
Appeal Decision

Site visit made on 19 January 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/Y2003/W/21/3275057

Land to rear of 36 Messingham Lane, Scawby DN20 9BA

- 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 Kapil, Rosemoor Developments against the decision of North Lincolnshire Council.
 - The application Ref: PA/2020/1418, dated 3 September 2020, was refused by notice dated 26 March 2021.
 - The development proposed is described as an 'Outline Planning Application with all matters reserved for residential development on land to the rear of 36 Messingham Lane, Scawby.'
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Kapil, Rosemoor Developments against North Lincolnshire Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application is in outline form with all matters reserved for future consideration. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being illustrative only.
4. Since the Council made its decision, the revised National Planning Policy Framework (Framework) has been published. The main parties have had the opportunity to comment on this document through the submissions that have been made in accordance with the appeal timetable. I have considered it in my decision.

Main Issues

5. The main issues are (i) whether the proposal would be in a suitable location for housing with regard to development plan policy; (ii) the effect on the character and appearance of the area; (iii) the need for affordable housing; (iv) agricultural land considerations; (v) the effect on flood risk; and (vi) if harm arises, whether this is outweighed by the benefits of the proposal.

Reasons

Suitable Location for Housing with regard to Development Plan Policy

6. The appeal site comprises an arable field that lies to the rear of residential properties on Messingham Lane and to the side of such properties on Old Vicarage Park. On the opposite side, there is open land associated with a large neighbouring residential property. To the rear, there is a further arable field and an area of woodland. The site boundaries are largely delineated by hedgerows, apart from along the southern boundary where there is also domestic type fencing. The site also extends in between neighbouring properties on Messingham Lane to form a short frontage onto this road.
7. Policy CS2 of the North Lincolnshire Council, Core Strategy (2011) (Core Strategy) sets out a sequential approach to development that is focussed on the Scunthorpe urban area, market towns and the defined development limits of rural settlements. Policy CS3 states that the extent of the development limits will be defined in the Housing & Employment Land Allocations Development Plan Document, which was subsequently adopted and includes these limits. The site lies outside of the defined development limit for Scawby and so it falls within the countryside. That the site abuts the limit has a minimal bearing under these policies.
8. Policies CS2 and CS3, along with Policy CS8 of the Core Strategy and saved Policy RD2 of the North Lincolnshire Local Plan (2003) (Local Plan), generally resist development outside of the limits and in the countryside. The type of development proposed does not accord with those which are permitted under these policies. These relate to more typical countryside uses and not to such a housing development as proposed.
9. I conclude that the proposal would not be in a suitable location for housing with regard to development plan policy. As such, it would not comply in this regard with Policies CS2, CS3 and CS8, and with saved Policy RD2, where they are concerned with how development is to be managed outside of development limits and in the countryside.

Character and Appearance

10. The pattern of development in this part of Scawby consists of a strongly linear arrangement of dwellings along Messingham Lane. Even where development extends to the rear on the same side as the site, as with Old Vicarage Park, it has not changed this established character in overall terms. The land to the rear of these properties on Messingham Lane provides a pleasing open and countryside character. The site contributes favourably in this regard as an arable field. There is more development to the south of Messingham Lane but this little impacts the open character of the site itself.
11. The proposal would represent a marked incursion into the countryside as it would constitute a new residential development of some size due to the extent of the site. The loss of the open character of the countryside would be considerable by virtue of the change that would result from such a development. Whilst this would be inevitable to some degree as the site is an undeveloped field, the loss would be pronounced in this case because the site allows the countryside to pervade appreciably close to this rural settlement along this part of Messingham Lane.

12. Nor would the proposal be in keeping with the development along this side of Messingham Lane in particular. In these surroundings, it would involve a development located well to the rear of the existing properties. It would be in clear contrast to the linear pattern of built development and, hence, the proposal would also unduly disrupt this aspect of the character of this part of the village. It would not represent a 'rounding off' because it would only effectively abut existing built development on 2 sides. It would not be well related, complimentary and form a natural extension to this part of the settlement because of the divergence from the prevailing character.
13. Whether or not a design or layout would take account of the residential character and the nearby village conservation area would not address the harm that would arise from both the reduction in countryside character and that it would be out of keeping with the predominant character along Messingham Lane. The same applies in relation to the likely limited visibility from this road and whether or not it would be obtrusive.
14. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. Accordingly, it would not comply in this regard with Policies CS5 and CS8 of the Core Strategy, and with saved Policies DS1 and RD2 of the Local Plan where they have regard to well-designed development and a sense of place, development not having an adverse impact on the landscape, a high quality of development and character, and the effect on the character or appearance of the open countryside and a nearby settlement.

Affordable Housing

15. Policy CS9 of the Core Strategy sets out that for rural settlements new residential development of 3 or more dwellings are to provide a 10% proportion of affordable housing. It does not refer to the presence or otherwise of development limits in this regard. The appellant is agreeable to such affordable housing provision as regards the proposal. The Council's Section 106 Officer also confirmed in the consultation response to the planning application that 10% of the proposal should be provided for affordable housing, as set out in the Planning Officer Report.
16. Policy CS9 does not require evidence of demonstrable need for affordable housing to be provided other than for rural exception sites. The proposal would not be such a site because it is not intended that it would be 100% affordable housing.
17. As such, there is no requirement for a need to be demonstrated by way of a survey or otherwise when affordable housing forms part of a larger housing development, including by way of carrying out a need survey. Moreover, the Council's appeal statement confirms that affordable housing need in North Lincolnshire in any event is not broken down into specific ward levels. The appellant has not therefore provided insufficient evidence in this respect.
18. I conclude that the need for affordable housing does not need to be demonstrated and so the proposal is compliant with this aspect of Policy CS9. I deal with matters in relation to the delivery of affordable housing provision under Policy CS9 later in my decision.

