



Appeal Decision

Site visit made on 9 September 2022

by **S Hunt BA (Hons) MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 06 October 2022

Appeal Ref: APP/N2535/W/22/3300608

Land rear of 72 Scothern Road, Nettleham, Lincoln LN2 2TX

- 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 Miss Emma Truelove of Truelove Property and Construction Ltd against the decision of West Lindsey District Council.
 - The application Ref 144264, dated 13 January 2022, was refused by notice dated 14 April 2022.
 - The application sought outline planning permission to erect 68 no. dwellings 10 no. affordable including open space provision, associated garages and infrastructure and footpath cycleway link to Sudbrooke, layout and scale to be considered and not reserved for subsequent applications, without complying with a condition attached to planning permission Ref 131975 granted 14 March 2017 (as amended by 140640 approved 8 July 2020 and 141843 approved 12 February 2021)
 - The condition in dispute is No 5 which states that: *'The development shall proceed in accordance with the Construction Method Statement (February 2018) throughout the build (approved under condition discharge approval 137462) except that the hours of work shall be restricted on week days to being between 8am – 6pm'.*
 - The reason given for the condition is *'In the interests of amenity and in accordance with policy LP26 of the Central Lincolnshire Local Plan'.*
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Decision

1. The appeal is allowed and outline planning permission is granted 'to erect 68 no. dwellings 10 no. affordable including open space provision, associated garages and infrastructure and footpath cycleway link to Sudbrooke, layout and scale to be considered and not reserved for subsequent applications' at Land rear of 72 Scothern Road, Nettleham, Lincoln LN2 2TX in accordance with the application Ref 144264 dated 13 January 2022 with variation to condition number 5 previously imposed on planning permission Ref 141843 approved 12 February 2021, and subject to the remaining conditions imposed therein, so far as the same are still subsisting and capable of taking effect, as set out in the attached Schedule.

Procedural Matters

2. The original planning permission Ref 131975 has been followed by the approval of two variation of condition applications under section 73 of the Town and Country Planning Act 1990 (s73). Amongst other conditions, condition 5 has been previously varied to include specific hours of work. For the avoidance of doubt, this appeal concerns the most recently approved application Ref

141843. The wording of condition 5 which is in dispute is as set out in the banner heading above.

3. Condition 5 refers to a Construction Method Statement (CMS) approved as part of a discharge of condition application (Ref 137462), and copies of the relevant documents have been provided. No other matters within the CMS are before me as being in dispute, only the construction working hours. The residential development site is under construction.
4. The outline consent included layout as a matter to be considered. No other plans have been submitted as part of the appeal documents apart from site layout, of which there are two slightly different versions before me. The appellant submitted plan ref. TL016-SL (12 January 2022), but the Council states that plan ref. TL016-SP-NMA Rev B (16 May 2022) is the most recent site layout as approved by a non-material amendment (Ref 144807). Whilst I have been made aware of full planning applications for additional dwellings, I understand these are currently undetermined. My decision is therefore informed by TL016-SP-NMA Rev B, being the layout which I understand is currently being built out.

Main Issue

5. The main issue is whether condition 5 is reasonable with regard to the potential effects on the living conditions of existing neighbouring occupiers.

Reasons

6. Paragraph 56 of the National Planning Policy Framework (the Framework) and Planning Practice Guidance on the use of planning conditions (PPG) set out a number of tests for the imposition of conditions; they should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects ('the tests').
7. The Council applied condition 5 to assist in reducing the effects of the construction phase of the development on the living conditions of existing residents which adjoin the appeal site. The CMS (February 2018) as originally approved by application Ref 137462 (5 November 2018) encompasses a range of measures to minimise such effects, such as wheel cleaning, dust suppression, waste disposal and traffic management. The hours of construction are noted in paragraph 1.1 of the CMS to be between 7.30am and 5pm Monday to Friday (excluding public and bank holidays). The decision letter for application 137462, in discharging a range of conditions, specifies that condition 5 is subject to 8.00am to 6pm hours of works.
8. The subsequent s73 applications continued to accept the CMS as approved under application Ref 137462, but instead condition 5 specified the hours of work as '*restricted on week days to being between 8am – 6pm*'. Neither the approved CMS nor the decision notices prescribe any weekend working hours.
9. The appellant seeks to extend construction working hours so that site operatives can start half an hour earlier, at 7.30am, rather than the currently prescribed 8.00am. The updated CMS (January 2022) also specifies a finish time of 17.00, and Saturday working hours, between 7.30am and 13.00. The appellant's final comments propose a start of 8.00am on Saturdays.

