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## Appeal Decision

Site visit made on 30 May 2025

**by S Hartley BA(Hons) Dist.TP (Manc) DMS MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 05 June 2025

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**Appeal Ref: APP/D2510/W/25/3362096**

**Land adjacent to William Lovell School/Stickney Meadows, Stickney**

- 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 P Cash against the decision of East Lindsey District Council.
  - The application reference is S/169/00025/2024.
  - The development proposed is in outline for the erection of 46 dwellings (with means of access and site layout to be considered).
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The appellant describes the proposal as for housing development. I have used the local planning authority's (LPA) description for the proposed development in the banner and in the decision as it more fully describes what is proposed.
3. The National Planning Policy Framework was revised in December 2024 and amended on 7 February 2025 to correct cross references from footnotes 7 and 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear. The 2025 Framework (the Framework) has not materially changed in terms of the identified main issue below and therefore it has not been necessary for me to seek comments from the main parties.
4. The issue of the way in which necessary planning obligations might be secured in order to mitigate the impacts of the development has arisen as a material consideration. In view of its importance in the decision-making process, I have raised it to the level of a main issue.

## Main Issues

5. The main issues are (i) whether the proposal accords with development plan policies relating to the location of residential development in the area, (ii) the effect of the proposal upon the character and appearance of the area and (iii) whether a planning obligation is necessary and deliverable in order to mitigate the impacts of the development proposal.

## Reasons

*Land use principle*

6. The appeal site is a rectangular area of land running from north to south with existing housing both along its northern and southern boundaries and where its western boundary aligns with those of the houses both to the north and south of it. Its eastern boundary borders the William Lovell school and its playing field.
7. While the LPA describes the appeal proposal as back land development to the linear form of Stickney, any such linear nature has been very substantially changed by development, including the housing sites both to the north and south of the appeal site. Moreover, the appeal site would not be back land in the sense that it would take place within the curtilage of existing gardens; only a handful of the rear of existing houses would border it, while to the east is the school and its playing field which forms part of the village settlement.
8. The East Lindsey Local Plan Core Strategy 2018 (CS) policy SP1 establishes a hierarchy of settlements for development purposes, including towns, large, medium and then small villages. Stickney is described as a 'large village' and where policy SP3 aims to allocate housing.
9. In fact, the appeal site is not allocated for housing. However, policy SP3 adds that in such a defined large village, windfall sites will be supported in appropriate localities within the settlement and outside of, but immediately adjacent to its development footprint. The policy states that in order to qualify as an '*appropriate location*', the site if developed '*would retain the core shape and form of the settlement; not significantly harm the settlement's character and appearance; not significantly harm the character and appearance of the surrounding countryside or the rural setting of the settlement; be connected to the settlement by way of a footpath, and does not conflict when taken as a whole, with national policy or policies in this Local Plan*'.
10. The policy also states that '*developed footprint*' of a settlement 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; 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; outdoor sports and recreation facilities and other formal open spaces on the edge of the settlement.
11. The appeal site has existing housing development to the north and south and where its outer western boundary aligns with that of those existing housing areas. To the east it abuts the school and its playing field and while policy SP3 excludes from 'development form', outdoor sports and recreation facilities and other formal open spaces on the edge of the settlement, the school is an integral part of the village and its playing field, and with houses on three sides, the proposed development relates far more to the built up area of the village than to the surrounding countryside.
12. For the above reasons, the appeal proposal would not change significantly the core shape of the village, and for the same reasons, plus my conclusion below, it would not significantly change its character and appearance, its rural setting or that of the surrounding countryside. The site would be linked to the existing settlement by footpaths.

13. As the proposed development would be adjacent to the continuous built-up area of the village, it would generally accord with the policy definition of a windfall site as stated above, notwithstanding that there is the school playing field to the east, though this is not for the whole of that side of the proposed development.
14. Therefore, for the above reasons, I conclude that the proposed development would generally accord with policies SP3 of the CS.

