



Appeal Decision

Site visit made on 9 October 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2025

Appeal Ref: APP/R2520/W/24/3343814

Kelvindale, Old Wood, Skellingthorpe, Lincoln, Lincolnshire LN6 5UA

- 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 Mr Stephen Mayo against the decision of North Kesteven District Council.
- The application reference is 23/0911/OUT.
- The development proposed is two residential bungalows.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made in outline with all matters reserved. I have considered the appeal on this basis, treating all details relating to the reserved matters as illustrative.
3. A new version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments.

Background and Main Issues

4. Old Wood lies outside of the village of Skellingthorpe and comprises scattered residential development on two main roads, Woodbank and The Old Wood, that pass through extensive woodland. The appeal relates to two plots of land forming part of the appellant's wider landholding, which includes an existing dwelling, Kelvindale, and other buildings and land associated with a crane hire business to the south of Woodbank. The holding extends to the south where it includes larger agricultural fields/paddocks on the eastern side of a byway, Old Wood Walk. It also includes a large woodland extending to Skellingthorpe Walk. This woodland is designated as a Local Wildlife Site (LWS), a Site of Nature Conservation Interest (SNCI) and is indicated to have met the criteria for designation as ancient woodland.
5. The wider land has an extensive planning history. Relevant to this appeal are three planning permissions granted in 1965 for development related to large scale poultry farming. The permissions are NK6490 (Erection of an egg packing room, canteen, toilets etc); NK6491 (Erection of a bungalow) and NK6492 (Erection of 7 poultry houses). The appellant's position is that these permissions remain extant and capable of implementation. Indeed, NK6491 has

recently been implemented on site as an agricultural worker's dwelling. The other permissions are presented as fall-back positions for the appellant.

6. Having regard to this background and the Council's reasons for refusal, the main issue is whether the proposal represents a suitable location for residential development, having regard to i) local and national policy relating to development in the countryside; ii) the safety and suitability of access to the site and to local services and facilities, and iii) the effect on the character and appearance of the area. Should harm be identified, it will be necessary to consider whether there are material considerations which outweigh that harm such that planning permission should be granted.

Reasons

Location for Housing

7. The development plan for the area is the Central Lincolnshire Local Plan 2023 (the CLLP). Policy S1 sets out the spatial strategy and settlement hierarchy. The appellant argues that Old Wood constitutes a hamlet with some 50 dwellings and other interspersed development. Under the CLLP, a hamlet is defined as a settlement with dwellings clearly clustered together to form a single developed footprint.
8. 'Developed footprint' is defined as 'the continuous built form of the settlement' and *excludes* individual buildings or groups of dispersed buildings which are clearly detached from the continuous built up area of the settlement, as well as gardens, paddocks and other undeveloped land within the curtilage of buildings on the edge of the settlement where land relates more to the surrounding countryside than to the built-up area of the settlement.
9. From my observations, the housing within Old Wood is scattered in nature, not clustered in a single developed footprint, with no identifiable centre and detached from the built-up area of Skellingthorpe. This is particularly the case for the sporadic development along Old Wood Walk. Therefore, I find that the immediate area does not have the characteristics of a hamlet. The appellant refers to an ongoing development of some 94 dwellings off Woodbank to the east, but this was an allocated site that is contiguous with the built-up area and separate physically and in character from the scattered development of Old Wood. As such, I find that the appeal sites are not located within a defined settlement and so fall within the open countryside under Tier 8 for the purposes of the spatial strategy.
10. Development in the countryside is supported under Policy S1 where it accords with criteria related to essential rural operations, including agriculture and forestry. This support is further contingent on meeting criteria of Policy S5, Part D to demonstrate the essential need that would be met. However, the proposal has not been made on the basis that it is needed to support an essential rural operation. Consequently, there is conflict with Policies S1 and S5.
11. The Council further assessed the proposal against the criteria of Paragraph 84 of the Framework. The proposal would not meet with any of these criteria. However, having regard to the judgment in *Braintree*,¹ the location of the

¹ Braintree District Council v Secretary of State for Communities and Local Government and Others [2018] EWCA Civ 610)

dwelling, though within the open countryside, would not be 'isolated' in physical terms, given the proximity of other dwellings on Old Wood Walk.

