therefore satisfied that the conditions meet the tests in, and requirements of both the Framework and the PPG.

Conclusion

20. For the reasons given above I conclude that although the proposal conflicts with elements of the development plan, there are material considerations which indicate that a decision be taken other than in accordance with it.
21. The appeal should therefore be allowed, and outline planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

- 1) Approval of the details of the layout, scale and appearance of the building(s), the means of access thereto, and the landscaping of the site, (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development is commenced.
- 2) Plans and particulars of the reserved matters referred to in condition 1 above, relating to the layout, scale and appearance of any buildings to be erected, the means of access to the site, and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan IF/20/01.
- 6) No development shall take place until details of: (i) the location and layout of the vehicular access; and (ii) the number, location and layout of vehicle parking and turning spaces within the curtilage of the site; have been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until details showing the provision of a footway across the whole of the site frontage have been submitted to and approved in writing by the local planning authority.
- 8) The proposed dwelling(s) shall not be occupied until the footway has been provided across the whole of the site frontage in accordance with the approved details.
- 9) No loose material shall be placed on any driveway or parking area within 10 metres of the adopted highway unless measures are taken in accordance with details to be submitted to and approved in writing by the local planning authority to prevent the material from spilling onto the highway. Once agreed and implemented these measures shall be retained.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), nothing shall at any time be erected, retained, planted or allowed to grow over 1.05 metres in height above the level of the adjoining carriageway for a distance of 2 metres from the highway boundary across the site frontage.
- 11) No dwelling on the site shall be occupied until the vehicular access to it and the vehicle parking spaces serving it have been completed and, once provided, the vehicle parking spaces shall be retained.

- 12) No dwelling served by the private driveway shall be occupied until it has been constructed in accordance with details including: (i) the proposed method of forming access from the highway, including the required visibility splays; (ii) the method of constructing/paving the drive; (iii) the provision of adequate drainage features; (iv) the provision of suitable bin collection facilities adjacent to the highway; (v) the provision of suitable lighting arrangements; and (vi) the provision of street name plates that shall include the words 'Private Drive'; which have been agreed in writing by the local planning authority. Once constructed the private driveway shall be retained.
- 13) No development shall take place until a detailed surface water drainage scheme for the site has been 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 hydro-geological context of the development. This must be based upon the submitted Flood Risk Assessment, prepared by EWE Associates, Rev0, dated October 2020.

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.

- 14) The drainage scheme shall be implemented in accordance with the approved submitted details required by condition 13 above, completed prior to the occupation of any dwelling or building within each phase or sub-phase of the development on site, and thereafter retained and maintained in accordance with the scheme for the life of the development unless otherwise agreed in writing with the local planning authority.
- 15) Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until part 4 has been complied with in relation to that contamination.

Part 1: Site characteristics; An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a

written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: - human health; - property (existing or proposed), including buildings, crops, livestock, pets, woodland, and service lines and pipes; - adjoining land; - groundwaters and surface waters; - ecological systems; - archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and a proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the management of Land Contamination, CLR 11'.

Part 2: Submission of remediation scheme; A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 3: Implementation of approved remediation scheme; The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks' written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

Part 4: Reporting of unexpected contamination; In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part 3.

- 16) Construction, demolition and site clearance operations shall be limited to the following days and hours: 8am to 6pm Monday to Friday - 8am to 1pm on Saturdays. No construction, demolition or site clearance operations shall take place on Sundays or public/bank holidays. HGV movements 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 shall not be permitted outside these hours without prior written approval from the local planning authority.
- 17) The development shall be carried out in accordance with the submitted flood risk assessment (EWE Associates Ltd, Rev0, October 2020) and the following mitigation measures it details: - finished floor levels shall be set no lower than 4.65 metres above Ordnance Datum (AOD) - first floor levels shall be set no lower than 6.24 metres AOD. These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.
- 18) Within three months of the commencement of development, the applicant or their successor in title shall submit a biodiversity metric assessment and biodiversity management plan to the local planning authority for approval in writing. The document shall include: - details of measures required to provide at least 10% biodiversity net gain in accordance with the Defra biodiversity metric 2.0; - details of bat boxes and bat bricks to be installed on at least three houses; - details of swift boxes and sparrow terraces to be installed on at least three houses each; - restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats; - provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland; - details of wetland habitat to be created as part of sustainable drainage; - prescriptions for the planting and aftercare of native trees and shrubs of high biodiversity value; - proposed timings for the above works in relation to the completion of the dwellings. Biodiversity units should be delivered on site, within the red and blue line boundaries shown on submitted Location Plan. Those that cannot viably be delivered on site should be delivered locally on land controlled by the applicant or successor in title, according to a local plan or strategy.
- 19) The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter, unless otherwise approved in writing by the local planning authority. Prior to the occupation of the seventh dwelling hereby approved, the applicant or their successor in title shall submit a report to the local planning authority, providing evidence of compliance with the biodiversity management plan.

- 20) Prior to the submission of the first reserved matters, the applicant shall submit the results of archaeological field evaluation (stage one) and have agreed in writing by the local planning authority an archaeological mitigation strategy (stage two), that provides the following:

Stage one - the proper identification and evaluation of the extent, character and significance of archaeological remains within the application area comprising geophysical survey followed by the excavation of trial trenches in accordance with a brief provided by the North Lincolnshire Historic Environment Record - an assessment of the impact of the proposed development on the archaeological remains - the submission of an updated written scheme of investigation for the approval in writing of the local planning authority setting out mitigation proposals that include the following:

Stage two - measures to ensure the preservation in situ or by record of archaeological features of identified importance - methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts - post-fieldwork methodologies for assessment and analyses - report content and arrangements for dissemination, and publication proposals - archive preparation and deposition with recognised repositories - a timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy - monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record of the commencement of archaeological works and the opportunity to monitor such works - a list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.

- 21) No development shall take place until the applicant, or their agents or successors in title, has provided the local planning authority with written confirmation that they have secured the implementation of the programme of archaeological work set out in the approved written scheme of investigation for archaeological mitigation (stage two).
- 22) The development shall not be occupied until any archaeological mitigation investigation and post investigation assessment has been completed in accordance with the programme set out in the approved written scheme of investigation, and provision made for analysis, publication and dissemination of results and archive deposition has been secured.

End of Schedule of Conditions