10. The updated CMS also specifies that work on public and bank holidays would take place during the same hours as regular weekdays. The originally approved CMS specifically excludes such holidays. I am unable to find clarification on the reasons for this amendment within the submission.
11. The appellant states that a benefit of an earlier start time would result in the acceleration of the build out of the site, with completion at least one year sooner than with the current approved working hours. It is unclear how this has been calculated. I acknowledge that Saturday working hours would assist in speeding up delivery of the residential development. However the appellant now proposes an earlier weekday finish time of 17.00, which would overall result in 30 minutes less working time per weekday.
12. Notwithstanding the somewhat contradictory submission in respect of the working hours being sought, I now go on to consider the potential effects, specifically an earlier start time of 7.30am, on the living conditions of existing neighbouring occupiers. The northern and western boundaries of the appeal site bound onto existing residential properties situated on High Leas and Highfields. On my site visit I noted that many of the dwellings, particularly those on High Leas, have short gardens and low boundaries. I also saw the fenced footpath links, which provide a buffer between many of the existing gardens and the new dwellings.
13. I saw that the majority of the dwellings which bound existing properties are structurally complete, with outstanding works largely being limited to internal fittings and landscaping works. A good proportion of the overall development is occupied. There is an undeveloped area remaining to the western edge of the site where it adjoins Highfields, indicated on the site layout plan to be plots 24 and 28. These plots have consent for detached dwellings with larger than average gardens. Elsewhere within the appeal site, construction is starting on the area to the east which stretches towards open fields and further away from existing dwellings.
14. I note that condition 6 requires implementation of a noise attenuation scheme to the boundaries of No's 70 and 74 Scothern Road. There is no evidence before me to suggest that this has not been implemented, and therefore such measures would continue to provide a level of protection to these particular properties from construction vehicle use of the access road.
15. There are no representations before me from neighbouring occupiers in respect of the proposal. This lack of objection does not necessarily represent support. However, there is little evidence before me to substantiate the Council's concerns that the current construction works and any breaches of the working hours conditions are resulting in significant harm to living conditions. I acknowledge that a small number of complaints have been received by the Council's Environmental Protection and Enforcement teams in relation to a construction noise and working hours, but I do not have details of the location or timing of such complaints.
16. Given my observations on site, it appears that the bulk of the 'noisy' development in close proximity to existing residential properties is substantially complete. Additional construction activities on the remainder of the site would be partially screened by the completed dwellings, and the effects on living conditions of existing residents would correspondingly be less than in the earlier phases of development. The construction works are temporary and time

limited, and I accept that amended hours of work could assist in delivering the housing development sooner.

17. In this context, I am satisfied that a start at 7.30am rather than 8.00am would not result in significant additional harm to living conditions. Likewise, I am satisfied that the existing finish time of 18.00 is suitable and it is unnecessary to bring it forward to 17.00. In terms of weekend working, hours of 8.00 to 13.00 on Saturdays would be appropriate. However Sundays, public and bank holidays should be specifically excluded so that existing and new residents are afforded some respite from the ongoing construction activities.
18. I therefore find the construction working hours as currently restricted by condition 5 to be unreasonable, and that amendment of the condition to permit construction working from 7.30 to 18.00 on weekdays and from 8.00 to 13.00 on Saturdays would meet the tests. In doing so, the proposal would comply with the amenity considerations set out within Policy LP26 of the Central Lincolnshire Local Plan which requires amongst other matters for proposals to demonstrate consideration of existing occupants. In turn it is compatible with paragraphs 130 and 185 of the Framework and advice set out in the PPG.

Other Matters

19. I acknowledge that the majority of existing dwellings which bound the appeal site are bungalows, however this has little bearing on my decision; I have considered all neighbouring occupiers equally no matter what house type they reside in. I have also had regard to the construction working hours conditions applied to other housing developments nearby, however given that circumstances may be different I have considered the appeal site on its own merits.
20. I note the correspondence between the appellant and the Council (dated 8 March 2022) regarding a proposal to move the construction compound to the southern boundary. I saw on my site visit that it is presently situated around the location of plot 32 (broadly central to the overall site) and it comprises site office and welfare facilities, contractors parking, and a storage compound. However, the use of the compound itself does not necessarily result in more disturbance than the activities which might take place within and around the housing plots. Moreover, the location of the compound is not specified within either version of the CMS. In this respect restricting the location of the compound or noisy activities would not meet the tests.
21. I have been provided with a copy of the Nettleham Neighbourhood Plan (2015). I note that the site is allocated by the plan for residential development however there are no policies which are directly relevant to the main issue before me.