12. Nonetheless, for the reasons given, the proposal for market housing would fail to accord with the criteria for development in the open countryside. As such, it would represent unjustified development at the lowest tier of the hierarchy, in conflict with the approach of the spatial strategy to direct development to the most sustainable locations in the first instance.

Access

13. The matter of access is not formally for consideration under this outline application. However, the dwellings could only be realistically accessed from the byway of Old Wood Walk, with access on to Skellingthorpe via Woodbank and it is necessary to consider whether safe access could be achieved in principle. The restricted byway and part of Woodbank are unpaved, and both are narrow roads with no footpaths and soft verges. Sporadic street lighting exists further along Woodbank. The nearest facilities, such as the Plough Inn and local supermarket, are some 1.3km away.
14. Although the nearest facilities in Skellingthorpe could be reached on foot or bicycle, the surface conditions and distances are not conducive to regular access by those means, particularly in inclement weather or at night. Consequently, residents would be heavily reliant on the private car for most transport. I concur with the findings of the 2015 appeal that although the proposed dwellings would not create significant volumes of traffic, it would increase vehicular use of a narrow, poorly surfaced and unlit route. Its use by the general public as a leisure walking route adds to the risk factor of adding more vehicular traffic to the restricted byway. I address the impacts of the fall-back position below, but on its own merits, I am not satisfied that safe and secure access would be provided or highway safety maintained.
15. The Framework recognises that opportunities for sustainable modes of transport will vary between rural and urban areas, and it is to be expected that those living in rural areas would own a vehicle. However, it is also an objective to reduce reliance on the private car and to ensure safe and suitable access to the site can be achieved for all users. In my view, the proposal's location does not fulfil these objectives, but rather would exacerbate car use along unsuitable roads due to its location well beyond a built-up area. My findings in this matter are consistent with those of the Inspector in a 2015 appeal for 3 dwellings.²
16. The appellant refers to a permission granted by the Council for two holiday homes³. From the available officer report excerpt, the one-bedroom holiday homes were considered to generate modest trip levels, which are also likely to be seasonal. I find this differs from the trips generated by permanent dwellings and I am not persuaded that the Council has been inconsistent in its approach. Consequently, this does not alter my finding on this issue.
17. For these reasons, I find that the proposal would conflict with Policies S47, S48 and S53 of the CLLP which together support proposals that contribute towards an efficient and safe transport network that offers a range of transport choices for the movement of people and goods, including by minimising travel and maximising use of sustainable transport modes and walking and cycling

² Appeal Decision APP/R2520/W/15/3029982

³ Council Ref 19/1765/FUL

infrastructure. The Council also cites conflict with Policy S5 under this issue, but the relevant section (Part D) does not specifically refer to accessibility.

Character and Appearance

18. The dwellings are proposed on two separate plots within open paddocks surrounded by tracts of woodland, including a mature band of trees along the byway on the western side. There are extant permissions for two dwellings, one close to the dwelling at Kelvindale and a second between the two plots the subject of this appeal. The recent agricultural worker's dwelling stands to the south. There is also housing to the opposite side of the byway, although the substantive tree cover means it is well screened from within the paddock land.
19. There is clearly already development to the eastern side of the byway. However, Kelvindale and the commercial operations are located close to Woodbank, and the agricultural worker's dwelling is tucked into the woodland to the south. As a result, the wider paddock land is largely intact and contributes positively to the distinctly rural character of the surroundings. In these respects, I concur with the Inspector in the 2015 appeal that enclosure of the paddock from the wider surroundings by the woodland lends it a sense of isolation and tranquillity.
20. The proposed dwellings would involve new or enlarged access points from the byway and the carving out of rectangular plots within the larger paddock. This would involve loss of sections of hedgerow and introduce artificial site boundaries that would appear out of character within the natural surroundings, and would be visible from the byway. So too would the parking, lighting, activity and domestic paraphernalia that residential uses would entail. Inevitably, each site would take on a more urban character that would conflict with the rural and natural character of the surroundings.
21. I accept that permission exists for one such dwelling already, but the addition of two further dwellings would intensify the urbanisation of the area, creating a disjointed arrangement of dwellings on standalone plots of different sizes, separated by remnant sections of a broken up paddock. This would severely erode the openness and quality of the paddock land and significantly harm the prevailing natural character of the surroundings. I recognise that the proposals are in outline, but even if dwellings came forward at a modest scale and with a well-considered external design, this would not overcome my concerns with the position, artificial plot creation and loss of hedgerow to form accesses.
22. I am also mindful that residential development is well-established along Woodbank and The Old Wood. However, for the most part, this development is aligned to these roads and well enclosed from the wider countryside by woodland. The proposal, by contrast, would represent an incursion of development into a more open area not subject to significant development or other urbanising influence. Consequently, the largely unsighted presence of dwellings in the wider area does not temper the harm the scheme would cause.
23. For these reasons, the proposal would significantly harm the character and appearance of the area, contrary to Policy S53 of the CLLP, which requires development to achieve high quality sustainable design that contributes positively to local character, landscape and townscape. As above, the Council also cites conflict with Policy S5 under this issue, but again the relevant section (Part D) does not specifically refer to effects on character and appearance.

