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## Appeal Decision

Site visit made on 24 October 2024

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 July 2025

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**Appeal Ref: APP/Y2003/W/24/3346249**

**Land West of Scotter Road, Messingham DN17 3QE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Mr S Cooke of Brooke Planning and Consultancy Ltd against North Lincolnshire Council.
  - The application Ref PA/2023/1701 sought approval of details pursuant to the reserved matters of planning permission Ref PA/2019/164 (APP/Y2003/W/20/3251184) granted on 2 November 2020.
  - The development proposed is residential development comprising up to 25 dwellings.
  - The reserved matters for which approval is sought are: access, appearance, landscaping, layout and scale.
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### Decision

1. The appeal is allowed and the reserved matters are approved, namely access, appearance, landscaping, layout and scale in pursuance of planning permission Ref PA/2019/164 dated 2 November 2020, subject to the conditions in the attached schedule.

### Application for Costs

2. An application for costs was made by Mr S Cooke of Brooke Planning and Consultancy Ltd against North Lincolnshire Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. I have dealt with an appeal<sup>1</sup> on an adjacent site, which is the subject of a separate Decision where the appeal was allowed and the reserved matters in relation to the erection of 6 No. 4 bedroom detached dwelling houses with integral garages was approved.
4. A revised National Planning Policy Framework (the Framework) was published in December 2024 subsequent to the appeal being lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal during the appeal process. I have had regard to the Framework in reaching my decision.
5. It was requested that I view the property of Thistle Downe, and I was able to do so at my visit.

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<sup>1</sup> Appeal Ref: APP/Y2003/W/24/3343971

## Background and Main Issues

6. The application which has led to this appeal followed the approval of residential development comprising up to 25 dwellings. This approval was granted in outline with all matters reserved in an Appeal Decision dated 2 November 2020.
7. The appeal before me seeks approval for all of the reserved matters, which are access, appearance, landscaping, layout and scale.
8. The Council has not validated the application as it has a number of concerns relating to the submitted evidence and drawings, as well as the planning status of the appeal site and an adjacent site.
9. The Council has issued a Non-Validation Notice letter dated 21 December 2023 to the appellant which sets out 2 reasons why it considers the submitted reserved matters application is invalid:
  1. *No detailed access arrangements with the highway have been provided. Condition 8 extends the information requirements to the junction with the adjacent highway. The application submitted lacks details of the proposed arrangements to provide footpath and highway connections to Manor Farm Close and Scotter Road.*
  2. *The detailed construction drawings for typical asphalt footway and surface cross sections are extracts from plans which are not provided to scale and are therefore not sufficient for validation purposes.*
10. The Council also considers that the outline permission has lapsed, and has identified difficulties in obtaining access to the site due to the refusal of a reserved matters application<sup>2</sup> for an adjacent site, which included access to the appeal site.
11. In respect of the main issues, I have also had regard to comments raised locally, which in particular refer to concerns about drainage and flood risk as well as access from adjacent land.
12. On the basis of the above, the main issues are:
  - Whether there is necessary information to enable the planning application to be validated and determined, and whether the outline planning permission has lapsed;
  - Foul and surface water drainage, and flood risk; and
  - Access and highway safety.

## Reasons

### *Necessary information and whether the outline planning permission has lapsed?*

13. Article 6(b) of Part 3 of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015 (DMPO) sets out that applications for approval of reserved matters must include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with the matters reserved in the outline planning permission.

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<sup>2</sup> Application Ref: PA/2021/1034. This is the subject of Appeal Ref: APP/Y2003/W/24/3343971.

