The Planning Inspectorate

Appeal Decision

Site visit made on 3 May 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 JUNE 2023

Appeal Ref: APP/Y2003/W/22/3297656
Agricultural Barn (Next to the Stables Restaurant), High Street, Messingham DN17 3UJ
Easting (x) 489340 Northing (y) 404148

- 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 Mr Philip Jackson - Jackson Philips Asset Solutions against the decision of North Lincolnshire Council.
- The application Ref PA/2021/1330, dated 21 July 2021, was refused by notice dated 7 April 2022.
- The development proposed is described as 'Outline planning consent for 0.96 ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved'.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Philip Jackson - Jackson Philips Asset Solutions against North Lincolnshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal is in outline form with all matters of detail reserved for subsequent approval. Therefore, I have considered the indicative layout and access details shown on the 'Drainage Strategy' plan on an indicative basis only. I shall have regard to these details only in so far as establishing whether the proposal would be acceptable in land-use principle terms and in terms of whether the site would likely to be capable of accommodating the quantum of development proposed.

4. I have had regard to the Council's Decision Notice and its appeal statement of case in defining the first main issue. The appellant has provided a 'Section 106 Heads of Terms' setting out potential developer contributions arising from the development towards affordable housing, recreation and education. I have considered this matter under the second main issue.

Main Issues

5. The main issues are:

   (i) whether suitable living conditions would be provided for future occupiers of the development with particular regard to noise and

disturbance, including whether or not this would necessitate restrictions being placed upon neighbouring businesses; and

(ii) whether the proposal makes adequate provision for any additional affordable housing, recreation and education requirements arising from the development.

Reasons

Living conditions

6. The site shares boundaries with commercial premises which are located on High Street. On my site visit, I observed that those premises are currently in use as restaurants. The restaurants are modest in scale and their main buildings are set away from the shared boundaries with the site. There are intervening barns and boundary walls between the outdoor areas serving these restaurants and the appeal site.

7. Paragraph 130 of the National Planning Policy Framework (the Framework) requires that developments create places with a high standard of amenity for existing and future users. Paragraph 187 of the Framework sets out that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities and that such neighbouring uses should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. These requirements are pertinent to my consideration of this main issue.

8. The Council points out that its Environmental Protection Team (EPT) suggested that the neighbouring commercial uses on High Street have the potential to cause an adverse noise impact for occupiers of the proposed dwellings. Given the modest scale of the neighbouring restaurants including their outdoor areas, these factors are to some degree self-limiting in terms of the likely levels of activity generated and any associated levels of noise and disturbance.

9. More particularly, the EPT suggested that a condition would be appropriate requiring a Noise Impact Assessment (NIA) to be carried out in this instance. Given the site-specific factors identified, this would be a proportionate approach in this instance to establishing whether there are levels of noise and disturbance emanating from the neighbouring commercial uses that would be likely to have a material effect on the living conditions of neighbouring occupiers. Any such condition could specify that the results of an NIA accompany the detailed design reserved matters application.

10. In the event that an NIA identified the need for mitigation, the proposal is in outline form and only specifies a maximum number of dwellings (up to 20). This means that there would be scope for the final number of dwellings and the layout of the development to take into account the findings of an NIA. If necessary, the final design and layout could for example include a requirement for a buffer or soft landscaping to be provided between the shared boundaries and the nearest dwellings. The nearest dwellings and the more immediate private garden areas serving them could also to be orientated or set away from the boundaries with the restaurants if this was necessary to provide acceptable living conditions.

11. Consequently, in the event that a requirement for mitigation was identified through an NIA, the onus would be on the developer to ensure that there

would be no significant adverse effects on the new development arising from the operation of existing businesses through the detailed design of the scheme. This is also in line with the requirements of Paragraph 187 of the Framework.

12. The appellant contends that the policies referred to in the Council's decision notice are not relevant. While there is some ambiguity to the wording of these policies, taken together they seek to protect the amenity of neighbouring land uses, require that new development should consider the relationship between any buildings and the spaces around them, and require that the function of buildings should also be considered in terms of its appropriateness for the context in which it is located. Therefore, I have taken the requirements of these policies into account in reaching my conclusion.

13. I conclude that subject to the layout and design of the development being informed by the results of an appropriate NIA, there is an opportunity to ensure that acceptable levels of amenity can be provided for future occupiers of the development without any unreasonable restrictions being placed on neighbouring uses. In these respects, the proposal is capable of complying with the design, amenity and context requirements in Saved Policies DS1 (General Requirements), DS11 (Development Standards) of the North Lincolnshire Local Plan (2003) (LP) and Policy CS5 of the North Lincolnshire Core Strategy (2011) (CS) and Paragraphs 130 and 187 of the Framework.

