



Appeal Decision

Site visit made on 12 April 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 29th June 2022

Appeal Ref: APP/Y2003/W/21/3284844

Land to the rear of Minster Day Centre, Chesterfield Road, Scunthorpe DN15 7UP

- 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 Mr Peter Lee of Villawood Homes Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2021/30, dated 5 January 2021, was refused by notice dated 30 July 2021.
 - The development proposed is described as the 'construction of 10 No. new affordable homes and associated parking'.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 10 No. new affordable homes and associated parking on the land to the rear of Minster Day Centre, Chesterfield Road, Scunthorpe DN15 7UP in accordance with the terms of the application, Ref PA/2021/30, dated 5 January 2021, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Peter Lee of Villawood Homes Ltd against North Lincolnshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application site address had an incorrect postcode, and this has been corrected in the above header.
4. A concern was raised that the application should not have been validated by the Council due to the lack of required information. In terms of the correctness of this however, there is an appeal before me, and the appeal process itself has afforded a fresh opportunity for any interested party to make representations.
5. The Officer Report recommended approval of the application however, this was overturned when considered by the Planning Committee. At the application stage, a draft head of terms was included in the report for planning obligations. This confirmed the development was to be all affordable housing and detailed the required contributions towards open space, a traffic regulation order, and tree replacement. During this appeal, a signed and dated Unilateral Undertaking in accordance with Section 106 of the Town and Country Planning Act 1990 was provided by the appellant. The Council have been given the opportunity to comment on this. I shall refer to this again below.

Main issues

6. The main issues are:

- the effect of the development on the living conditions of the users of the Minster Day Centre with particular regard to light, privacy and whether it would be overbearing; and
- whether the proposal would provide suitable living conditions for the future occupiers of the development in terms of light, privacy and outlook.

Reasons

Living conditions of users of Minster Day Centre

7. The appeal site is located on a redundant tennis court and grassed/landscaped area to the rear of the Minster Day Centre. It is approximately L-shaped and located between the day centre and Chesterfield Road and The Fairways. The surrounding area is predominately residential with a general mix of varying sized semi-detached and terraced properties. Parking in the area is a mix of courtyards, on street and private drives.
8. The proposal would construct ten affordable homes with courtyard parking and a new access onto Chesterfield Road. The proposed houses would be separated from the day centre by mix of rear gardens and rear access paths. They would be raised above the existing ground to provide suitable flood protection. House numbers 1 and 2 which face Chesterfield Road would be set back from the corner end of the day centre by approximately 21.6 metres. House numbers 5 to 10 which would face The Fairways would be set back from the day centre by approximately 11.9 metres and 12.8 metres. Along the rear boundary, between the proposal and the day centre, a 1.8-metre high close boarded fence would be installed.
9. The day centre is a single storey building which is used for local community services and activities. The building has a number of rooms to the rear which have windows that would look out onto the proposal. The details of these rooms' use, and hours of occupation are not fully known. However, in all probability they will be used for business and educational/leisure activities and no evidence to the contrary is before me. Based on this use, I am of the opinion that users of these rooms will be more focused on the activities taking place rather than the need for specific views out of the windows. I acknowledge that the windows do play an important part of making these rooms more comfortable and enjoyable by providing natural light and a level of outlook. However, a degree of change could be permitted without causing undue harm to the function of the rooms and users' enjoyment.
10. While the proposed fence would be located relatively close to the day centre's rear windows and along the existing rear path boundary, its limited height and timber construction would minimise and soften its visual intrusion, ensuring it would not have an overbearing effect that would unduly harm the outlook from these windows. The proposed housing would also not be overly dominant or visually intrusive to this rear aspect of the day centre due to the relatively good separation that would exist between the buildings. Furthermore, the limited height of the fence and the proposed separation also would mean that the rooms would retain good and relatively open outlook with negligible impact on access to light.