Other Matters

Fall-back Position

24. The appellant's position is that the three historic permissions have been implemented and remain extant and are a realistic fall-back position in the event the appeal is dismissed. The appellant's contention, as it was in the 2015 appeal, is that the environmental impacts of the proposed dwellings would be significantly less than a commercial poultry farming operation, and so is a factor that should weigh in favour of the appeal scheme.
25. Permission NK6491 was confirmed as extant under a lawful development certificate (LDC) in 2013.⁴ Permission NK6490 was also confirmed as extant under an LDC in 2012.⁵ No LDC has been issued in relation to the seven poultry sheds (Ref NK6492). I recognise that this does not necessarily mean the permission is not extant, but neither have I certainty that it is.
26. The appellant has adduced evidence purporting to show intent to implement the fall-back scheme, including correspondence with bodies such as Natural England (NE), the Environment Agency and the Forestry Commission seeking to clarify various legal and other matters relevant to the fall-back scheme. However, whilst this evidence goes some way to clarifying the feasibility of the fall-back scheme in principle, there is little evidence to suggest it is a realistic alternative. The permissions are nearly 60 years old. There is no information before me as to show whether facilities granted decades ago would be capable of meeting modern animal welfare standards and other necessary operational requirements of modern poultry farms.
27. There is also no indication that the appellant has a background in poultry farming. Indeed, the evidence indicates that earlier applications were made on the basis that a third party operator would be sought, but now the appellant is seeking to operate it themselves. This suggests a lack of interest from those with experience in the industry. I also note the Inspector's comment in 2015 that the fall-back position was not the appellant's preference for developing the land. Indeed, the fact that there have been several planning applications to place dwellings on the land over many years adds weight to the argument that there is no real intent by the appellant to carry out the fall-back scheme.
28. The appellant points to the construction of the agricultural worker's dwelling, and provision of electricity connections as evidence of a financial commitment to delivering the poultry farming scheme. However, the occupancy restriction on the dwelling is not specific to a poultry farming operation on the land and could be lawfully occupied by anyone working in agriculture or forestry. The dwelling can also function independently and does not require the poultry sheds to be built in order to realise value or utility from it. The utility connections appear at least partly necessary to connect the agricultural worker's dwelling to the grid. As such, I do not regard these as persuasive evidence that implementation of the other historic permissions will follow.
29. It is suggested that timber felling in the woodland would raise some £20,000 to offset construction of the poultry farm. However, there is no substantive detail before me, such as a business plan, to determine whether the appellant has considered the wider costs and financing of the fall-back scheme. For such a