14. The Council has an interim Validation Checklist<sup>3</sup> which includes a list of Local Requirements, but the Council acknowledges that the submission of detailed highway and access matters does not fall within this validation checklist.
15. The appellant has submitted a Notice pursuant to Article 12 of the DMPO requesting that the Council waive its requirements in relation to the requested information. The Council has refused to do so, for the reasons given in its Non-Validation Notice as set out above. In cases such as this, the Secretary of State may deal with the application as if it had been made to them in the first instance, and I will determine this appeal on that basis.
16. Initially, I will therefore consider whether the application contains such particulars, including plans and drawings, as are necessary to deal with the matters reserved as is set out in Article 6 of the DMPO; and determine the appeal against the Council's failure to determine the application within the appropriate time period.
17. Outline Planning Permission for the appeal site was granted on appeal subject to a number of conditions, including:
  1. *Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.*
  2. *Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.*
  8. *The details required by condition 1 shall include but not be limited to:*
    - i. *the layout, drainage, including an effective method for preventing surface water run-off from hard paved areas within the site on to the highway, construction, services and lighting of the proposed access and estate roads, including the junction with the adjacent highway;*
    - ii. *the number and location of vehicle parking spaces and cycle parking spaces on the site;*
    - iii. *Electrical Vehicle Charging Points designed to take account of good practice guidance as set out in the Institute of Air Quality*
    - iv. *A programme for the completion of the works*
18. Condition 8 provides clarification on details that should be submitted in respect of the reserved matters identified in Condition 1. This includes details of the proposed access and estate roads, including the junction with the adjacent highway.
19. Consequently, the Council's first reason for finding the application invalid refers to Condition 8 of the Outline Permission and the submission of details including junction with the adjacent highway. The appellant contends that Condition 8 only requires the provision of a single 'proposed access' rather than, for example, 'the two proposed accesses'. However, in their decision granting outline planning permission, the previous Inspector stated that "*the location of the access is reserved and is not therefore for me to consider here*". Within that context I consider that the appellant is reliant on an overly narrow reading of the previous appeal decision and conditions, and that the Inspector had not concluded on the

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<sup>3</sup> North Lincolnshire Council Interim Validation Check List (January 2018)

number or location of the accesses, which instead would be addressed through the reserved matters.

20. The Proposed Site Plan shows a footpath and highway connection to Manor Farm Close, but states that this is subject to an agreement with adjacent landowner. There are also concerns about the suitability of Manor Farm Close for a vehicular connection due to its limited width. There is therefore a significant degree of uncertainty as to whether Manor Farm Close could be relied upon to provide a junction with the adjacent highway as required by Condition 8.
21. The proposed access from Scotter Road would be via adjacent land which is the subject of a separate proposal for 6 dwellings, and which is under the control of the appellant. At the time of the submission of the application which has led to the current appeal, it was uncertain whether the reserved matters application for the 6 dwellings which included access from Scotter Road would be approved. Indeed, the Council's concerns about the status of the adjacent proposal were borne out as the reserved matters were refused, albeit in relation to drainage rather than highways matters.
22. There were therefore fundamental uncertainties about access from both Manor Farm Close as well as Scotter Road. There was a realistic possibility that if the application had been validated and consulted upon then this may have been on the basis of a proposal with no highway access, and particularly no vehicular access. This would clearly be material to the Council's consideration of the application, as well as comments from consultees and interested parties. Although Condition 1 of the outline planning permission is a pre-commencement condition, given the uncertainties in respect of both access routes and the importance of the junction to the highway to the consideration of the proposal, I do not consider that it would be appropriate to address this through a condition requiring further details.
23. The Council was therefore justified in requiring details of the access arrangements to the highway to be provided with the reserved matters application. Details of the junction with the highway was a clear requirement of Conditions 1 and 8 of the Outline Permission, and the 'dashed' indicative details on the submitted plans referring to another undetermined planning application did not meet that requirement. Having regard to Article 6 of the DMPO, the Council did not have the particulars necessary to deal with the matters reserved in the outline planning permission.
24. However, turning to validity and whether the permission has lapsed, Condition 2 only states that the "*application for the approval of reserved matters shall be made... not later than 3 years...*" (my emphasis). It does not state that the application should be 'validly made'. This means that regardless of the consideration of validity, Condition 2 has been complied with. I acknowledge that this is a narrow interpretation of the wording of that condition, but it is reasonable that further evidence could be provided in respect of the reserved matters after the expiry of the 3 year period given in Condition 2.
25. This reflects the *Inverclyde*<sup>4</sup> judgment provided by the appellant, which addresses whether an insufficiency of information was sufficient to impact the validity of an application. This judgment states that "*It can readily be envisaged that in many*

