
Appeal Decision

Site visit made on 7 May 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2024

Appeal Ref: APP/E2530/W/23/3334444

Land north of South Heath Lane, Fulbeck, Lincolnshire NG32 3HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Alix Fane against the decision of South Kesteven District Council.
 - The application Ref is S23/1124.
 - The development proposed is described as "Erection of 9 no. dwellings comprising 7 no. affordable housing units and 2 no. market housing units; formulation of new private drives and associated hard landscaping to provide vehicular and pedestrian access from South Heath Lane".
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Decision

1. The appeal is allowed and planning permission is granted for erection of 9no. dwellings comprising 7no. affordable housing units and 2no. market housing units; formulation of new private drives and associated hard landscaping to provide vehicular and pedestrian access from South Heath Lane at land north of South Heath Lane, Fulbeck, Lincolnshire NG32 3HX in accordance with the terms of the application, Ref S23/1124, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant, Ms Alix Fane, against South Kesteven District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. A revised National Planning Policy Framework (the revised Framework) came into force on 19 December 2023. Paragraph 73 of the revised Framework relates to the development of exception sites which effectively replaces reference to entry-level exception sites in the previous iteration of the National Planning Policy Framework. The revised Framework's exception site policy in paragraph 73 does not replace the First Homes exception policy set out in the Affordable Homes Update Written Ministerial Statement (WMS), dated 24 May 2021, which remains extant policy. The WMS is a material planning consideration and I have determined this appeal on that basis.

Main Issues

4. The main issues are whether the proposal is in a suitable location; the effect of the proposal on affordable housing; and the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Location

5. Policy SP4 of the South Kesteven District Council Local Plan 2020 (LP) relates to development proposals on the edge of the settlement. Policy SP4 states amongst other things that proposals must demonstrate support from local community and meet a proven local need for housing. The Policy continues indicating that as an exception to demonstrating local support, a housing scheme which meets a demonstrable local need for affordable housing will be considered as a Rural Exception scheme providing it meets a number of specific criteria.
6. The appeal site sits on the edge of a settlement with the proposed seven affordable housing units to be provided as First Homes. A Housing and Local Employment Needs Survey for Fulbeck Parish (HLNS) has been submitted with the evidence and this survey concludes that there is need for some additional affordable housing units including starter homes, shared equity and other tenures, as well as private elderly and accessible accommodation for people with disabilities. The Council disagree with the findings of the HLNS, arguing that the Council's Housing Register demonstrates a need for affordable housing for rent.
7. The affordable housing units are to be provided as First Homes. A home meeting the criteria of a First Home is considered to meet the definition of 'affordable housing' for planning purposes. The proposed affordable housing units would meet the need identified in the HLNS with the development being proportionate to the settlement of Fulbeck. The Council accept that there is no compelling evidence indicating that a need for First Home schemes is being met elsewhere in the District.
8. A completed section 106 legal agreement (s106) has been submitted which aims to secure the provision of First Homes. The main parties have agreed that the s106 delivers on obligations including matters on clustering, type and distribution, development standard, delivery mechanism, use, mortgage exclusion and perpetuity. The agreement is modelled on the 'First Homes: Model Section 106 Agreement' guidance and I am satisfied that the proposed development would deliver First Homes.
9. The proposal includes two open market dwellings. A Viability Assessment (VA) has been submitted which aims to show a viable scheme that enables a surplus above existing land cost in order to secure a willing landowner. The VA assesses the viability of the proposed scheme and compared it to a scheme in which all nine dwellings are to be First Homes. The assessment on the scheme for nine First Homes resulted in a negative land value whereas the proposed development with seven First Homes and two market houses showed margins that the scheme was viable.
10. A previous scheme on this site proposed 12 dwellings comprising 10 First Homes and two open market dwellings with this scheme being accompanied by evidence that the development required the two market dwellings in order to be viable. The Council consider it illogical that the number of open market dwellings required to make the scheme remains the same as the previous scheme for 12 dwellings. Viability information relating to the previous scheme has not been presented and the Council have not comprehensively objected to the specific data, analysis and findings of the VA. From the evidence before me, I am

satisfied that two open market dwellings are required to subsidise the First Homes and to make the scheme a viable development.

