



Appeal Decision

Site visit made on 19 June 2024 by Darren Ellis MPlan MRTPI

Decision by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/R2520/W/23/3334926

**Fern Bank, 12 Thorpe Lane, South Hykeham, Lincoln, Lincolnshire
LN6 9NW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 is 22/0925/OUT.
 - The development proposed is described as 'outline application (all matters reserved) for the erection of up to 3 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.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. Revised proposed site plans have been submitted in addition to the plans on which the Council made their decision. These revised drawings show alternative layouts for the proposed dwellings and their plots. However, the application was submitted in outline with all matters, including layout and access, reserved for subsequent approval. Subsequently I have assessed the appeal proposal on that basis and have considered the submitted plans as indicative only.

Background and Main Issues

4. A previous outline application for five dwellings at the appeal site was dismissed at appeal in 2023¹, as it was considered that the proposed development would result in unacceptable living conditions for the future occupiers and would result in an adverse effect on the character and appearance of the area. The current proposal has been reduced to three dwellings in an attempt to resolve these issues. The Council have not raised any concerns with regards to the character and appearance of the area, however they concluded that the proposal would still cause harm to the living conditions of the future occupiers. Furthermore, since the previous appeal,

¹ Planning application ref. 21/1008/OUT, Planning appeal ref. APP/R2520/W/22/3298407

developments including this appeal proposal are required to demonstrate a biodiversity net gain of at least 10%.

5. The main issues therefore are a) the effect of the proposal on the living conditions of future occupiers of the proposed dwellings with particular regards to light and noise, and b) whether the development can demonstrate at least a 10% measurable biodiversity net gain.

Reasons for the Recommendation

Living Conditions

6. The appeal site comprises land to the rear of 12 Thorpe Lane, which is currently used as a paddock for the keeping of animals. The site is long and relatively narrow and, at the time of my site visit, with a number of trees along the western boundary.
7. Although it is indicative, the proposed site plan shows that Plots 1 and 2 would have rear gardens situated to the east of their respective dwellings. Given their relatively limited depth, the gardens and in particular the areas closest to the dwellings would potentially be in considerable shade during the afternoons and evenings. This would result in the rooms at the rear of the dwellings and the areas of garden closest to the dwellings being dark and gloomy, making them less pleasant to use.
8. The appellant's Sunlight Hours Analysis document is based on a revised site plan which was not the one the Council based its decision on, and in any case the positions of the dwellings on the site plans are indicative only and would be subject to approval in a future application. Nevertheless, the analysis shows that some parts of each plot, including areas directly adjacent to the indicative dwellings, would be in constant or near-constant shade.
9. While the revised site plans show the dwellings and gardens on Plots 1 and 2 in slightly different positions and orientations, this would not mitigate the issue of noise which is discussed in more detail below.
10. The proposed site plan also shows that Plot 3 would have trees in close proximity to its west and north-west, which would likely leave the plot in considerable shade during the afternoons and evenings. However, I note that outline planning permission has recently been granted for two dwellings, including their layout, on the appeal site², with the approved drawing showing the dwelling on Plot 2 would be in a very similar position to the indicative dwelling on Plot 3 of the scheme before me. As the Council has found that a dwelling in this position would be acceptable, I have no reason to conclude otherwise in this regard in relation to Plot 3.
11. The proposed site plan shows the access to the dwellings would run adjacent to the western boundary of the site. Whilst indicative, the site plan shows the dwellings on Plots 1 and 2 would be in close proximity to the access road. Given the narrowness of the site and the constraints of the root protection areas of the existing trees, I cannot see how it would be possible to position either the dwellings or their private garden areas away from the access road. As the access would serve three dwellings, it is likely that future occupiers of the dwellings, and particularly those on Plots 1 and 2, would experience a

² Planning application ref. 23/1444/OUT

significant disturbance through the noise of vehicles using the access road in such close proximity to the dwellings and/or their gardens.

12. The appellant has suggested that a condition could be used to require the submission of a noise survey which includes the acoustic performance of the boundary treatments, doors, windows, walls, vents etc. However, I am not convinced that such a condition would be sufficient to mitigate against the noise and disturbance identified above. There is a risk that it would not, and a planning permission would have been granted by then.
13. The approved scheme is for two dwellings, and as such fewer vehicles would use the access road. Consequently, the approved scheme does not justify the appeal proposal before me with regards to noise.
14. For these reasons, I am not convinced that the site could accommodate three dwellings in such a way that would not cause harm to the living conditions of future occupiers in the manners I have set out. The proposal would therefore conflict with Policies S1, S3 and S53 of the Central Lincolnshire Local Plan 2023 (CLLP), insofar as they require development not to result in harm to the living conditions of future occupiers of a development. The proposal would also fail to comply with Policy 1 of the Hykeham Neighbourhood Plan 2016-2036, which requires proposals to not be unsuitable for the site, and with the National Planning Policy Framework 2023 (the Framework) and the National Design Guide, insofar as they require development to have a high standard of amenity for future users.
15. The Council also cites a conflict with CLLP Policy S66 which relates to trees, woodland and hedgerows. I note that the proposal would result in a tree being removed and a hedgerow being replaced on the eastern boundary, however these also form part of the approved scheme for two dwellings. There is also no guarantee that any tree would be removed by any future occupier, and in any case, I am not aware that any of the trees on the site are statutorily protected. For these reasons I find that the proposal would comply with the aims of Policy S66. This would however be a lack of harm which, accordingly, would be a neutral matter.

Biodiversity Net Gain (BNG)

16. A BNG metric calculation was not provided during the original application. However, sufficient information relating to BNG appears to have been provided for the approved scheme, and I therefore have no reason to believe that this information would be significantly different when related to the proposal before me. Furthermore, a pre-commencement condition could be used to require the submission and approval of a Biodiversity Gain Plan and Management Plan, as suggested in the Council's statement. Subject to such a condition, the proposal would thus comply with the aims of CLLP Policy S61, which requires all qualifying development proposals to deliver at least a 10% measurable BNG attributable to the development. The proposal would also accord with the biodiversity aims of the Framework in this respect.

Conclusion and Recommendation

17. For the reasons given above, the appeal scheme would conflict with the development plan and there are no sufficiently weighty material considerations to indicate a decision other than in accordance therewith. I therefore recommend that the appeal should be dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

18. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

John Morrison

INSPECTOR