Agricultural Land

19. The site is grade 2 (very good) under the Agricultural Land Classification (ALC) and thus it constitutes best and most versatile agricultural land. Based on the evidence that the appellant has provided, the site forms part of a broad swathe of such land and not insignificant parts of the Council area fall within this grade. Such evidence has not been disputed by the Council.
20. The Council has agreed that Policy RD1 of the Local Plan, which concerned development involving High Quality Agricultural Land, that is listed in the Council's first reason for refusal, is not a saved policy. Hence, it no longer forms part of the development plan. Nevertheless, some protection is afforded by the Framework to the best and most versatile agricultural land, and that areas of poorer quality land should be preferred to those of a higher quality, and by Policy CS8 in so far as it relates to broader environmental matters.
21. In the case of the Council area, there is clearly a propensity of land which falls into the higher grades under the ALC and conversely areas of poorer quality land are less commonplace, including in relation to the environs of the site. Within this context, the loss of such land under the proposal would be of a limited order. Neither the Framework or Policy CS8 seek outright to prevent the loss of such agricultural land in these circumstances and I am not persuaded that the proposal would cause untoward harm in this respect.
22. I conclude that the proposal would not result in the unacceptable loss of agricultural land. As a result, it would comply in this regard with Policy CS8 where it states that all development should not have an adverse impact on the environment, amongst other considerations, and with the Framework where it concerns agricultural land.

Flood Risk

23. The principle matter of dispute over flood risk concerns how surface water from the proposal will be disposed of. Interested parties have also made reference to flood risk matters. The proposed means of surface water disposal as set out in the appellant's drainage strategy is dependent on the use of soakaways, storm water storage, permeable paving and the restriction of run off rates. It is also understood that the properties on Old Vicarage Park utilise soakaways.
24. Notwithstanding the reported discussions between the appellant and the Lead Local Flood Authority (LLFA), it is apparent that surface water drainage matters remain outstanding. The LLFA refer in response to the planning application to the current site investigation not being satisfactory with respect to the depths and areas investigated across the whole development site.
25. However, there is no suggestion that surface water from the proposal would not be able to be properly disposed of. This would require the appellant's drainage strategy to be revisited, but the LLFA suggested conditions to deal with this matter. The LLFA also stated that should infiltration not be feasible at the site, alternative sustainable drainage should be used, focusing on above ground solutions. I see no reason to disagree and if I was minded to allow the appeal this is a matter that could be addressed through the imposition of planning conditions, so that the proposal would not result in flooding to both existing and future residential occupiers.

26. I conclude that the proposal would not be unacceptable as regards the effect on flood risk. As a result, it would comply with Policy CS19 of the Core Strategy, and with saved Policies DS14 and DS16 of the Local Plan, where they are concerned with development not increasing the risk of flooding, wherever practical incorporating sustainable urban drainage systems to manage surface water drainage and requiring satisfactory provision for the disposal of surface water from new development.

Planning Balance and Conclusion

27. At the time the Council made its decision, it could not demonstrate a 5 year supply of deliverable sites in accordance with the Framework. The Council has subsequently published its Five Year Housing Land Supply Statement August 2021 which sets out that it can demonstrate a 5.64 year supply. This has not been disputed. Nevertheless, a 5 year supply does not act as a ceiling and the proposal would accord with the Government's objective of significantly boosting the supply of homes.
28. In relation to other benefits, the appellant has also stated that the proposal would provide high quality family homes. In addition, there would be economic benefits during construction and through the spend of the future occupiers. The proposal would be located where it would be accessible to local services. Other larger centres are also accessible by modes of transport other than the car. Scawby thus fares well in relation to the Council's Settlement Audit.
29. The provision of affordable housing is required so that the proposal accords with Policy CS9. Such housing would also have the benefit of providing for those unable to obtain general market housing. However, there is no mechanism before me to deliver the proposed affordable housing, whether that be a finalised agreement under Section 106 of the Town and Country Planning Act 1990 (Section 106 Agreement) or similar. Affordable housing would not thus be secured if planning permission were to be granted. As a consequence, the delivery of affordable housing provision would not be provided in line with Policy CS9. This counts against the proposal.
30. The imposition of mitigating conditions would be required so that the proposal would not be unacceptable in those terms. As such, they attract neutral weight.
31. Matters have been raised in relation to the weight to be given to the conflict with the Council's development plan policies. Even if I was to accept that Local Plan policies should be afforded limited weight, the more recent Core Strategy policies cover similar ground in relation to the main issues and are central to my decision-making. The various appeal decisions that both main parties have referred to on this matter are largely predicated on the particular site circumstances, and at least some concerned a time when the Council could not demonstrate a 5 year supply of deliverable sites. None of these matters change my views.
32. The Planning Officer Report refers also to contributions towards education, open space and leisure through a Section 106 Agreement. As I am dismissing the appeal on other grounds, I have not considered these matters further. Similarly, whilst Interested Parties have raised a number of other concerns, such matters do not alter my overall conclusion. Where I have taken a different view from the Planning Officer Report, I have set out the reasons why.

33. I have taken into account the relevant matters in relation to the economic, social and environmental objectives of the Framework, as set out above, notwithstanding these are not criteria against which every decision can or should be judged.
34. In coming to my conclusion, the proposal would not be in a suitable location for housing with regard to development plan policy and it would have an unacceptable effect on the character and appearance of the area. It would also not deliver affordable housing. These matters are decisive and would outweigh the benefits. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR