



Appeal Decision

Site visit made on 8 February 2023

by J Downs BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2023

Appeal Ref: APP/V2635/W/22/3303848

Thriftfields, Cotts Lane, Tilney All Saints PE34 4SL

- 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 Joy Chamberlain against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/02418/O, dated 8 December 2021, was refused by notice dated 23 June 2022.
 - The development proposed is erection of two dwelling houses.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of two dwelling houses at Thriftfields, Cotts Lane, Tilney All Saints PE34 4SL in accordance with the terms of the application, Ref 21/02418/O, dated 8 December 2021, subject to the schedule of conditions at the end of this decision.

Preliminary Matters

2. The appeal is made in outline, with access and layout to be considered at this stage. Appearance, landscaping and scale are reserved for later consideration.
3. Reference has been made to the emerging Local Plan by interested parties. I have not been provided with copies of its policies or an indication of its stage of preparation. I therefore attach limited weight to it in the determination of this appeal.
4. The Council's reason for refusal only identified a detrimental impact on neighbouring amenity. Their statement of case expanded on this to specify their concerns were specifically in relation to loss of outlook and overshadowing. The appellant has responded to this in their final comments. I therefore consider there has been no prejudice to any party and proceed to determine the appeal on this basis.

Main Issue

5. The main issue is the effect of the development on the living conditions of occupiers of 1 Cotts Lane (No 1) with particular regard to outlook and overshadowing.

Reasons

6. The appeal site consists of part of the private garden of Thriftfields. The boundary with No 1 consists of a high, close boarded fence. The site layout

- plan shows the garage to serve Plot B would be sited adjacent to this boundary.
7. The outlook from the ground floor windows of No 1 facing onto the site is constrained by the existing boundary treatment between the properties. While it is likely that the proposed garage would be visible from these windows, the distance and position of the proposed garage relative to No 1 is such that it is unlikely there would be significant harm to the outlook from those windows. The first floor windows of No 1 would look toward the garage, however given garages are typically single storey and the generally open nature of the surrounding development, there would not be harm to the outlook from those windows.
 8. While the proposed garage would be to the south of No 1, the layout plan shows it would be limited in length. As garages are typically single storey, the potential for overshadowing would be limited. Further, in the summer, the sun is higher in the sky, so any overshadowing would be less pronounced. Any effects would be limited to a small area of the expansive plot on which No 1 is sited.
 9. The site could therefore be developed without there being significant harm to the living conditions of occupiers of No 1. Further control can also be exercised at the reserved matters stage should the scale or appearance of the proposed garage lead to a different effect on living conditions.
 10. I therefore conclude the appeal proposal would not have an adverse effect on the living conditions of occupiers of 1 Cotts Willow with particular regard to outlook and overshadowing. The proposed development would not have a significant adverse impact on the amenity of those occupiers as required by Site Allocations and Development Management Policies Plan adopted September 2016 (SADMPP) Policy DM15 and paragraph 130 of the National Planning Policy Framework (the Framework) which requires a high standard of amenity.

Other Matters

11. It is not in dispute that the site is within the development boundary for Tilney All Saints. SADMPP Policy DM2 confirms there is not an objection in principle to residential development in such a location. The Council considers that the appellant has demonstrated compliance with Tilney All Saints Neighbourhood Plan made 27 July 2021 (NP) Policy 1.2 with regard to the types of dwellings that could be delivered and the viability of the site. Neither of these policies seek to restrict development to low cost housing. I have no reason to disagree with this. The lack of allocations for the settlement in the emerging Local Plan would not merit the appeal being dismissed given the policies of the adopted development plan and national policy being to significantly boost the supply of housing.
12. It has been put forward that there is poor access to public transport, however no specific evidence of this has been put before me. Further, the Framework acknowledges that access to public transport differs between urban and rural areas. Concern has also been raised at the limited number of facilities within Tilney All Saints. However, as Tilney All Saints is recognised as a rural village in the settlement hierarchy established by CS Policy CS2 and the limited scale of

the development, these do not alter my conclusion with regard to the suitability of the site for the proposed development.

