



Appeal Decision

Site visit made on 20 August 2025

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2025

Appeal Ref: APP/R2520/W/25/3367064

Land off North Street, Digby, Lincolnshire LN4 3NN

- 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 Mr Fraser Key against the decision of North Kesteven District Council.
 - The application Ref is 24/1480/FUL.
 - The development proposed is the erection of 9no. dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Fraser Key against North Kesteven District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - Whether or not the proposal would meet affordable housing requirements.
 - Whether or not the proposal would support the transition to a low carbon future.
 - Whether or not the proposal would result in suitable levels of privacy and amenity for future occupiers of the appeal site and occupiers of adjoining properties.
 - The effect of the proposal on the green infrastructure of the area.
 - The effect of the proposal on protected species.
 - Whether or not the proposal could satisfy the biodiversity net gain (BNG) condition.
 - Whether or not the appeal site is a suitable location for the development proposed.

Reasons

Affordable housing

4. Policy S22 of the Central Lincolnshire Local Plan, adopted April 2023 (the Local Plan) requires 20% of the units provided on a site of this scale and in this location to be affordable housing.

5. Despite being aware of this need, making clear reference within their submissions to potential mechanisms which might secure it, the appellant has not taken any steps to ensure that the appeal proposal could deliver the affordable housing that the Local Plan requires of it.
6. Whilst I note that their offers to discuss the matter with the Council apparently came to nothing during the application process, this does not take away from or otherwise set aside the clear policy requirement for affordable housing on a site of this nature.
7. As a result of this failure, the proposal clearly conflicts with Policy S22 of the Local Plan.

Low carbon

8. Policies S6 and S7 of the Local Plan set out clear expectations for how new development should support the transition to a low carbon future, with clear principles which seek to make buildings efficient and reduce their energy consumption, and detailed requirements for Energy Statements (ES) to confirm that the policy requirements are met, including specific requirements around renewable energy generation.
9. The submitted ES includes a SAP calculations results table, with relatively little context or explanation. Whilst it is clear from it that the results indicate that the proposals are *energy efficient*, it is not clear that the proposal meets the detailed, specific requirements of the development plan. The ES sets out the aim of the policy with regard to solar, but not whether it is met, only that the roof slopes provide enough space to meet the energy needs.
10. I accept and acknowledge that the ES is clear that compliance with Policies S6 and S7 will not be achieved until the standards set out within the ES have been met. However, the report does not, in fact, make it wholly plain how, or indeed if, the proposal would meet the detailed standards of the policy, particularly with respect to green generation. Policy S6 requires that renewable energy generates enough energy from renewable sources onsite (and preferably on plot) to meet reasonable estimates of all regulated and unregulated total annual energy demand across the year. But there is neither calculation of that demand, calculation of how it would be met, or detailed design to show how it would be met.
11. Whilst the results of the SAP calculations satisfy part of part 1 of Policy 7 in that they predict the buildings energy performance, the evidence does not demonstrate how or whether the amount of renewable energy generated on site or on plot would be the same or greater than that amount. The policies are seeking to deliver energy efficient building and reduce energy consumption in residential development, through very specific criteria, and one of those explicitly relates to the generation of renewable energy on site (and preferably on plot).
12. Given that, in this respect, the proposal does not demonstrate this, I cannot be certain that the proposal would support the transition to a low carbon future in the way envisaged by and required by the Local Plan. As such, it is contrary to Policies S6 and S7.

Privacy and amenity

13. The decision of the Council relates to whether or not the proposal would result in suitable levels of privacy and amenity for future occupiers of the appeal site as a result of windows in the adjoining property. However, it is clear from representations that the effect of the proposal on the privacy and amenity of occupiers of adjoining properties is also at issue. I am satisfied that considering this does not give rise to any prejudice as the objections were available to the appellant.
14. The garden and rear of Plot 9 would be directly overlooked by the first-floor gable window of the adjoining Cart Shed. Regardless of the number of bedrooms in the Cart Shed, or the perceived likely level of use of this window in particular, this has the potential to give rise to a significant and substantial loss of privacy. Even if this room were to be in such infrequent use as suggested by the appellant, the perception of overlooking which would arise is as harmful as actual overlooking.
15. Whilst I accept that the window in the Cart Shed may overlook the rear of properties at Greswell Field already, the angle of view would be different and the window would be closer. At present the Cart Shed window has a perpendicular relationship to the rear of those properties, whereas it would be directly opposed to Plot 9 and its rear garden. This would have a much greater, and therefore much more harmful effect. That such an arrangement may be typical in urban areas, or indeed, elsewhere in Digby, does not alter my conclusions.
16. Given the relationship of Plots 7, 8 and 9 to the Cart Shed, the relative level differences, seen on site and shown on the topographic survey, as well as the location of the existing boundary screening within the appeal site, with little detail on whether or not it would be retained in future, I am also concerned at the potential effect of the proposal on the living conditions of occupiers of adjoining properties with respect to privacy. My conclusions on this point are not changed by the unfortunate tone of the suggestion that the site could be brought back into active agricultural use with greater consequential effects on amenity than the appeal proposal.
17. Even if I had found that the proposal would not cause harm to the privacy and amenity of the occupiers of adjoining properties, the likely harm I have found to the privacy and amenity of future occupiers of the appeal site would in itself be sufficient to conflict significantly with the development plan.
18. As such, I find that the proposal would conflict with Policy S53 of the Local Plan.