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<sup>4</sup> Inverclyde District Council v Secretary of State for Scotland 1982 SLT 2000

*cases the authority may require further particulars in addition to those originally made available, and there is no good reason why these should not be allowed to be proffered at a later stage”.*

26. The *Inverclyde* judgment decided that the provision of documents under 6(1) of the Town and Country Planning (General Development) (Scotland) Order 1975 is directory rather than mandatory. The English statutory provision under Article 6(b) of the DMPO is not identical to those found in the Scottish equivalent, but the substantive effect is the same. In these circumstances the appellant's submissions on this point are persuasive, and Article 6(b) of the DMPO should not be a barrier to validity in this case due to it being directory rather than mandatory. On that basis, if further particulars were required then this could be requested or provided rather than find the application and subsequent appeal invalid.
27. That said, given the uncertainty and the importance of the junction with the highway to the consideration of this proposal, the Council's request that details of the junction with the highway be provided as part of the reserved matters application was justified. The appellant did not provide these details as part of the application which has led to this appeal, and I have previously concluded that the 'dashed' indicative details on the submitted plans relying on another undetermined planning application (at that time) on an adjacent site did not represent the necessary information.
28. The Council's second reason for considering the application being invalid refers to drawings of the footway and surface cross-sections which are not provided to scale. However, these are matters of detail which do not go to the heart of the proposal. Although the Local Requirements on the Council's Validation Check List sets out that sections be at an appropriate metric scale, this appears to relate to buildings and ground/site levels rather than highway construction. Therefore, although Condition 8 refers to the construction of the proposed access and estate roads, should the Council have considered that these details are necessary then they could have requested this as part of the application process or through a planning condition. I consider that the details provided by the appellant on this issue were sufficient to validate the application, although this does not negate my conclusions in respect of details of the junction with the highway.
29. Notwithstanding my conclusion in respect of highway construction details, the Council's request that details of the junction with the highway be provided as part of the application was justified.
30. However, the appeal relating to the reserved matters on the adjacent site has been allowed, which would enable access from Scotter Road to the current appeal site. In accordance with *Inverclyde* and my consideration of the application being 'made', this further evidence can now be taken into account in respect of the reserved matters, even though this access and junction with the highway has only been confirmed after the expiry of the 3 year period stated in Condition 2. On that basis, there is now the necessary information sufficient to deal with the reserved matters before me, including in respect of access to the highway. I will proceed to determine the appeal on that basis.

### *Drainage and Flood Risk*

31. Outline planning permission for the erection of up to 25 dwellings with all matters reserved was granted on appeal in November 2020. Although the main issues in that appeal were character and appearance as well as the overall planning balance, reference was also made to drainage and flooding. In their decision, the Inspector stated that *“The description of the proposed development has been amended to ‘up to 25 dwellings’ to reflect the need to resolve drainage capacity through appropriate on-site attenuation”*. Based on the evidence before me, potential solutions to drainage capacity put forward in respect of the outline planning application included a pond<sup>5</sup> or storage/attenuation tanks<sup>6</sup> within the appeal site.
32. The outline planning permission includes Condition 10 which states *“No building hereby permitted shall be occupied until foul and surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority...”*.
33. Extensive evidence on issues including sewerage and surface water drainage as well as flooding has been submitted by interested parties. However, the appeal before me relates to the reserved matters, which do not include drainage or flooding issues beyond the scope of those matters.
34. That said, the details of reserved matters which are the subject of this appeal including layout and landscaping, would prevent the creation of an on-site attenuation pond as indicated at the outline application stage. Indeed, the submitted plans indicate that a drainage feature would be provided on land outwith the appeal site but which is within the appellant’s ownership. Nevertheless, it may be possible to provide on-site storage/attenuation tanks.
35. But notwithstanding the indicated location of drainage features, the consideration of details in respect of drainage falls within the remit of Condition 10 of the outline planning permission. Drainage and flooding were considered as part of the outline planning permission, and should be addressed in relation to the conditions on that permission. This may include drainage and associated issues in respect of Thistle Downe as well as other works in the surrounding area, but this is within the remit of the Council’s consideration of Condition 10 rather than my consideration of the reserved matters. In allowing the appeal before me, this is without prejudice to the Council’s consideration of details submitted to discharge Condition 10 as well as any further permissions or consents that may be required.
36. My attention has been drawn to an Appeal Decision<sup>7</sup> elsewhere in Messingham, where the Inspector referred to the extent of development including an infiltration basin, and that the amount of development would be likely to occupy more land than was identified on the ‘red line’ site plan. However, that appeal related to an application for outline planning permission, and is therefore materially different in scope to the appeal before me which relates to reserved matters. Although the indicated drainage feature of the appeal proposal is located outside of the red line boundary, it is within the ownership of the appellants and Condition 10 is an

