



Appeal Decision

Site visit made on 22 November 2022

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/R2520/W/22/3298407

12 Thorpe Lane, South Hykeham, Lincoln LN6 9NW

- 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 Michelle Robinson against the decision of North Kesteven District Council.
 - The application Ref 21/1008/OUT, dated 29 June 2021, was refused by notice dated 8 November 2021.
 - The development proposed is outline application (all matters reserved) for the erection of up to 5 no dwellings, upgrading of the existing access and creation of a new access and garage for 12 Thorpe Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved. I recognise that the indicative layouts provided are intended solely to demonstrate the potential for the scheme to adequately accommodate the scale of development proposed.
3. The appellant submitted a revised indicative layout with their final comments during the course of the appeal (proposed site plan drawing number J1801-PL-02 A04). As such the Council did not have opportunity to comment on the revision. However, as the plan is largely similar to that previously before the Council (drawing number J1801-PL-02 A03) I consider that no interests will be prejudiced in accepting this plan.
4. Following my site visit the appellant advised that an adjacent landowner had cut down a number of trees along the eastern boundary of the appeal site and suggested consideration be given to a further visit. However, the Technical Report – Sunlight Hours Analysis in Residential Gardens (technical report) was compiled on the basis of the trees being present. There is no amended technical report that reflects the updated circumstances surrounding the appeal site. I have therefore determined the appeal on the basis of the plans and information before the Council at the time of their decision, as well as being informed by the revised indicative layout submitted by the appellant.

Main Issues

5. The main issues are whether the proposed development would result in acceptable living conditions for future occupiers, with regard to the shading of gardens from trees, and noise and disturbance, and ii) the effect upon the character and appearance of the area.

Reasons

Living Conditions

6. The appeal site comprises a detached 1.5 storey dwelling set towards the front of an extremely long and narrow plot. The southern part of the garden closest to the host dwelling is occupied by multiple small-scale detached single storey outbuildings. There are mature trees to the side boundaries and an additional large oak specimen located centrally within the rear garden.
7. The indicative plans show that the proposed dwellings would be reasonably close to the crown spread of the existing trees, units 3 and 4 in particular. The Technical Report is based on the methodologies set out in the Building Research Establishment's 'site layout planning for daylight and sunlight' guidelines (BRE 209 2022). The Technical Report advises that all of the gardens of the proposed dwellings would receive more than the minimum requirement of at least 2 hours of sunlight set out in the BRE guidelines.
8. I am mindful that the BRE guidelines are not mandatory and that their interpretation may be treated flexibly. Although I acknowledge that the proposed site plan is indicative, and the appellant has considered the consequences of the proposal on existing trees through the submission of an Arboricultural Implications Assessment (AIA), the proposed dwellings would have relatively small plots with little to no front gardens. The useability of the rear gardens for normal domestic activities including gardening and sitting out is therefore even more important, and for which there is a reasonable expectation of adequate sunlight.
9. Though a partially cloudy autumnal morning and a snapshot in time, during my visit I witnessed sunlight distribution across the appeal site. I observed that the northern-most part of the site received little direct sunlight due to shading from the existing trees, some of which retained a good degree of leaf cover. Whilst the sun would be higher in the sky during summer months, the proximity of trees to the proposed dwellings, their height and extent of their crown spreads in full leaf cover, would be such that the areas surrounding the dwellings would be likely to experience a degree of shade for a good proportion of the year.
10. I further note from the analysis mesh within the Technical Report that the garden areas of plots 1 and 4 would be particularly affected by shade to differing degrees, at different times of the day. Plot 4 would be the most affected due to the presence of tall, mature trees to the east, south and west.
11. The Technical Report advises that the simple modelling method used was not sufficiently detailed to take into account the presence of multiple trees at differing heights and crown spreads. As such, I cannot rely on the findings to robustly demonstrate that the proposed plots would not experience undue shading from the specific trees in proximity to the appeal site. The information provided in the appellant's Technical Report Addendum does not provide any more detailed modelling of the specific crown spread and heights of trees adjacent to the appeal site, sufficient to address my concerns with regard to the potential shading of the plots.
12. The appellant considers that a similar type of development with similar tree constraints was permitted on land to the rear of 18 Thorpe Lane (application references 19/1779/OUT and 21/1192/RESM). Limited details of the

circumstances leading to these approvals are before me. However, I note that the proposal was for a smaller scale of development comprising 2 dwellings within larger plots, further away from existing trees located to the north of the plot. The context and scale of the development therefore appears to be different to the circumstances now before me.

13. Whilst siting and design are matters to be reserved for a future application, I am not convinced based on the indicative plans before me, that the appeal site can accommodate the amount of development proposed, without causing harm to the amenity of the future occupiers through the significant shading of rear gardens.
14. Although I accept that the usage of the access road would be relatively low-level in relation to just 5 dwellings and that vehicle speeds are likely to be low, nonetheless the proposed dwellings would be sited very close (1.5m as cited by the appellant) to the proposed access road.
15. I note the appellant's suggestion that the western elevations of the proposed dwellings would contain limited windows and no doors due to the internal arrangements. Whilst access and detailed design would be dealt with at the reserved matters stage, as the western elevations as shown on all of the indicative plans are one of the longer elevations of the dwellings, it may not be possible to devise an internal layout that would ensure all habitable rooms are located away from the access road. Likewise, the narrowness of the appeal site is likely to restrict the extent to which the proposed dwellings could be separated from the proposed access. Hence, I am not satisfied that material harm would not be exerted on the living conditions of the future occupiers from noise and disturbance associated with the use of the access road.
16. For the above reasons, I find that the proposed development would result in unacceptable living conditions for the future occupiers, with regard to the shading of gardens from trees, and noise and disturbance. Consequently, conflict is found with Policies LP2, LP17 and LP26 of the Central Lincolnshire Local Plan 2017 (CLLP) which amongst other things, seek to ensure that proposals have considered issues of compatibility with neighbouring land uses and overshadowing. The proposals are also contrary to Policy HNP1 of the Hykeham Neighbourhood Plan which states that proposals with an unacceptable impact without mitigation, will be refused. Further conflict is found with paragraph 130 of the National Planning Policy Framework (the Framework), which amongst other things seeks a high standard of amenity for future users.