13. There is no consistent pattern of development to Cotts Lane, which is characterised by detached dwellings in spacious plots. The appeal proposal would not affect this character, as the existing and proposed dwellings would all be detached and sited within generous plots.
14. The appearance and scale of the dwellings would be considered at the reserved matters stage, as would any arising effects of overlooking and loss of light. The submitted layout plan demonstrates that the site could be developed in such a way that overlooking would not be beyond that found in residential areas.
15. The local highways authority has not raised any concerns with regard to the effect of the proposal on highway safety, including at the junction with Church Road. This is subject to a condition requiring off-site mitigation works including widening part of Cotts Lane. The layout plan shows sufficient space for parking and turning within the site boundary so the development would not add to the issues highlighted by interested parties in relation to vehicles manoeuvring. It also shows parking spaces provided to the rear of Thriftfields in addition to the spaces in proximity to the proposed dwellings. From this, and my observations at my site visit, I have no reason to conclude there would be a harmful effect on highway safety.
16. Concerns regarding maintaining access to the neighbouring dwellings during the construction process can be addressed via a construction management condition
17. Cotts Lane also forms part of the route of Tilney All Saints Footpath 3. Improvement works are proposed to part of the road which would also improve the surfacing of the public right of way (PROW). It is unlikely that the increase in vehicle movements associated with two dwellings would be so significant as to harm the amenity of users of the PROW, particularly given the short extent of Cotts Lane. Separate legislation exists to protect access to the PROW.
18. The site is in Flood Zone 3 and the application was accompanied by a flood risk assessment. No concerns with regard to the sequential test have been raised and I have no reason to disagree. The flood risk assessment has demonstrated that the development can be made safe for its lifetime and compliance with this can be secured by condition. I am satisfied that the wider sustainability benefits of residential development in this location outweigh the flood risk.
19. NP Policy 2.2 and King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy adopted July 2011 (CS) Policy CS08 both seek to ensure effective drainage of new development. It has been highlighted that the site is not served by public foul sewer system. However, there is no evidence before me that the site could not be effectively drained. This is a matter which can be controlled by condition.
20. It has been identified that the site is adjacent to a medieval moated site, and that it is within an area where ancillary buildings and development may have been located. The significance of these heritage assets derives from their archaeological interest and the additional knowledge and understanding of historic occupation of the area. The development does have the potential to cause less than substantial harm to the significance of those assets and I

attach significant weight to this harm. However this would be outweighed by the public benefits of an additional two dwellings. Mitigation can be secure by condition.

21. The appellant operates a business involving dogs, at least some of which is proposed to be continued. Council officers are satisfied this can be addressed by condition and would therefore not have a harmful effect on the living conditions of future occupiers of the proposed dwellings.
22. Part of the site has been referred to as a market garden or orchard. No policy to prevent the loss of employment development has been placed before me. The location of this area, separated from the surrounding countryside by the existing domestic garden, and its small scale are such that any loss of agricultural land would not be harmful.
23. There is no substantiated evidence before me that the proposed development would result in any increase in vandalism or other anti-social behaviour. In any event, there are other mechanisms to address such issues.
24. Issues related to the cables that pass over the site can be resolved using the powers available to the owner of the cables.

Conditions

25. The Council has suggested a number of conditions should the appeal be allowed. I have had regard to these in light of the advice contained within the Framework. I have amended the suggested wording of conditions related to the submission of reserved matters and commencement in the interests of precision. I have imposed the standard condition relating to approved plans in the interests of certainty and have amended it in the interests of clarity and precision.
26. Matters relating to drainage are beyond the scope of the reserved matters. However, for the reasons given above, I consider it necessary to secure the provision of a suitable surface and foul water drainage scheme by condition and it is necessary for this to be a pre-commencement condition.
27. It is reasonable and necessary to ensure that the parking and turning area is available for use prior to the dwellings being occupied. I have amended the condition to remove the reference to drainage as that is secured by another condition and to levelling as levels are not shown on the approved plan. I have also removed the reference to surfacing as appearance is a reserved matter.
28. It is also reasonable and necessary for details of the off-site highway works to be secured prior to the development commencing and for them to be delivered prior to the occupation of the dwellings. In the interests of clarity I have combined the suggested conditions, and amended them in the interests of precision. I have removed the reference to amending the timescale for the submission of the details in the interests of certainty. I have also removed the reference to public rights of way works as the Council's case does not explain why this is reasonable or necessary.
29. It is reasonable and necessary to ensure that the finished floor level is at the level recommended by the submitted flood risk assessment, and that the construction and internal layout of the dwellings also reflect its findings. However, the other mitigation measures set out, are not enforceable. I have

therefore amended the suggested condition to those specifically identified measures to ensure the condition meets the tests set out in the Framework. I have made minor amendments for clarity.