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<sup>5</sup> Site Plan Manor Farm Close, Ref: LIMF 005, Mark Simmonds Planning Services, May 2019 (Appendix A, Appellant’s Statement of Case).

<sup>6</sup> Flood Risk Assessment And Sustainable Drainage Systems (SUDs) Strategy, Mark Simmonds Planning Services, February 2019 (Appendix A, Appellant’s Statement of Case).

<sup>7</sup> Appeal Ref: APP/Y2003/W/22/3290138

appropriate means of securing the provision of drainage. Although the ownership of the appeal site and adjacent land may change, Condition 10 requires that the foul and surface water drainage works shall have been implemented prior to occupation of the dwellings, which gives sufficient certainty in respect of the implementation of the works.

37. Drawing the above together, the issues of drainage and flood risk would be appropriately addressed as part of the discharge of conditions on the outline planning permission, and do not represent a reason for the refusal of the reserved matters. The Council has not specified which development plan policies it considers are relevant to this issue. But having regard to the policies referred to in my Appeal Decision on the adjacent site, the proposal would not conflict with the flood risk and drainage requirements of Policy DS16 of the North Lincolnshire Local Plan 2003 and Policies CS18 and CS19 of the Core Strategy 2011. The proposal would also not be contrary to the Framework with regards to planning for climate change and flood risk.

#### *Access and Highway Safety*

38. The submitted plans indicate that a vehicular and footpath highway connection will be provided to Manor Farm Close subject to agreement with the adjacent landowner. However, the Council and comments raised locally have expressed concern about the suitability of Manor Farm Close for vehicular access, particularly due to its limited width. This reflects my own observations where I saw that the extent of Manor Farm Close adjacent to the appeal site would not be of a suitable width to provide for vehicle movements generated by the appeal proposal.
39. However, the Council has suggested conditions which would limit vehicular access to Scotter Road only, as well as the provision of a turning head within the appeal site. These conditions would address concerns in respect of vehicular access from Manor Farm Close.
40. Concern has also been expressed about the lack of detail regarding the access through the adjacent site to Scotter Road. However, this has been addressed through the approval of the reserved matters for the adjacent site.
41. The proposal would increase the number of vehicle movements in the area. But there is no substantive evidence that the highway infrastructure is incapable of dealing with the increased traffic. Based on what I have seen and read, the effect on the highway network would not be of a degree that would warrant the dismissal of this appeal.
42. I therefore conclude that the proposal would not be harmful in respect of access and highway safety, subject to appropriate conditions. The Council has not specified which development plan policies it considers to be relevant to this issue. However, the proposal would not conflict with the Framework in respect of promoting sustainable transport.

#### **Other Matters**

43. Concerns have been raised about the evidence provided in respect of drainage and flood risk. However, evidence on those issues is more appropriately addressed as part of the discharge of conditions on the outline planning permission. Reference has also been made to ongoing complaints and potential investigations. However,

this is not a matter for this appeal which I have determined on its planning merits. Although I have had regard to the evidence provided in relation to these matters, this does not lead me to the conclusion that my consideration of the reserved matters should be delayed pending the outcome of other procedures.

44. Nearby residents have queried the proximity of the dwelling on Plot 18 to properties on Manor Farm Close. However, even allowing for orientation and layout, there would be a suitable separation distance between the proposed dwelling and neighbouring properties so that the proposal would not have an unacceptable effect on the living conditions of nearby residents with regard to light, outlook and privacy.
45. With regard to the environment and nature, the outline planning permission is subject to a condition requiring the approval and implementation of a biodiversity management plan which should protect ecological interests and improve biodiversity. There is no substantive evidence that the development would increase pollution in the area, and the outline planning permission is subject to conditions relating to construction and environmental management as well as contamination.