Conditions

22. The guidance 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that any other conditions have been discharged, that is a matter which can be addressed by the parties. Condition 19 (approved plans)

reflects the latest site layout plan TL016-SP-NMA Rev B approved by the aforementioned non-material amendment.

23. The standard conditions relating to time limits are unnecessary given that work has commenced, and therefore this alters the numbering. In respect of condition 3 (previously 5) I retain the substance of the condition in its requirement to adhere to the CMS, together with stating the construction working hours and days in a more precise manner so to ensure that the tests are met.

Conclusions

24. For the reasons given above and taking into account all other considerations, I conclude that the appeal should be allowed, and a new planning permission granted with variation to condition 5 as previously imposed.

Susan Hunt
Inspector

Schedule of Conditions

- 1) The development shall proceed in accordance with the surface water drainage plans depicted in drawings 4827-06 to 482710; 4827-12 and Report 4241/DR/01 (approved under condition discharge approval 137462) and shall be completed before all the dwellings are occupied.
- 2) Prior to occupation, a Landscape Management Plan setting out management responsibilities and maintenance schedules for all landscaped areas, inclusive of trees, hedges, ditches and balancing ponds; and a Biodiversity Enhancement Scheme setting out measures for habitat creation and management, including the provision of bat roosts and bird boxes.
- 3) The development shall proceed in accordance with the approved Construction Method Statement (January 2022) throughout the build, except that construction works shall take place only between the hours of 07:30 and 18:00 on Mondays to Fridays and between 08:00 and 13:00 on Saturdays, and such works shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) The noise attenuation scheme to the boundaries of No 74 and No 70 Scothern Road contained within The Noise Impact Assessment by ENS Limited, alongside drawings TL016-NB-01 (Noise Barrier Wall) & TL016-NB-02 (Noise Barrier Positioning) (approved under condition discharge approval 137462) shall be put in place prior to the occupation of the first dwelling.
- 5) The development shall proceed in accordance with the Estate Street Phasing and Completion Plan (TL016-PP (Street Phasing Plan)) (approved under condition discharge approval 137462).
- 6) No dwelling shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Estate Street Development Plan.
- 7) The development shall proceed in accordance with the arrangements for future management and maintenance of the proposed streets previously approved under 137462. The streets shall thereafter be maintained in accordance with the management and maintenance details approved until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 8) The development shall proceed in accordance with the full engineering, drainage, street lighting and constructional details of the streets proposed for adoption depicted on drawings 4827-01; 4827-02; 4827-03 (approved under condition discharge approval 137462), unless otherwise agreed in writing with the Local Planning Authority.
- 9) No dwellings (or other development as specified) shall be commenced before the first 60 metres of estate road from its junction with the public highway, including visibility splays, as shown on drawing number TL16-SL-01 Rev.E (3) dated 01/05/15 has been completed, approved under 131975 unless otherwise agreed in writing with the Local Planning Authority.
- 10) The Travel Plan by LDC (approved under condition discharge approval 137462) shall be adhered in totality. Those parts of the approved Travel Plan

that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

- 11) The development shall proceed in strict accordance to the written scheme of archaeological investigation by Allen Archaeology Limited (approved under condition discharge approval 137462) and the Written Scheme of Investigation: Archaeological Monitoring by PCAS Archaeology (approved under condition discharge approval 144569).
- 12) The local planning authority shall be notified in writing of the intention to commence the archaeological investigations in accordance with the approved written scheme referred to in condition 11 of this permission at least 14 days before the said commencement. No variation shall take place.
- 13) The archaeological site work shall be undertaken only in full accordance with the written scheme required by condition 11 of this permission.
- 14) Following the archaeological site work referred to in condition 11 a written report of the findings of the work shall be submitted to and approved in writing by the local planning authority within 3 months of the said site work being completed.
- 15) The report referred to in condition 14 and any artefactual evidence recovered from the site shall be deposited within 6 months of the archaeological site work being completed in accordance with a methodology and in a location to be agreed in writing by the local planning authority.
- 16) The existing boundary hedges on the site shall be retained at all times apart from that required to be removed for the purpose of the new access.
- 17) The development shall proceed in strict accordance with the following plans:

Site wide plans: TL016-SP-NMA Rev B dated 16/05/2022.

