



Appeal Decision

Site visit made on 18 January 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2022

Appeal Ref: APP/R2520/W/21/3275297

Land Adjacent Sundara, 43 South Scarle Lane, North Scarle, Lincoln LN6 9ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr P Munnelly (North Scarle Property Limited) against the decision of North Kesteven District Council.
 - The application Ref 20/1165/VARCON, dated 2 September 2020, was refused by notice dated 19 November 2020.
 - The application sought planning permission for erection of 3no dwellings (Outline with access, layout, and scale for consideration) without complying with a condition attached to planning permission Ref 18/1627/OUT, dated 4 February 2019.
 - The condition in dispute is No 8 which states that: 'No dwelling shall be occupied until a footpath has been constructed within the limits public highway along the eastern side of South Scarle Lane to connect with the existing footpath to the north of the site'.
 - The reason given for the condition is: 'In the interests of highway safety to accord with policy LP13 of the Central Lincolnshire Local Plan (2017)'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 3no dwellings (Outline with access, layout and scale for consideration) at Land adjacent Sundara, 43 South Scarle Lane, North Scarle, Lincoln LN6 9ER in accordance with application Ref: 20/1165/VARCON, made on 24 September 2020 without compliance with condition 8 previously imposed on planning permission Ref 18/1627/OUT, dated 4 February 2019 but otherwise subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. Outline planning permission was granted for the erection of three dwellings at the appeal site. Subsequently approval of reserved matters has been granted and the development has been started. The appeal seeks permission to carry out the development without complying with condition 8. This requires the construction of a footpath along the site frontage to join with the existing footpath to the north of the application site.
3. The reason for imposing the condition was as set out in the banner heading above and relates to highway safety. However, in its reason for refusal the Council refers to conflict with the spatial strategy set out in Policies LP2 and LP4 of the Central Lincolnshire Local Plan (CLLP), due to lack of evidence of community support for the removal of the footpath.

Main Issue

4. The main issue is whether condition 8 is necessary and reasonable to accord with the spatial strategy set out in the development plan.

Reasons

5. The appeal site is on the eastern side of South Scarle Lane between No 43 South Scarle Lane and the entrance to a former piggery site.
6. The village of North Scarle is designated in the CLLP as a medium village. Policy LP4 of the CLLP establishes the total level of percentage growth for each medium village. However, the policy sets out certain circumstances when growth above the permitted limit may be supported. The Council states that North Scarle was above its growth limit at the time the application at the appeal site was considered, but the appellant demonstrated clear community support for the development in the terms set out in Policy LP2 and LP4 and outline planning permission was granted.
7. The Council says that at the time of the application the 3 respondents to the community consultation who live closest to the appeal site and the Parish Council supported the development only on the basis that a footpath would be provided along the site frontage joining with the existing footpath north of the application site. Consequently, the Council considers that the development would not have accorded with Policies LP2 and LP4 of the CLLP without the public footpath being secured through a planning condition.
8. The Planning Practice Guidance (PPG) confirms¹ that clear and precise reasons must be given by the local planning authority for the imposition of every condition. As I have set out, the planning decision notice states that the reason for applying the condition was in the interests of highway safety to accord with Policy LP13 of the CLLP.
9. There is a footpath along one side of South Scarle Lane from its junction with High Street as far as the entrance to the public footpath which runs next to the boundary with No 39 South Scarle Lane. Beyond this point, there is no roadside footpath, but there is a wide grass verge adjacent to the road.
10. South Scarle Lane is lightly trafficked and the grass verges adjacent to the Lane near the appeal site are suitable for pedestrian refuge in the event of passing vehicles. Lincolnshire County Council Highway Authority does not consider that the prevailing traffic conditions require the provision of a footpath. The Highway Authority did not object to the original planning application and confirms that there are no highway objections to the removal of the condition.
11. Policy LP13 of the CLLP indicates that developments should provide well-designed, safe, and convenient access for all. Whilst I note the Parish Council comments about the speed of agricultural vehicles, there is nothing before me to indicate that the implementation of the development without the footpath would result in conditions prejudicial to highway safety and the Council does not seek to argue that there are any such concerns.