11. From the evidence submitted, the proposed development would meet a demonstrable local need for affordable housing in the form of First Homes and is therefore a Rural Exception scheme. The submitted VA demonstrates that the proposed scheme only promotes the minimum number of market houses required to make the scheme viable and therefore the proposed market housing is required as a means of cross subsidising the First Home dwellings.
12. Accordingly, the proposed development would be suitably located. The proposal would accord with Policy SP4 of the LP and the WMS which supports Rural Exception schemes where a local need can be demonstrated and the provision of First Homes.

Affordable housing

13. Policy H2 of the LP expects all affordable housing to, amongst other things, include a mix of socially rented/affordable rent/immediate rent and intermediate market housing appropriate to the current evidence of local need and local incomes as advised by the Council.
14. The Council's Housing Register establishes a need for six dwellings for affordable rent, which should include a mix of one, two and four bed dwellings. The proposed First Homes dwellings would be a mix of two and three bed properties. Whilst the submitted HLNS identifies a need for First Homes in the area, there is minimal information in respect of number, size and type of dwellings required.
15. The proposal would not provide affordable housing that has a mix of number, size and type that meets an identified need as advised by the Council. The proposed development would therefore be contrary to Policy H2 of the LP.

Character and appearance

16. The area surrounding the appeal site is characterised by predominantly residential properties in a linear form with open countryside beyond. The built form is mixed with various sizes, form, materials and architectural design. It is this variation in the built development which contributes positively to the character of the surrounding area.
17. The proposed layout aligns with the linear built form of the existing properties in the area. The existing properties in the vicinity mostly have large driveways and parking areas to the front of the properties. The proposal would introduce driveways and parking, that may differ in widths, but would be in front of the properties and not appear substantially different to surrounding driveways and parking areas.
18. The proposed development would have varying styles and design for each of the properties which would not be out of keeping with the mixed architectural features, detailing and form in the area. The Council have concerns with some features such as blank gable elevations, window sizes and access splays, however, these matters would not be significantly prominent and would not detract from the overall street scene.
19. A mix of materials is proposed throughout the development which would match the differing material palette in the area. The surrounding properties are

constructed from high quality traditional materials, and it would be expected that the finished materials for the proposed properties would also be of high quality. A planning condition would provide certainty on this matter.

20. The boundary treatment in the area is mixed including hedgerows, fencing and walls. Whilst the submitted plans have provided a certain level of information with regards to boundary treatment, including retaining some the existing hedgerow, a suitable planning condition would provide further definitive details. Given the variation in the area, boundary treatments for the scheme can be provided that would not compromise the character of the area and help towards demarcation of the individual plots.
21. The proposed development would not have a harmful effect on the character and appearance of the surrounding area. The proposal would not be contrary with Policies SP4, DE1 and EN1 of the LP, the Design Guidelines for Rutland and South Kesteven Supplementary Planning Document 2021 and the revised Framework which seeks development to promote good quality design, be appropriate to the character and features of the landscape, and be of appropriate size, layout and character to the setting and area.