*Character and appearance.*

15. The appealed application is in outline, including the means of access and layout, but excluding other matters such as landscaping.
16. The LPA raises no objections in terms of the proposed layout or access and I have no reason to disagree. The submitted plans include for illustrative purposes some landscaping details and I have no reason to believe that such matters cannot be determined satisfactorily at the reserved matters stage.
17. There would be some incursion into the existing rural area from 46 dwellings, but this would be contained within an enclave, with existing urban uses on three of its sides. In such circumstances, the proposed development would not cause material harm to the character and appearance of the village or that of the wider countryside area around it.
18. Therefore, I conclude that the proposed development would accord with policy SP10 of the CS which, amongst other things, requires development to relate well to the settlement in which it is to be located and to the character of the surrounding area.

*Planning obligations*

19. In the LPA report to Committee, it is argued that affordable housing, being a requirement as part of a planning approval, can be secured by way of a condition and that the same can be achieved with regard to improvements to NHS facilities.
20. So far as the latter is concerned and where the report to Committee requires a stated financial contribution, I have no details before me as to how such a sum has been calculated or how in detail it might be spent, and I cannot be certain that this has been the subject of public examination as part of the local plan. I consider that such a condition, as recommended by the LPA, would not meet the six tests relating to conditions by reason of precision and enforceability.
21. So far as the delivery of affordable housing is concerned, while the LPA initially considered that this could be secured by way of a condition, in its appeal statement it argues that a legal agreement is necessary before any approval can be considered, when it states '*no signed Section 106 Legal Agreement has been received which would secure the affordable housing and the mitigation for the local health services by way of a contribution as set above. Without this to allow the appeal would be contrary to SP7 and SP28*'.
22. Policies SP7 and SP28 of the CS require, amongst other things, financial contributions in order to secure such requirements.
23. I have sought such an agreement from the parties, but this has not been forthcoming, with the appellant being of the view that '*we concur with the LPA's*

*previously submitted statement and request that should the Inspectorate choose to uphold the appeal, that the Section 106 be dealt with by condition’.*

24. The Planning Practice Guidance (PPG) advises that ‘*a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers is unlikely to pass the test of enforceability. A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency*’.
25. I have not been made aware of any exceptional circumstances in this case which might warrant the departure from the above.
26. Furthermore, the PPG advises that ‘*heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency*’. The position is that I have no agreed heads of terms before me, which adds weight to my concerns regarding the appropriateness of a condition to control the provision of affordable housing.
27. Therefore, I conclude that in the absence of a completed planning obligation relating to the provision of affordable housing, the proposal does not accord with policies SP7 of the CS which requires for development of fifteen or more dwellings, a 30% contribution of affordable houses. This is a matter to which I afford very substantial adverse weight in the decision making process.

### **Other Considerations**

28. The LPA has confirmed that, since this application was refused, there have been changes to the Framework which have amended the method for calculating the 5-year supply of deliverable housing sites and which result in the LPA no longer being able to demonstrate a five year supply of deliverable housing sites, with a figure of just over 3% (3.08%). The Framework states at paragraph 11(d) that where a five year supply of deliverable housing sites cannot be demonstrated, the most important policies for deciding such applications should be considered as out of date, with permission being granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### **The Planning balance and conclusion**

29. I have concluded that the proposal accords with policy SP3 of the CS relating to the location of residential development in the area, and with policy SP10 which, amongst other things, requires development to relate well to the settlement in which it is to be located and to the character of the surrounding area. I have also noted the LPA’s conclusion that it cannot demonstrate a five year supply of deliverable housing land and where, in such circumstances, paragraph 11d of the Framework is engaged, meaning that where policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

30. However, these cumulative and positive aspects of the appeal proposal are outweighed by the lack of an enforceable mechanism for the delivery of affordable housing as outlined in policy SP7 of the CS. Therefore, the appeal should be dismissed.

*S. Hartley*

INSPECTOR