House Types Plot 1: TL016-CA-A-08 rev A, Plot 2: TL016-DO-A-08, Plot 3: TL016-DO-B-08, Plot 4: TL016-KE-08, Plot 5: TL016-DO-5-08, Plot 5A: TL016-DO-B-02 Rev G, TL016-DO-B-03 Rev F & TL016-DO-B-07 Rev G, Plot 6: TL016-PE-SP, Plot 7: TL016-PE-SP, Plot 8: TL016-SN-08, Plot 10: TL016-DO-10-08, Plot 11: TL016-KE-08 rev A, Plot 12: TL016-HI-06, Plot 13: TL016-DO-B-08, Plot 14: TL016-CA-A-08, Plot 15: TL016-DO-15-08, Plot 16: TL016-CA-16-08, Plot 17: TL016-DO-17-08, Plot 18: TL016-SN-08, Plot 19: TL016-WR-08, Plot 20: TL016-BU-08 rev B, Plot 21: TL016-BUA-08 rev B, Plot 22: TL016-HI22-06, Plot 23: TL016-HI22-06, Plot 24: TL016-WR-08 Plot 25: TL016-PE-SP, Plot 26: TL016-PE-SP, Plot 27: TL016-KEA-A-07, Plot 28: TL016-T8-05, Plot 29: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 30: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 31: TL016-KEA-A-07, Plot 32: TL016-KE-08 rev A, Plot 33: TL016-KE-08 rev A, Plot 34: TL016-SN-08, Plot 35: TL016-WR-02 Rev F, TL016-WR-03 Rev E, TL016-WR-04 Rev F, Plot 36: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 37: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 38: TL016-DO-B-02 Rev G, TL016-DO-B-03 Rev F & TL016-DO-B-07 Rev G, Plot 39: TL016-KE-08 rev A, Plot 40: TL016-HI-02 Rev B, TL016-HI-03 Rev D & TL016-HI-05 Rev C, Plot

41: TL016-DO-B-02 Rev G, TL016-DO-B-03 Rev F & TL016-DO-B-07 Rev G, Plot 42: TL016-SC-06, Plot 43: TL016-KE-08 rev A, Plot 44: TL016-DO-A-08, Plot 45: TL016-KE-08 rev A, Plot 46: TL016-DO-A-08, Plot 47: TL016-CAR-08, Plot 48: TL016-DO-A-08, Plot 49: TL016-HI-06, Plot 50: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 51: TL016-A1-06 or TL016-A2-06 or TL016-A3-06, Plot 52: TL016-DO-A-08, Plot 53: TL016-CO-08, Plot 54: TL016-SN-08, Plot 55: TL016-HI-06, Plot 56: TL016-HI-06, Plot 57: TL016-T8-05, Plot 58: TL016-KEA-A-07, Plot 59: TL016-KE-08 rev A, Plot 60: TL016-CA-A-02 Rev I, TL016-CA-A-03 Rev H & TL016-CA-A-07 Rev G, Plot 61: TL016-KE-08 rev A, Plot 62: TL016-HI-02 Rev B, TL016-HI-03 Rev D & TL016-HI-05 Rev C, Plot 63: TL016-CA-A-02 Rev I, TL016-CA-A-03 Rev H & TL016-CA-A-07 Rev G, Plot 64: TL016-WR-02 Rev F, TL016-WR-03 Rev E, TL016-WR-04 Rev F, Plot 65: TL016-KE-08 rev A, Plot 66: TL016-DO-B-02 Rev G, TL016-DO-B-03 Rev F & TL016-DO-B-07 Rev G, Plot 67: TL016-CA-A-08, TL016-CA-A-02 Rev I, TL016-CA-A-03 Rev H & TL016-CA-A-07 Rev G and Plot 68: TL016-SN-08

Garage & substation types: TL-SGD-03, TL016-SGD-01 and TL016-SS-01.

- 18) None of the dwellings hereby approved shall be first occupied until the surface water drainage system serving that dwelling including for the highway serving that dwelling and the public open space has been completed in accordance with the details required by condition 1. The approved system shall be retained thereafter.
- 19) The recommendations contained in the Extended Phase 1 Habitat survey carried out by Delta Simons no 14-0725.01 dated November 2014 (approved in planning permission 131975) shall be followed at all times during development.
- 20) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.