### **Conditions**

46. Both the Council and the appellant have suggested a number of conditions. I have considered the suggested conditions against the advice in the Planning Practice Guidance, and as a result have reworded some of the conditions in the interests of clarity and effectiveness.
47. I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. I have changed some of the drawing numbers as suggested by the appellant to refer to the latest version of the plans.
48. A condition requiring obscure glazing is necessary in the interests of the privacy of existing and future residents.
49. Conditions limiting vehicular access to Scotter Road only and the provision of a turning head are necessary in the interests of highway safety. A condition requiring details of highway works is required in the interests of sustainable transport and highway safety, as well as having regard to the provisions of the outline planning permission. The details in respect of the highway and turning head should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
50. A condition requiring details of cycle parking is required in the interests of sustainable transport.
51. Conditions in respect of planting and tree protection are necessary in the interests of character and appearance as well as ecology.
52. The outline planning permission referred to the provision of electrical vehicle charging points, but this is no longer necessary as it is addressed by the Building Regulations. The appellant has suggested a condition regarding the submission of further drainage details, but this is more appropriately addressed through the conditions of the outline planning permission.

## Conclusion

53. For the reasons given above, I therefore conclude that the appeal should be allowed.

*David Cross*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following drawing nos:
  - Site location plan (19) 100 Rev B
  - Proposed site plan (08) 101 Rev B
  - Unit Type 1 1(08)101
  - Unit Types A1 and A2 A(08)101
  - Unit Type B1 1(08)101 Rev A
  - Unit Type B2 (08) 101 Rev A
  - Unit Type C1 (08) 101
  - Unit Type C2 (08) 101
  - Unit Type D1 (08) 101
  - Unit Type D2 (08) 101
  - Unit Type D3 (08)101
  - Unit Type E1 (08) 101 Rev A
  - Unit Type E2 (08) 101 Rev A
  - Unit Type F1 (08) 101
  - Unit Type F2 (08) 101
  - Unit Type F3 (08) 101
  - Unit Type G (08) 101
  - Unit Type H1 (08) 101
  - Unit Type H2 (08) 101
  - Garage Plans GAR(08)101
- 2) Any bathroom/en-suite/WC window installed in any dwelling shall be fitted with obscure glazing (Pilkington Level 4 or equivalent) and shall be retained as such for the lifetime of the development.
- 3) The only vehicular access to the development site shall be from Scotter Road. No vehicular access shall be installed between the development site and Manor Farm Close at any time.
- 4) No development shall commence until details of a turning head or similar feature to be provided at the northern end of the proposed estate road to prevent vehicular access to Manor Farm Close along with a timetable/phasing plan for the implementation of the turning head or similar feature on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to occupation of the first dwelling, or in accordance with a timescale agreed in writing by the Local Planning Authority.
- 5) No development shall commence until the detailed design and specification of the highway construction, lighting and connection(s) to the adopted

highway have been submitted to and approved in writing by the Local Planning Authority. The approved works shall be completed in full in accordance with the approved details before first occupation of any of the dwellings hereby approved, or in accordance with a timescale agreed in writing by the Local Planning Authority.

- 6) No dwelling shall be occupied until details of the provision of cycle parking have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to occupation of the first dwelling, or in accordance with a timescale agreed in writing by the Local Planning Authority.
- 7) The planting shown on Proposed Site Plan drawing ref (08)101 Rev B, shall be implemented prior to first occupation of the first dwelling on the site, and shall be retained thereafter unless otherwise agreed in writing by the local planning authority. Any tree or planting which becomes diseased, dies or is removed within the first five years of completion of the development shall be replaced with a similar species during the next available planting season.
- 8) The tree protection measures shown on Proposed Site Plan drawing ref (08)101 Rev B, shall remain fully in place during the construction phase of the development and shall be removed prior to the first occupation of any dwelling, or in accordance with a timescale agreed in writing by the Local Planning Authority.

**End of Schedule**