¹ Paragraph: 023 Reference ID: 21a-023-20140306

12. Even if community support was conditional upon the provision of a footpath, the Council would need to have been satisfied that a condition to require the footpath's provision would meet the six tests set out in paragraph 56 of the National Planning Policy Framework (the Framework). Where the condition would not meet the six tests, the Council could have considered, at the time of the original application, whether conditional support amounted to support for the application in the terms set out in the CLLP. The principle of the development is not open for review as part of a variation of condition application and, in any case, the reason for the condition related to highway safety and there is no need for the condition in this respect.
13. Therefore, condition 8 is not necessary or reasonable to accord with the spatial strategy set out in the development plan. In the absence of the condition, there would be no conflict with Policies LP2, LP4 or LP13 of the CLLP. Nor would there be conflict with the Framework where it requires planning policies and decisions in rural areas to be responsive to local circumstances.

Conditions

14. The advice in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
15. The Council has provided a list of conditions and further information which confirms that the reserved matters have been approved and conditions have been discharged. I have taken the submitted documents into account and consulted the parties on a list of conditions.
16. I have imposed an approved plans condition and a condition regarding the height of the development for certainty. An archaeology scheme has been agreed and a condition is imposed to ensure the implementation of the approved scheme. A condition regarding surface water drainage is required to ensure that the site is suitably drained. Protection of existing landscaping during the development is necessary in the interests of the character and appearance of the area. To safeguard neighbouring development and for health and safety reasons certain activities are prohibited during the construction phase of the development.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed, as set out in the formal decision.

Diane Cragg

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans:
CD609-A100 Location Plan 29th November 2018
CD609-A102 Rev P2 Rev P2 Proposed Block Plan 17th January 2019
CD609-A103 Rev P1 Rev P1 Proposed Site Plan 17th January 2019
Tree Report Tree Survey and Details 18th January 2019
- 2) For the avoidance of doubt the proposed dwellings shall be 1.5 storey only.
- 3) All works/development shall be carried out in full accordance with the approved tree/hedgerow protection scheme, as shown on drawing no. 'NS 660 - A103 P6' (received 14.10.20) and agreed under the terms of 20/0855/RESM.
- 4) Prohibited activities:
In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars:
 - (a) No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree on or adjacent to the proposal site.
 - (b) No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site.
 - (c) No temporary access within designated Root Protection Areas without the prior written approval of the local planning authority,
 - (d) No mixing of cement, dispensing of fuels or chemicals within 10 metres of the tree stem of any retained tree on or adjacent to the application site.
 - (e) No soakaways to be routed within the Root Protections Areas or any retained tree on or adjacent to the application site.
 - (f) No stripping of topsoils, excavations or changing of levels to occur within the Root Protection Areas of any retained tree on or adjacent to the application site.
 - (g) No topsoil, building materials or other to be stored within the Root Protections Areas of any retained tree on or adjacent to the application site.
 - (h) No alterations or variations of the approved works or tree protection schemes shall be carried out without the prior written approval of the local planning authority.
- 5) Prior to first occupation the adjacent piggery and associated buildings to the immediate east of the proposed site shall either be demolished or planning permission(s) 18/1628/FUL or 20/1500/PNND shall be implemented in its entirety such that the buildings are no longer capable of being utilised for intensive livestock rearing without a specific grant of planning permission in that behalf.

- 6) Surface water disposal shall be by way of infiltration and shall be carried out in full accordance with the Rob Lobley Consulting report dated 13 October 2020 before any dwelling hereby approved is first occupied.
- 7) All works shall be carried out strictly in accordance with the approved 'Written Scheme of Investigation for Archaeological Monitoring and Recording', as received on the 17 July 2020 and approved under the terms of 20/0855/RESM.