Whether adequate provision for affordable housing, recreation and education

14. 10% of the total number of dwellings would need to be provided as affordable housing in order to comply with the requirements of Policy CS9 (Affordable Housing) of the CS. This also reflects the minimum expectations for the provision of affordable housing set out at paragraph 65 of the Framework. This matter has not been disputed by the appellant who has provided a 'Section 106 Heads of Terms' (s106 HoT) which confirms their intention to meet this expectation. Based on the quantum of development proposed, this would equate to up to 2 affordable housing units being required.

15. The Local Education Authority (LEA) is seeking a developer contribution towards school places created to meet the need arising from housing development. More specifically, the LEA seeks a contribution towards secondary education of £4,838 stated as being the figure valid for any s106 agreement complete by 31 March 2022. I have no more recent figure before me, however there is nothing to suggest that there would no longer be a need for a secondary education contribution.

16. However, I have not been provided with any adopted policy or formula demonstrating how the requested education contribution was calculated. Nor has the LEA specified whether its request would be required for improvements to school infrastructure or to address a shortfall in capacity in the local area. Therefore, I cannot be certain that this particular contribution would meet the tests at paragraph 57 of the Framework.

17. To the extent that the existing public open space in an area is insufficient to meet the needs of additional residents, Policy H10 (Public Open Space Provision in New Housing Development) of the LP requires that windfall sites of 0.5ha or more will be required to provide recreational open space on a scale, and in a form, appropriate to serve the needs of residents. Policy CS23 (Sport, Recreation and Open Space) of the CS confirms that developers will be

expected to make an appropriate contribution towards necessary improvements or additional provision for recreation facilities and open space arising from their development proposals. In these respects, the Council has identified that occupiers of the development will generate demand for recreation provision. It is also suggested that there are elements of the existing provision in the area which will not be able to accommodate this increased demand without exacerbating existing and/or predicted future deficiencies.

18. The appellant has not disputed that the site should provide on-site public open space and has confirmed that they intend to provide it in the interests of good planning and place making. However, there is no legal mechanism before me to secure provision of this space, and importantly, to secure future maintenance of it. The appropriate way to secure future maintenance would be through a completed legal agreement which sets out provisions for either a commuted sum payment to be made for maintenance or for a management company to be set up.

19. The Council's Senior Leisure and Active Lifestyles Manager says that its Playing Pitches Strategy (PPS) identifies the need to provide improvements to natural turf football facilities at Holme Meadow. It is further suggested that the PPS and the Council's Local Football Facilities Plan (LFFP) identify a need to provide an additional full-size football compatible artificial grass pitch in the area. The respective contributions sought by the Council are £12,611 and £1,151.

20. The Council has not explained what is meant in terms of the relevant consultation response referring to an 'emerging evidence base' showing that that an indoor bowls facility needs investment to sustain an increase in use. Given the absence of any reference to a specific document identifying this requirement, I am not persuaded that the contribution of £1,282 being sought in this regard could be justified.

21. However, the appellant has not provided any counter evidence to suggest that the football pitch requests based on the Council's PPS and LFFP are not necessary or directly related to the likely increased demand arising from the development. Furthermore, there is nothing to suggest that the figures requested, which the Council suggests have been calculated using the sport facility calculators developed by Sport England, are not fairly and reasonably related in scale and kind.

22. The appellant has not provided me with a completed planning obligation. I have found that the secondary education and indoor bowls facility requests have not been adequately justified. However, from the evidence before me, the affordable housing and other recreation contribution requests meet the tests at paragraph 57 of the Framework. Therefore, I can only conclude that in the absence of a suitable legal mechanism to secure the affordable housing and recreation requirements arising from the development, the proposal would conflict with the requirements of the development plan and the Framework.

Other Matters

23. Third-party concerns include references to the site being identified as an 'Area of Amenity Importance'. Policy LC11 of the LP is relevant in this regard and seeks to ensure development within important amenity areas do not adversely affect their open character, visual amenity or wildlife value or compromise the gap between conflicting land uses. Where development is permitted, measures

shall be taken to minimise their impact or, where necessary, make a positive contribution to such areas.

24. The site is located within the settlement limits of Messingham. It is not accessible to the public and is not currently usable open space. I saw on my site visit that the majority of the site is set away from the street and behind existing buildings which limits its contribution to open character and the visual amenity of the area. The Council's Officer report recognised that the density of development proposed was at the lower end of the density range sought in the CS and that the site characteristics may dictate that this lower number may be preferable in the interest of amenity and character. A design and layout which best responds to these matters can be sought through the reserved matters. I am satisfied that this provides an opportunity to ensure the development successfully integrates with its immediate surroundings.