Planning Balance

22. I have found that the proposal would conflict with Policy H2 of the LP as it has not been sufficiently demonstrated that the proposed affordable housing has a mix of number, size and type that meets an identified need. The scale of the development is relatively small given the number of properties proposed and it is also noted that there are two bed properties proposed which would match a need identified in the Council's Housing Register. So, on this basis, the harm and conflict with the proposal and Policy H2, I attribute modest weight in this appeal.
23. The proposed development would provide seven First Homes and two market housing units which would not be harmful to the character and appearance of the surrounding area. I am satisfied that the two market housing units are required in order to deliver the development whilst remaining viable and the submitted evidence details that there is a need for First Homes in the area. The WMS states that it is a key priority to enable as many people as possible to enjoy the benefits of home ownership, and First Homes are a crucial way in which this will be achieved. In order to maximise the number of First Homes made available to those keen to get on the housing ladder, the delivery of First Homes via exception sites are sought. Given the importance on delivering First Homes, I attribute substantial weight to this particular benefit.
24. I therefore find that the modest adverse impacts of the development would be outweighed by the substantial benefits of delivering a Rural Exception scheme including First Homes.
25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The WMS is a significant material consideration which justifies a decision other than in accordance with the development plan in this case.

Conditions

26. The conditions imposed are largely those that were attached to the Council's statement of case. In the interests of precision and clarity I have undertaken some minor editing and rationalisation where necessary.
27. Conditions relating to timeliness and the identification of plans are necessary in the interests of proper planning and to provide certainty. To prevent undue risk to the local environment it is necessary to attach conditions relating to trees, drainage, contamination and ecology. In the interests of the character and appearance of the area, conditions are necessary relating to materials, boundary treatment, hard standings and landscape details and implementation. To safeguard the living conditions of nearby residents' conditions are necessary in relation to a construction management plan. In the interests of future occupiers of the site, conditions are necessary with relation to footpath connectivity and sustainable building measures. The Council had suggested a separate condition in relation to construction hours however, I am satisfied that this matter would be dealt with in the construction management plan.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed subject to the appropriate conditions and the relevant terms of the submitted Section 106 Agreement.

Chris Baxter

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: L-ADD-092-10; L-ADD-092-11; L-ADD-092-14 Rev C; L-ADD-092-15; L-ADD-092-16; L-ADD-092-17; L-ADD-092-18; L-ADD-092-19; L-ADD-092-20; L-ADD-092-21.
- 3) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods including monitoring protocol (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. [In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 4) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within one year from the date of the occupation of the property in which the retained tree falls within the curtilage, other than in accordance with the approved plans. [In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) The phasing of the development, to include access construction;
 - ii) Hours of construction and deliveries;
 - iii) The parking of all vehicles and site operatives;
 - iv) The loading and unloading of all plant and materials;
 - v) Wheel washing facilities;
 - vi) The routing of all vehicles associated with the construction stage of the development; and
 - vii) Measure of dust suppression during the construction period.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall take place 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, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:

- i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
- ii. the site has been remediated in accordance with the approved measures and timescale; and
- iii. a verification report has been 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 until:

- i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 7) No development above damp-proof course shall take place until a scheme of on-site foul drainage works, including connection point and discharge rate, has been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details before the occupation of the first property.
- 8) No development above damp-proof course shall take place until a scheme of sustainable building measures, including details of minimising carbon dioxide emissions, has been submitted to and approved in writing by the local planning authority. The approved details shall be completed for each property before the occupation of that particular property.
- 9) No development above damp-proof course shall take place until detailed specifications of the materials has been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 10) No development above damp-proof course shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include planting plans, written specifications, schedule of plants and details of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.
- 12) No development above damp-proof course shall take place until detailed specifications of all means of enclosures, boundary treatment and hard standing areas, including vehicular and pedestrian access and circulation

areas, has been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.

- 13) All works on site during the construction period shall be carried out in accordance with the recommendations contained within the Extended Phase 1 Habitat Survey (CBE Consulting) (May 2021), including reasonable avoidance measures for protected species and the installation of roosting bat and bird nesting boxes.

The scheme of bat and bird boxes are to be installed on site prior to first occupation of the development hereby permitted and shall be retained for the lifetime of the development.

- 14) No development above damp-proof course shall take place until a scheme detailing a tactile crossing point on South Heath Lane connecting the development to the existing footway, has been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details before the occupation of the first property.