



Appeal Decision

Site visit made on 15 March 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 May 2016

Appeal Ref: APP/D2510/W/15/3141079

Land off Hall Lane, Burgh le Marsh, Skegness, Lincolnshire, PE24 5LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Messrs RP & CG Clarke against East Lindsey District Council.
 - The application Ref S/023/00311/14, is dated 17 February 2014.
 - The development proposed is the erection of 97 No. dwellings, including alterations to 2 No. approved plots and excavation of 2 No. SUDS ponds.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 97 No. dwellings including alterations to 2 No. approved plots and excavation of 2 No. SUDS ponds on land off Hall Lane, Burgh le Marsh, Skegness, Lincolnshire, PE24 5LX in accordance with the terms of the application, Ref S/023/00311/14, dated 17 February 2014, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline, with only access and layout to be determined at this stage, this is the basis on which I have considered this appeal.
3. The Council has an emerging plan that is at an early stage and is yet to be examined in public. As its policies have not been tested this appeal will be determined according to the East Lindsay Local Plan 1999 (LP) and the National Planning Policy Framework 2012 (the Framework). Given the main issues of this appeal I consider the most relevant policies to be saved policies A5, ENV3 and TR3 of the LP.

Main Issue

4. The Council has not provided any putative reasons for refusal. Bearing in mind the case officer's report and representations made by interested parties I find the main issues to be the effect of the proposal on:
 - the safe and efficient operation of the highway;
 - the character of the local landscape; and
 - local foul water and surface drainage capacity.
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Reasons

5. The appeal site is located in open countryside immediately to the south of the settlement of Burgh le Marsh approximately 5 km to the west of Skegness. It is classified as a Main Village in policy A3 of the LP. It has a number of services which include a primary school, public houses, shops, a post office, churches and a regular bus service. The site itself covers an irregular area of approximately 8.4 ha and comprises Grade 3b agricultural land.

Highway safety

6. The appeal site lies to the south of Hall Lane between the junction of Marsh Lane, to the east, and Chapman Avenue, to the west. Hall Lane is a relatively straight road with good levels of visibility arising from an uncluttered street scene. The northern side of the road is characterised by a reasonably wide footway and grass verge, regularly punctuated by the vehicle access points of the adjacent houses. The southern side of the road is characterised by a hedgerow that is set back from the carriageway by an embanked grass verge. The speed limit is 30 mph and street lighting is present. Only part of the appeal site directly abuts Hall Lane, immediately to the west of the junction with Marsh Lane where the road bends in a northerly direction and becomes Storey's Lane. The main access to the site would be situated approximately 100 m to the northwest of Marsh Lane, roughly opposite Nos. 47-49 Hall Lane.
7. I observed from my site visit that the visibility of emerging vehicles would be more constrained when viewed from the south-easterly direction in and around the junction with Marsh Lane. Whilst only a snapshot, I observed that vehicles that approached the appeal site along Marsh Lane and Storey's Lane did so in a lower gear and at a reduced speed in order to negotiate the road layout. I also observed that the low garden boundary of No. 48 Storey's Lane would allow the drivers of oncoming vehicles to see vehicles emerging from the proposed development before entering the bend. By the same token the drivers of emerging vehicles would also be able to see oncoming traffic and judge whether or not they had sufficient time to manoeuvre onto the main carriageway. Consequently, I am satisfied that the positioning of the main access point would enable vehicles to enter and leave the proposed development in a safe manner. I am also satisfied that the location of the proposed pedestrian crossing would allow pedestrians to enter and leave the proposed development in a safe manner.
8. I acknowledge the concerns that have been raised by interested parties regarding highway network capacity and existing congestion caused by parents collecting and dropping children at the school on Wainfleet Road. Whilst this congestion was identified in the Transport Assessment, it is clear from the evidence before me that that it only occurs for relatively brief periods which do not generally coincide with the observed peak traffic flows. Consequently, the predicted increase in vehicle movements during peak flow periods would not significantly exacerbate this situation. Even if the development leads to an increase in the number of pupils attending the school, any associated impact is likely to be minimal given that the school is within walking distance along wide, well-lit footways thus encouraging pedestrian school journeys.
9. In more general terms I am satisfied that the baseline capacity of the local road network as been robustly quantified and that the predicted level of movement would not lead to any significant negative impact. Paragraph 32 of

the Framework advises that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. I have no substantiated evidence before me to suggest that this would be the case or any technical arguments to suggest that the analysis of the predicted vehicle movements is flawed. Moreover, I place some weight on the fact that the Highways Officer has not objected to the proposed development, subject to appropriate conditions.

10. Given the above, I conclude that the proposal would not cause significant harm to the safe and efficient operation of the highway and that it would not conflict with saved policy TR3 of the LP. In this respect the proposal would be in accordance with the development plan. This policy seeks to ensure that the design, access and layout of roads and footpaths are suited to their surroundings, cater for the needs of all road users and are safe and functional.

Landscape character

11. As appearance is a reserved matter I will simply consider how the layout would relate to the wider landscape. I observe from the plans and my site visit that a significant proportion of the wider land parcel in which the appeal site is situated would retain its open character. This is because of the proposed public open space and the retention of a flood management zone in the area immediately to the east of the site which is partially bounded by Hall Lane. Bearing in mind the proximity of the settlement boundary and the houses that have already been approved (Ref: S/023/00795/12), as well as the ribbon development along Wainfleet Road, I find that the scheme would provide a well-considered extension to the existing settlement. Its open space would have a transitional quality which would soften the harshly regimented, high density housing to the north.
12. Given the above, I conclude that the proposal would not cause significant harm to the local landscape and would not therefore conflict with saved policy A5 of the LP that seeks, among other things, to ensure that the design of new development does not detract from the distinctive character of a locality. In this respect the proposal would be in accordance with the development plan. I also find it to be consistent with paragraph 55 of the Framework which seeks to control new isolated homes in the countryside. This is because it would form a well-considered extension to the existing settlement for the reasons set out above.