11. In terms of privacy, the proposed rear fencing would prevent any overlooking from the proposed housing's ground level and gardens into the day centre and therefore no harm would be caused. With respect to the proposed housing's first floor level, the rear rooms facing the day centre would be bedrooms which would not be expected to be extensively used during the day and as such would not typically create a significant level of overlooking. When considered with the relatively good separation from the day centre and the partial screening from the rear fencing, overlooking and harm to the privacy of users of the day centre would be acceptable.
12. In conclusion, the proposal would not constitute overdevelopment which would adversely affect the living conditions of the users of the Minster Day Centre with regard to light, privacy and outlook. The proposal would therefore not be contrary to saved Policies H5 and DS1 of North Lincolnshire Local Plan 2003 (Local Plan) and Policies CS5 and CS7 of the Core Strategy 2011 (Core Strategy). These seek, amongst other matters, to ensure new development is to a high standard, well designed and would not result in overlooking or a loss of privacy to existing developments.

Living conditions of future occupiers

13. As noted previously the day centre is single storey in height. It would have relatively good separation from the housing, the rear fencing would provide screening between the buildings and the day centre would not be visually intrusive or overly dominant when viewed from within the proposed dwellings. Furthermore, due to its height and separation from the proposed housing, the day centre would not adversely affect the outlook from, or light into the properties.
14. Turning to privacy, similar levels of protection to those experienced by users of the day centre would exist. At ground level the proposed rear fencing would screen both the rear ground floor rooms and the garden areas from the day centre, ensuring the dwellings would have satisfactory privacy. In relation to the development's rear first floor bedrooms, the limited use of these during the day with the relatively good building separation and screening provided by the rear fencing, would ensure satisfactory privacy.
15. In conclusion, the proposal would not constitute overdevelopment which would adversely affect the living conditions of the future occupants of the development with regard to light, privacy and outlook. The proposal would therefore not be contrary to saved Policies H5 and DS1 of the Local Plan and Policies CS5 and CS7 of the Core Strategy. These seek, amongst other matters, to ensure new development is to a high standard, well designed and adjacent land uses would not result in annoyance or detract from the residential amenity which residents of the proposed dwellings could expect to enjoy.

Other matters

16. A representation was made advising that the proposal did not meet a variety of the North Lincolnshire's planning policies or the Framework with regard to design quality, landscape, greenspace, sustainable resources and climate change. However, it is clear from the Officer's Report that these were considered through the determination of the application and the merits of the scheme were appropriately assessed. Based on the evidence before me, there

is no substantive evidence that the proposal would result in any undue harm with regard to these matters.

17. Objections were raised regarding aspects of the design in relation to the quality of housing standards, appropriateness of close board fencing and front metal railing boundary treatments and proposed garden sizes. The housing, courtyard parking and gardens proposed would be to a good standard and there are examples of close boarded fencing in the area. The proposed front railings would provide a discrete and open frontage which would be sympathetic to the day centre's railing boundary. The parking courtyard would provide sufficient parking to prevent the development increasing indiscriminate parking during busy times.
18. It is acknowledged that there would be some loss of the community recreation space and loss of existing trees and hedgerow. However, the poor condition of the tennis courts shows limited use of this area and no evidence that the grass recreation area is used extensively has been provided. With the tree replacement compensation and the proposed biodiversity net gain provision, sufficient mitigation for the loss of these could be provided.
19. The proposal would include streetlighting, vehicle electric charging points and refuse bin collection points and as such addresses the concerns raised regarding these issues. In terms of the suitability of the development drainage using soakaways and the presence of off-site garden flooding issues, the proposal would include a sustainable drainage system. This would prevent any increase in off-site flood risk and I have no reason to believe that an appropriate drainage outfall would not be possible for the development.
20. The Council has raised no significant concerns regarding any of the above representations and having considered the plans and visited the site, I have no reason to disagree.