Green infrastructure

19. The consultation response from the County Council as Highways Authority sets out their requirements for the access road to be 4.1m in width, and for it to include a 2m footway in line with inclusive mobility standards. From the topographic survey and my observations on site, including the changes in level along and across the existing track, achieving this may require substantial works, details of which are not before me nor were they before the Council. Absent such details, regardless of how previous applications were dealt with, I cannot be certain of the effect of the proposal either on existing trees or other green infrastructure on-site or off-site.

20. This is a clear development plan policy requirement, and indeed, Policy S66 gives a clear definition of how to take adequate consideration of the impact of the development on any existing trees found on-site and off-site. The proposal, and the evidence before me does not do this.
21. It is also not wholly clear how the proposal intends to deal with existing hedging on the site, which itself makes a positive contribution to the character and appearance of the area.
22. I have considered, as suggested by the appellant whether or not this could be addressed by a suitably worded condition. However, given the importance of the site and its surroundings to the rural setting of the settlement, and indeed, the importance of the existing trees around the site margins to the biodiversity net gain calculations, I do not consider that a condition would address this concern.
23. Given that, I cannot be certain that the proposal would not have an unacceptable effect on the green infrastructure of the area and it would therefore conflict with Policies S53 and S66 of the Local Plan.

Protected species

24. A Preliminary Ecological Appraisal report was submitted to identify key ecological constraints, identify avoidance, mitigation or compensation measures likely to be required in accordance with the mitigation hierarchy, identify any additional surveys that may be required and to identify likely opportunities to deliver ecological enhancement.
25. In considering Great Crested Newts, this report by Elton Ecology sets out the desk and field study methodology and results, as well as habitat suitability index assessment of likely Great Crested Newt habitats.
26. The report refers to one pond and two ditches within 250m of the site on the desk study, and a pond plan, which identifies these waterbodies is included within the report. However, immediately adjoining the site is another pond, identified on the existing and proposed site plans, the topographical survey and pictured in the appendices to the report.
27. The evidence on protected species, specifically Great Crested Newts is therefore unclear and somewhat confusing. The Council clearly set this out in their statement, but fundamentally, it is unclear whether or not the habitats which have been surveyed are to the east or the west of the site. Given the relationship between potential habitats and the site, and the importance of intervening development in this, this confusion is fatal to the reliability of the report.
28. Given that uncertainty and the requirement for such matters to be addressed prior to determination, I agree that the proposal has not been accompanied by sufficient information or evidence to satisfactorily demonstrate its effect on protected species, notably Great Crested Newts. This is clear conflict with Policy S60 of the Local Plan.

Biodiversity net gain

29. The appellant has submitted two reports which attempt to deal with the statutory requirement for BNG. Both apparently show that the proposal could satisfy the BNG condition. However, each is based on a different baseline and as a result, each gives different results. Notably, each reaches a different conclusion on the condition of the grassland baseline habitat, which has an obvious effect on the overall result. Notwithstanding that the latter report results in greater BNG, the unexplained difference between their baselines and indeed unanswered methodological criticisms lead me to consider that I cannot be satisfied that the statutory BNG condition could be met, and that a suitably worded planning condition would not be an appropriate way to address the issue.
30. As such, the proposal conflicts with Policy S61 of the Local Plan insofar as it has not been superseded by regulation, and also does not comply with the relevant regulations.