25. Furthermore, from a wildlife value perspective, the appellant has undertaken a preliminary ecological appraisal. The Council's Natural Environment Policy Specialist has not raised any objections in terms of its findings that all habitats encountered were assessed as having either low or moderate nature conservation value and is satisfied that there is low potential for the proposal to impact on protected species. There is no detailed contrary evidence before me to suggest I should reach a different conclusion. The detailed design of the proposal would provide opportunities to incorporate biodiversity measures in and around the development both integrated into the design of the dwellings and in terms of soft landscaped areas.

26. Having regard to these factors, there would be opportunities to minimise the impacts of the development and ensure it makes a positive contribution to the area. This is also a matter not disputed by the Council. It is also envisaged that the proposal would incorporate an area of public open space and this would be an improvement on the existing situation in terms of providing a publicly accessible area of amenity space.

27. There is anecdotal evidence of previous flooding in the village. I have also seen the third-party photographic evidence depicting flooding at Westfield Drive. However, an illustrative drainage strategy has been provided. The Lead Local Flood Authority (LLFA) has not objected to the proposal nor has the LLFA suggested that development of the site would lead to increased flood risk in the locality. Furthermore, Severn Trent Water have not objected to the proposal or suggested that a suitable sewerage scheme could not be achieved. On this basis, there is no objective evidence to suggest that acceptable drainage and sewerage solutions could not be incorporated as part of the detailed matters.

28. Similarly, there is no detailed evidence to demonstrate that the proposal either on its own or when considered cumulatively with other developments in the area would have an unacceptable impact on highway safety. No highway safety concerns have been raised by the highway authority. From my observations on site, I am satisfied that there would be an opportunity for the detailed design of the scheme to ensure a safe access is provided. Wider measures throughout the village which are not directly attributable to the proposed development, for example in terms of speed limits or crossing facilities, are a matter for the highway authority to consider if necessary.

29. In the event that planning permission was granted, the detailed requirements of the drainage and access infrastructure could be secured through the respective conditions suggested by the relevant consultees.

30. The appearance of the dwellings is a matter for the detailed design stage. This would provide an opportunity to ensure the scale, form and materials positively respond to the local vernacular. The reserved matters is also the appropriate stage to ensure that the layout of the proposals provides acceptable interface distances between neighbouring residential properties in order to protect the living conditions of existing occupiers.

31. Concerns have been raised in respect of the capacity of health services in the area to absorb potential demand resulting from the development. There is no evidence before me to suggest that a development of the scale proposed would trigger a policy requirement for a health contribution. In the event that it would, I am not aware that the health authority has been consulted. In any case, given that the evidenced developer contributions have not been provided for and I am dismissing the appeal, it has not been necessary to consider this matter any further.

32. There would likely be some social and economic benefits associated with the development of the site and the future contributions that occupiers of the dwellings would make towards supporting local services and facilities in the area. These are positive benefits to weigh in the balance.

Planning Balance and Conclusion

33. The appellant contends that the local planning authority (LPA) cannot demonstrate a 5-year supply of deliverable housing sites. While I have no comments from the LPA in respect of this matter, I have applied a worst-case scenario for the purposes of my decision. Therefore, paragraph 11d of the Framework is engaged.

34. I have found that the proposal could be designed to ensure that acceptable living conditions would be provided for future occupants with regards to matters of noise and disturbance. The proposal would make a positive contribution to the Council's housing supply in a sustainable location within the settlement of Messingham which in the absence of a suitable housing land supply carries substantial weight.

35. However, a completed legal obligation to secure the developer contribution requirements arising from the development has not been provided. More specifically, there is nothing before me to dispute that the affordable housing or recreation contributions towards football pitch provision are required. In addition, the future maintenance of the public open space envisaged on the site would also need to be secured through a completed legal agreement. In all these respects, the absence of a suitable legal mechanism to secure these requirements has the potential to have a significantly adverse effect on local infrastructure. This is a matter which significantly and demonstrably outweighs the benefits of the proposal when assessed against the policies of the Framework when taken as a whole.

36. In addition, and in the absence of a completed planning obligation relating to at least the provision of affordable housing and open space provision, I find there is conflict with Policy H10 of the LP and Policies CS9 and CS23 of the CS. This is

a matter of overriding concern and outweighs the positive considerations identified above.

37. For the above reasons the appeal should be dismissed.

M Russell

INSPECTOR