⁴ Council Ref 12/1219/LDEXI

⁵ Council Ref 12/0013/LDEXI

- potentially significant operation, I consider the Council's concerns in respect of its viability are reasonable, and the vagueness of the evidence before me in these respects casts significant doubt over how genuine these proposals are.
30. Beyond this, there are significant physical constraints in developing and operating the site for an intensive commercial operation, most notably the narrow, unpaved access along the byway where the track is single-width and unsuitable for regular use by the larger delivery vehicles expected to visit such a facility. This casts doubt on the likelihood of significant investment being made in the fall-back scheme.
31. I acknowledge that were the poultry farm to be implemented, it is likely to operate at a more intensive level in comparison to two dwellings, in matters such as noise, odour and traffic generation. However, there is no evidence before me to precisely quantify the expected noise or traffic levels, which limits the weight I afford these potential impacts. I have noted the odour dispersion modelling study, which indicates a 'moderate risk of annoyance and complaint from residents' at a capacity of 270,000 birds. However, the evidence also suggests a free range operation of considerably lower capacity, under 40,000 birds, for which I do not have details of predicted impact. Again, this lack of clarity as to the nature of the proposal limits the weight I ascribe to the potential harm from odour impacts.
32. The greater visual harm of the poultry farm is also cited, but whilst it would be substantially larger than two dwellings, I agree with the previous appeal decision that the sheds would comprise agricultural buildings and thus would not be incongruous in principle in a rural area. They would also be set away from most dwellings in Old Wood and would be enclosed by the surviving area of woodland that would reduce visibility from the south in particular and limit its prominence in the landscape.
33. The appellant also points to the need to close the public footpath running through the woodland during the construction period and the longer term intrusion it would have on the adjacent Sustrans Route, but I concur with the Inspector in 2015 that these would be minor impacts over a short stretch of a very long route.
34. The indication from NE that the woodland constitutes ancient woodland is a change in circumstances from earlier applications. The loss of such woodland through development of the poultry farm would be a significant harm to the visual amenity of the area and to an irreplaceable habitat, as would the associated harm to biodiversity and the effect of this on the LWS and SNCI. I am mindful of the significant protection afforded to both ancient woodland and biodiversity in the Framework and, in these respects, the fall-back position would be more harmful than the appeal scheme, which would have no direct effect on the woodland.
35. However, even if I accept the appellant's stated intention to implement the fall-back position, the means to ensure this would be avoided is by way of a planning obligation wherein the landowner covenants to forego the previous permissions immediately upon the granting of planning permission for the dwellings. It would not be possible to address this by planning condition, as a condition would only take effect once a planning permission is implemented, and would not prevent a fall-back position being implemented beforehand.

36. There is no completed obligation before me. A draft unilateral undertaking has been provided, but this is unsigned and therefore of no legal effect. In the absence of a completed legal agreement, there would be no restriction on the appellant implementing both the residential development proposed under this appeal *and* the poultry farm, which would result in a cumulatively greater degree of development, and harm, than the fall-back scheme alone.
37. Consequently, taking these considerations together, I find that the appellant's fall-back scheme would not present an equivalent or greater degree of harm compared to that which could occur cumulatively were the appeal scheme to be granted. Therefore, the fall-back position does not attract weight in favour of the proposal as a material consideration.

Other Issues Raised

38. In terms of the proposed dwellings themselves, the Council has not refused permission in respect of other matters, including neighbours' living conditions, ecology, biodiversity gain, highway safety and trees. The evidence before me does not lead me to conclude otherwise as these matters pertain to the proposed dwellings. As such, they are neutral considerations weighing neither for nor against the development.
39. In reaching a view, I have had regard to other evidence from the appellant, including in relation to various other planning decisions of the Council; circumstances surrounding an LDC application in relation to Ref NK6492; legal advice relating to lawfulness and rights to fell trees under the Forestry Act. Ultimately, none of the other evidence before me leads me to different conclusions in the matters addressed above.

Conclusion

40. The proposal would conflict with the development plan due to the locating of market housing within the open countryside where residents would be reliant on the private car for most travel, in conflict with the spatial strategy of the CLLP and the approach of the Framework. The proposal would also cause harm to the character and appearance of the area.
41. A fall-back position exists, but for the reasons set out, it would not be more harmful than the outcome of the appeal scheme and so is not a factor weighing in favour of the proposal.
42. The proposal would deliver two additional dwellings to the housing stock, with associated economic benefits from their construction and subsequent engagement by residents in the local economy. However, given the modest scale of the proposal, and the uncontested position of the Council that it can demonstrate in excess of a five year supply of deliverable housing sites, the social and economic benefits in these respects would be limited. A modest gain in biodiversity on the site itself could be secured by condition, but would also be a limited benefit.
43. Taken together, I conclude that the material considerations in this case would not be sufficient to outweigh the identified conflict with the development plan, taken as a whole. Therefore, the appeal should be dismissed.

K. Savage INSPECTOR