30. It is reasonable and necessary to secure appropriate archaeological investigation, recording and mitigation by condition. I have combined two of the conditions in the interests of clarity.
31. Although the development is small in scale, it is necessary for there to be a construction management plan in place to ensure that access to the surrounding properties is maintained and to limit the effects on the living conditions of surrounding occupiers. It is necessary for this to be a pre-commencement condition to ensure access is maintained during all stages of the development. However, I have removed the requirement for construction traffic signage, as there is only one access to the site and there is no evidence before me that any particular route into Tilney All Saints is necessary. I have amended the suggested wording in the interests of precision and combined it with another suggested condition to secure compliance.
32. The site layout plan shows tree protection measures to be used during the construction phase of the development. There are also trees on surrounding land which may need to be protected during development. It is therefore reasonable and necessary to require details of tree and hedgerow protection measures to be approved and implemented before the development commences and for this condition to be imposed at the outline stage. However, landscaping is a reserved matter and the acceptability of any landscaping scheme with regard to tree planting can be adequately considered at that stage. I have therefore amended the suggested condition in the interests of clarity and precision.
33. Given the comments from Council officers on noise from the commercial use at the host property, it is considered reasonable and necessary for a condition to be imposed requiring it to be demonstrated how this has been mitigated. However there is no evidence before me that the Council's suggested condition requiring an acoustic fence is necessary or reasonable. I have therefore amended the suggested condition to require noise mitigation measures to be submitted and approved. It is necessary for this to be a pre-commencement condition to ensure that it is effective.
34. The Council has suggested a condition in relation to the siting of waste bins which is not reasonable or necessary given the proposed use and size of the appeal site. The Council's Waste and Recycling Officer has suggested a bin presentation point be secured by condition. However, given that refuse collection arrangements are in place for the other dwellings on Cotts Lane, it is not necessary for this to be secured by a planning condition.

Conclusion

35. For the reasons given above, the proposed development complies with the development plan when read as a whole and there are no material considerations that lead me to a decision otherwise. As such, the appeal should be allowed.

J Downs
INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to means of access and layout only: 21092 01 (location plan), and 21092 02-2 (Site layout).
- 5) No development shall commence until full details of the foul and surface water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be constructed as approved before any part of the development hereby permitted is brought into use.
- 6) Prior to the first occupation of the development hereby permitted the proposed access / on-site car parking / turning area shall be laid out in accordance with the approved plan and retained thereafter available for that specific use.
- 7) Notwithstanding the details indicated on the submitted drawings, no development shall commence on site until detailed drawings for the off-site highway improvement works as indicated on Drawing No. 21092 02-2 (Site layout) have been submitted to and approved in writing by the Local Planning Authority. The dwellings hereby approved shall not be occupied until the approved highway improvement works have been carried out.
- 8) The development hereby permitted shall be carried out in accordance with the following mitigation measures proposed in the submitted Flood Risk Assessment by Ellingham Consulting dated Sept 2021:
 - Finished floor levels will be set 0.5m above typical ground levels.
 - The development will incorporate 0.3m of flood resilient construction above finished floor level.
 - There will be no ground floor sleeping accommodation.
- 9) No development shall take place until an archaeological written scheme of investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and 1) The programme and methodology of site investigation and recording, 2) The programme for post investigation assessment, 3) Provision to be made for analysis of the site investigation and recording, 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation, 5) Provision to be made for archive deposition of the analysis and records of

the site investigation and 6) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation. No development shall take place other than in accordance with the approved written scheme of investigation.

- 10) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under condition 9 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 11) No development or other operations shall take place on site until a construction management statement has been submitted to and approved in writing by the local planning authority. The method statement shall include:

1) the methods to be used and the measures to be undertaken to control the emission of dust, noise, and vibration from the operation of plant and machinery to be used;

2) the location of any temporary buildings and compound areas;

3) the location of parking areas for construction and other vehicles; and

4) the measures to be used to prevent the deposit of mud and other deleterious material on the public highway.

No development shall be carried out other than in accordance with the approved statement.

- 12) No site clearance, preparatory work or development shall take place until a scheme for the protection of any existing trees and/or hedgerows to be retained has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the erection of fencing for the protection of any retained tree or hedge before any equipment, machinery, or materials are brought on to the site for the purposes of development or other operations. The fencing shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made without the written approval of the local planning authority.
- 13) No development shall take place until a noise mitigation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate that any noise impacts that may arise from the continued operation of the kennels / dog grooming can be sufficiently mitigated. The development shall be carried out in accordance with the approved scheme and any mitigation measures thereafter retained.

[ENDS]