Location

31. Policies in the Local Plan set out the spatial strategy and settlement hierarchy for the area, defining Digby as a medium village. Development in such villages beyond allocations is limited by Policy S1 to that which accords with Policy S4. That policy allows for development on unallocated sites of up to 10 dwellings in a medium village, subject to the site being in an appropriate location within the developed footprint of the village. Both of these terms are defined in the glossary to the Plan.
32. If first the appropriate location and then the developed footprint tests are passed, then part 2 of the policy sets out further criteria which must be met.
33. Given the wording of the policy, it is logical first to assess whether or not the site is within the developed footprint of the site, before considering whether or not the site is in an appropriate location.
34. The Plan defines the developed footprint as the continuous built form of the settlement, excluding certain specific forms and types of development and land.
35. On plan, the site appears to be within the developed footprint, representing an understandable rounding-off of the settlement, with the site being on the settlement side of the existing track which links North Street to the unclassified County road and the Manor Farm Cottage access. On the ground, however, the impression of the site and its surroundings is very different.
36. Viewed from the public rights of way, the junction of the B1188 with the unclassified County road, the access track, Greswell Field, the private road accessing The Cart Shed and The Grange and within the site itself, the undeveloped land which comprises the site does, in my view, relate more to the surrounding countryside than to the built up area. It is open, unfenced and both visually and in terms of ground-cover, appears more closely related to the surrounding countryside than the settlement. When looking towards or away from the settlement, across the site, the impression gained is not one of part of the settlement, rather of countryside abutting the settlement.

37. Whilst parts of the land, including that used for the storage of materials, do appear to be associated with the barn on the site, that is explicitly excluded from the definition of developed footprint in the Plan.
38. I note that the appellant has referred to the site as being infill, lying between existing houses and the existing track. Whilst I acknowledge this argument, it is inconsistent with the definition of infill given in the glossary to the Plan.
39. Given that, I do not find that the appeal site is within the developed footprint of the village. Having reached that conclusion, a logical reading of Policy S4 does not now require assessment of whether or not the site is an appropriate location having regard to the definition in the glossary to the Plan.
40. However, as the appellant has addressed this test in their submission, I will address this matter. Setting aside for the moment the first part of the definition that the location does not conflict with policies in the Plan, the glossary sets out a number of criteria to be considered an appropriate location.
41. I accept that there has been other recent (and not so recent) development around the settlement which has expanded it outwards, including at Greswell Field and the Cart Shed/Grange complex. However, to my mind, the further expansion of the settlement into the appeal site would begin to distort the core shape and form of the settlement. Both of those examples of recent and nearby development have a very different form and character to the appeal proposal. The mixture of traditional houses and replica barn-conversions on both of those sites give the impression of the redevelopment of former uses on a settlement edge, but within and part of the settlement. The proposal would, somewhat atypically for Digby, add a second layer of expansion to the settlement edge beyond the principal roads through the settlement (North Street in this case).
42. The density, scale and type of housing proposed would also, to my mind harm the character and appearance of the settlement. The proposal would be inconsistent with the established lowering of the density from the village core out towards the open countryside. Also, the form and appearance of the dwellings themselves would be inconsistent with the established character of this part of the village, which has otherwise been maintained by the relatively recent development of Greswell Field and the Cart Shed/Grange complex.
43. Although the proposal would increase built form on undefined edge to the settlement and would result in the development of otherwise open countryside, I do not consider that on its own it would harm the character and appearance of the surrounding countryside or the overall rural setting of the settlement. The settlement would still have an open, rural setting, and the effects of the proposal would essentially be limited to the site itself.
44. These criteria however are in addition to the primary part of the appropriate location test, which requires that the location does not conflict when taken as a whole with policies in the Local Plan. I have found above significant and substantial conflict between the proposal and the Local Plan. Whilst some of these conflicts may in time be resolved, at this time, they count against the site being an appropriate location.

45. Taking all of the above together, I find that the appeal site is neither within the developed footprint of the settlement, nor is it an appropriate location. As such, the appeal site is not a suitable location for the development proposed. The proposal therefore conflicts with Policies S1 and S4 of the Local Plan.

Other Matters

46. The Council has suggested a number of conditions to be attached, should planning permission be granted. The appellant has also suggested that a number of the reasons for refusal could be resolved through the imposition of suitably worded planning conditions. Having had regard to the requirements of the Framework and the Planning Practice Guidance I have considered whether or not the parts of the development which I have found unacceptable could be made acceptable through the use of conditions. Given the significance of the harm and development plan conflict I have found, I am not satisfied that conditions could appropriately remedy that harm.
47. Parties agree that the Council does not have a shortfall in housing land. However, the appellant suggests that as the five-year supply requirement is not a ceiling, the proposal would in fact benefit from the presumption in favour of sustainable development set out in the Framework. Whilst I do not disagree with the benefits they have ascribed to the proposal, there are significant and substantial adverse impacts which would arise from granting planning permission, not least to the overall spatial strategy, but also through the failure to provide affordable housing, the failure support the transition to a low carbon future, living condition concerns, the unknown effects on green infrastructure, protected species and the uncertainty over the ability of the proposal to discharge the BNG condition.
48. Taking all of that together, I find that the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

49. The proposal conflicts with the development plan, and whilst there are material considerations in its favour, including the delivery of housing and the associated economic benefits, these are not of such weight to indicate that a decision be taken other than in accordance with the development plan.
50. The appeal should therefore be dismissed.

S Dean

INSPECTOR