Unilateral Undertaking and Conditions

21. As noted previously, the appellant has submitted a signed Unilateral Undertaking that ensures the development would be for affordable housing and provides contributions towards open space, traffic regulation order and tree replacement. The Unilateral Undertaking accords with the draft heads of terms and no objections have been raised by the Council.
22. In these circumstances, I consider these obligations would be fairly and reasonably related to the proposal and meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.
23. The Council has requested conditions to be applied, which I have assessed with regard to the tests set out in the Framework. The conditions that are included are broadly reflective of those suggested by the parties although I have amended some of the wording in the interests of precision and clarity.
24. In the interest of certainty, I have included a condition ensuring the development is carried out in accordance with the approved plans.
25. Conditions have been included for the agreement of a Construction Method Statement, a Construction Environmental Management Plan and permitted construction working hours to protect the living conditions of neighbours and

the surrounding environment. These are necessarily pre-commencement condition to ensure that development progresses in line with the approved details and any effects of the construction process are acceptable.

26. To protect construction workers and future occupiers, a condition is imposed to ensure that the risk of ground contamination is assessed, and any appropriate remediation is approved and implemented with verification prior to any ground works being undertaken. For the sake of conciseness, I have reduced the wording of the suggested condition. Elements of this condition necessarily require compliance with them prior to commencement to ensure that the proposed development makes appropriate arrangements in these regards.
27. A condition is necessary in the interests of highway safety to secure the provision of the access and parking. However, in the interests of correctness and conciseness I have removed reference to driveways, as these are not used in the proposal, and amended the suggested conditions to allow the highway details to be approved. I have also included a condition to protect the access's visibility splay. As there is no existing access into the site to be removed, I have not included a condition relating to reinstatement.
28. To encourage use of low emission vehicles, a condition requiring inclusion of vehicle charging points is included.
29. Flood risk protection and surface water drainage conditions are included to prevent increased flood risk to neighbours and future occupiers. Elements of these conditions necessarily require compliance with them prior to commencement to ensure that the proposed development makes appropriate arrangements in these regards.
30. Conditions for biodiversity metric assessment and preparation of a biodiversity management plan are included to enhance biodiversity and I consider that a three month timescale to complete these is reasonable.

Conclusion

31. For the above reasons and having regard to all other matters raised, I conclude that the appeal should succeed.

J Symmons

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:
 - Location Plan – Drawing: 3196/05
 - Topographical Survey – Drawing: 3196/08
 - Detailed Site Layout – Drawing: 3196/09
 - House Type B – Drawing: 3196/10
 - House Type A – Drawing: 3196/11
 - House Type A Handed – Drawing: 3196/12
 - Fence Details – Drawing: 3196/13
- 3) Demolition or construction works shall take place only between 08:00 and 18:00 Monday to Friday and between 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or Public Holidays.
- 4) No development shall commence, including any demolition works, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. As a minimum, the statement shall provide for:
 - (i) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - (ii) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - (iii) any abnormal load movements;
 - (iv) contractor parking and welfare facilities;
 - (v) storage of materials;
 - (vi) wheel washing facilities; and
 - (vii) traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway, as may be required.

Once approved the Construction Method Statement shall be adhered to throughout the construction period of the development.

- 5) No development shall commence, including any demolition works, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. As a minimum, the plan shall include the following:

Noise and vibration – The CEMP shall set out the particulars of:

- (i) the works, and the method by which they are to be carried out;

- (ii) the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including noise limits; and
- (iii) a scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

Light – The CEMP shall set out the particulars of:

- (i) specified locations for contractors' compounds and materials storage areas;
- (ii) areas where lighting will be required for health and safety purposes;
- (iii) location of potential temporary floodlights;
- (iv) identification of sensitive receptors likely to be impacted upon by light nuisance; and
- (v) proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors.

Dust – The CEMP shall set out the particulars of:

- (i) site dust monitoring, recording and complaint investigation procedures;
- (ii) identification of receptors and the related risk of dust impact at all phases of the development, including when buildings and properties start to be occupied;
- (iii) provision of water to the site;
- (iv) dust mitigation techniques at all stages of development;
- (v) prevention of dust track-out;
- (vi) communication with residents and other receptors;
- (vii) a commitment to cease the relevant operation if dust emissions are identified either by regular site monitoring or by the local authority; and
- (viii) a 'no burning of waste' policy.

Once approved the Construction Method Statement shall be adhered to throughout the construction period of the development.

- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be

submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 5 days of the report being completed and approved in writing by the local planning authority.

- 7) No dwelling shall be occupied until details of the vehicular junction, access and parking spaces, have been submitted to and approved in writing by the local planning authority; and until they have been constructed in accordance with the approved details. The details shall include the following:
- (i) the proposed method of forming the access from the highway, including the required visibility splays;
 - (ii) the method of constructing/paving;
 - (iii) the provision of adequate drainage features;
 - (iv) the provision of bin collection facilities adjacent to the highway;
 - (v) the provision of suitable lighting arrangements; and
 - (vi) the provision of street name plates with private parking notice.

The vehicular junction, access and parking area shall thereafter be retained.

- 8) 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.
- 9) No dwelling shall be occupied until a scheme for the provision of electrical vehicle charging points has been submitted to and approved in writing by the local planning authority; and until they have been constructed in accordance with the approved details. The scheme shall be designed to take account of good practice guidance as set out in the Institute of Air Quality Management Land Use Planning and Development Control and contemporaneous electrical standards, including:
- (i) Electrical Requirements of BS7671:2008; and
 - (ii) IET Code of Practice on Electrical Vehicle Charging Equipment installation 2012 ISBN 978-1-84919-515-7.

The electrical vehicle charging points shall thereafter be maintained and retained.

- 10) The development shall be carried out in accordance with the submitted flood risk assessment (FRA) (GTCE Griffin Toomes, 2 March 2021, ref J4220 Rev. B) and the following mitigation measures it details:
- (i) Finished floor levels shall be set no lower than 3.6 metres above Ordnance Datum; and
 - (ii) Flood resilience measures shall be implemented as described on page 14 of the FRA.

No dwelling shall be occupied until the above flood mitigation measures have been implemented. These mitigation measures shall thereafter be retained.

- 11) No development shall commence until a detailed surface water drainage design for the site has been submitted to and approved in writing by the local planning authority. The design shall be based on sustainable drainage system (SuDs) principles and an assessment of the hydrological and hydro-geological context of the development. It shall also be based upon the submitted Flood Risk Assessment, prepared by GTCE, Griffin Toomes, Dated: 2 March 2021, ref J4220 Rev. B and the current version of the North Lincolnshire Council's SuDs and Flood Risk Guidance Document.

The drainage design 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. The design shall include consideration of exceedance flow routing through the development site and the southern edge of the site which is highlighted as a medium surface water flood risk area.

- 12) The drainage design shall be implemented in accordance with the approved submitted details required by condition 11 above, completed prior to the occupation of the dwellings, and thereafter shall be retained and maintained.
- 13) No development shall commence until details showing the effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been approved in writing by the local planning authority. These facilities shall be implemented prior to the access and parking facilities being brought into use and retained thereafter.
- 14) No development shall commence until details showing the effective method of preventing surface water run-off from the highway onto the developed site have been submitted to and approved in writing by the local planning authority. These facilities shall be implemented prior to the access and parking facilities being brought into use and retained thereafter.
- 15) Within three months of the commencement of development, a biodiversity metric assessment and biodiversity management plan shall be submitted to and approved in writing by local planning authority. The document shall include:
- (i) an assessment of biodiversity loss based on the habitat and hedgerow baseline evident prior to any removal;
 - (ii) details of measures required to provide at least 10% biodiversity net gain in accordance with the Defra biodiversity metric 2.0 or later versions;
 - (iii) details of sensitive working practices to avoid harm to hedgehogs;
 - (iv) details of bat boxes and bat bricks to be installed on at least two dwellings;
 - (v) details of swift boxes and sparrow terraces to be installed on at least two dwellings;

- (vi) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
- (vii) prescriptions for the planting and aftercare of native trees and shrubs, of high biodiversity value; and
- (viii) proposed timings for the above works in relation to the completion of the dwellings.

The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter. Prior to the occupation of the 6th dwelling, a report to the local planning authority, providing evidence of compliance with the biodiversity management plan shall be submitted to and approved in writing by the local planning authority.