Character and Appearance

17. The area surrounding the appeal site is residential and generally characterised by detached dwellings of varying scales and designs, with the majority fronting directly onto Thorpe Lane. The dwellings along this part of Thorpe Lane typically have very long rear gardens which contribute to the sense of space and, when combined with the wide verges, tree planting and hedgerows, provide a pleasing and verdant quality to the character and appearance of the area.
18. Whilst I acknowledge that siting and design are matters reserved for future consideration, I note that the indicative plan suggests a tandem layout for the proposed dwellings for the full depth of the appeal site. The long rear gardens

of the neighbouring dwellings fronting Thorpe Road are largely devoid of development, other than the presence of occasional single storey detached outbuildings and structures, the majority of which are small-scale. Buildings and structures are typically absent from the northern-most sections of the rear gardens, which are more remote from the associated dwellings on Thorpe Lane.

19. The siting and scale of the proposed 1.5 storey dwellings including infrastructure, curtilage demarcation and domestic paraphernalia would result in the subdivision of the long, linear garden into much smaller plots. This would erode the generally open and cohesive character of the appeal site, particularly in views from nearby dwellings. It would increase the concentration of built form that would not reflect the established pattern of low-density frontage development along this part of Thorpe Lane. Plots 4 and 5 in particular would result in development extending significantly further to the north than the existing outbuildings and structures to the rear of the host dwelling and the adjacent 16 Thorpe Lane. Notwithstanding the presence of the mature oak tree to the centre of the appeal site, the wide vehicular access that exists to the side of the host dwelling would allow views of the depth of development from Thorpe Lane along the new access road, such that the change in character would be perceptible.
20. The appellant has referred me to examples of backland development within the vicinity of the appeal site. I saw that these were limited to 2 recently constructed houses to the rear of 18 Thorpe Lane to the west, and a bungalow to the rear of 10 Thorpe Lane immediately to the east of the appeal site. Whilst the bungalow to the rear of No 10 is sited close to the rear of the existing dwelling, I acknowledge that the development at the rear of No 18, extends further back and away from Thorpe Road. Nevertheless, neither of the existing forms of backland development extend so deeply away from Thorpe Lane as the development proposed. Although there are park homes on the Longacre Park to the west, they have a cul-de-sac type arrangement off Wood Lane, such that they do not appear as a backland form of development.
21. I am also referred to caravans that occupy a site between 18-24 Thorpe Lane. However, no evidence is before me as to the circumstances of this development including the context of any planning permission that has been granted. Irrespective of this, I saw that the caravans are of a different form of development, smaller in scale than the proposal, without significant boundary demarcation and occupying a site that is wider in nature. I do not find the circumstances comparable to that before me.
22. As discussed above, the appeal site is surrounded by trees. Their maturity and height are such that they appear as skyline features that contribute to the spacious, verdant quality of the area. It seems to me based on my observations, that the height, crown spread and proximity of the trees in relation to particular plots is also likely to result in pressure for the trees to be lopped, topped or removed, given the potential to cause shading of the private gardens. Such works would therefore be further harmful to the character and appearance of the area.
23. For the above reasons the proposal would result in an adverse effect on the character and appearance of the area. As such, the proposal would conflict with Policies LP1, LP2 and LP26 of the CLLP which require amongst other things, for proposals to take into account the character and local distinctiveness of the

area. It would further conflict with Policy HNP1 of the Hykeham Neighbourhood Plan (2017), which requires proposals to be in accordance with the development plan, and paragraph 130 of the Framework which requires development to be sympathetic to local character.

Other Matters

24. Reference is made to a reserved matters approval for the erection of 144 dwellings and associated works on land to the west of the appeal site (application reference 21/1045/RESM). Limited evidence of the circumstances leading to this approval is before me, but it appears to relate to the creation of a large housing estate on an undeveloped field fronting onto Thorpe Road. As such, the circumstances and context are not considered comparable to the appeal proposal or site.
25. The appellant suggests that permitted development rights could be removed at the reserved matters stage which would protect the existing trees. It is not clear from the evidence which permitted development rights should be removed. Nonetheless, such a condition would only restrict future development once the dwellings were built and therefore, it would not mitigate the harm that I have identified from the proposed dwellings themselves.
26. The appellant advocates that the proposal provides adequate car parking and cycle and bin storage. These are to be expected of all new developments and are therefore neutral in the planning balance, weighing neither for, nor against allowing the appeal.
27. The parties refer to an objection from the Lincolnshire Fire and Rescue Service with regard to the standard and width of the proposed access road and the resultant impact on existing trees within the appeal site. I note that the proposal was not refused on highway or fire safety grounds. Moreover, access is a reserved matter for future consideration where full details would be required, including the proposed construction method of the access. As I am dismissing the appeal in relation to the main issues and it would not alter the outcome of the appeal, I have not considered this matter further.

Conclusion

28. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other matters raised, the appeal is dismissed.

M Clowes

INSPECTOR