Drainage capacity

13. I acknowledge the significant concerns of interested parties over the effect of the proposal on surface water and foul water drainage. However, I note that the scheme would benefit from a sustainable urban drainage system that would involve the use of swales, retention ponds and hydrobrakes that would limit discharge into the local drainage system at a rate that has been agreed by the Lindsey Marsh Internal Drainage Board (IDB). I also note that a multi-agency meeting of technical specialists led to the amendment of the original drainage scheme and that it is now supported by the IDB, Anglian Water and the Environment Agency.
14. I accept that flooding has occurred in the local area and that the last incident occurred relatively recently, in 2014. I also accept that the capacity of the Storey's Lane sewer and the wet holding at Parker's Close pumping station has

not been fully established, despite the view of Anglian Water that the existing system has sufficient capacity. In this respect I note the undisputed fact that storm water from existing domestic properties enters the foul water system and could play a significant role in flooding during extreme weather events. As the proposed scheme would have independent drainage systems and given that Ingoldmells Water Recycling Centre has sufficient capacity to process the additional foul water drainage, I find the risk of flooding improbable but not wholly impossible. However, I am satisfied that any residual risk could be mitigated by a suitable condition requiring a foul drainage management strategy.

15. Given the above, I conclude that the proposal would not cause significant harm to local foul water and surface drainage capacity and would therefore be consistent with saved policy ENV3 of the LP that seeks to ensure that foul sewers, sewage treatment and surface water drainage is of an adequate standard to serve all new development. In this respect the proposal would be in accordance with the development plan.

Other Matters

16. Successive committee reports have identified a need for affordable housing and additional school places in the local area and highlighted that this should be met through a planning obligation. A completed obligation has since been submitted as part of the appeal process. Paragraph 204 of the Framework requires that all planning obligations must be directly related to the development, necessary to make it acceptable in planning terms and fairly and reasonably related in scale and kind.
17. In relation to the educational provision, I note that a contribution of £157,870 would be provided for the construction of a new classroom and ancillary facilities at Burgh le Marsh Primary School. This sum is based on national census data and research undertaken by the Lincolnshire Research Observatory. It is also scaled to the number of households in the proposed development. Saved policy A3 of the LP establishes the planning grounds for such a contribution. This policy seeks to ensure that development in Main Villages does not place undue pressure on existing services.
18. In relation to the provision of affordable housing, I note that a total of 29 affordable homes would be provided and that this would be consistent with a recently published viability assessment¹. This assessment identifies that the appropriate affordable housing rate for Burgh le Marsh, as a medium value market area, is 30%. I am satisfied that the methodology is robust and provides a clear basis for setting affordable housing delivery levels. I am also satisfied that it would meet an identified local need as defined by the Senior Housing Officer of the Council. Saved policy H6 of the LP establishes the planning grounds for this provision.
19. Given the above, I conclude that a planning obligation is necessary and that it would be directly related to the development and necessary in planning terms as well as fairly and reasonably related to the proposal.
20. Additional concerns were raised by objectors to the proposed development in relation to sustainable development, land allocation, loss of agricultural land,

¹ Review and update of the East Lindsey economic viability assessment. Final Report. September 2015. Bilfinger GVA. September 2015.

disturbance, environmental impact, loss of trees and archaeological impact. The security and financial impact of the development on a neighbouring property was also raised but these issues are not planning matters. All of the preceding issues were considered in the case officer's report and I support the view that the concerns raised do not warrant the refusal of the scheme. Consequently, none of these matters were determinative nor would they have led me to a different overall conclusion. This is due to the following reasons.

21. The Council have accepted that they are unable to demonstrate a five-year supply of deliverable housing sites. Under such circumstances paragraph 47 of the Framework advises that relevant policies for the supply of housing should not be considered up-to-date, which includes any policies restricting new development to land allocated for that purpose or within settlement boundaries, such as saved policies A3 and H1 of the LP. Consequently, there is a presumption in favour of sustainable development unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
22. I note that the proposal would be in a sustainable location and would benefit from a range of local services. Access to alternative modes of transport that are capable of reducing the reliance of future occupants on the use of private motor vehicles would also be present. The scheme would significantly boost the supply of housing in the local area, including affordable homes. Not only would significant social benefits be derived from the affordable housing but the additional housing would also support local services through increased use, thus enhancing the sustainability of the local community. In environmental terms I am satisfied that a significant biodiversity enhancement of the existing site would be readily achieved given its current intensive agricultural use and the proposed retention of a significant area of open land containing SUDS features. I note that the local wildlife trust supports the suggested biodiversity enhancements and I am satisfied that these can be secured through the use of a suitably worded condition. I also note the 'strong support' from Natural England in relation to the resulting green infrastructure. In economic terms the proposal would benefit local businesses during its construction phase through the supply of labour and materials. Once complete it would also lead to an increased profitability of local businesses. In these respects the proposal gains significant support from the Framework.
23. However, these benefits must be balanced against any adverse impacts. The Town Council are of the opinion that insufficient provision is present in relation to school places, healthcare and policing. I am satisfied that the first of these would be addressed through the planning obligation and I note that neither of the statutory consultees responsible for the other two objected to the scheme. Consequently, I find the assertion of potential impact on these services to be unsubstantiated by the facts before me. The need for new housing in Burgh le Marsh has also been questioned by the Town Council. However, I have no policies before me or an adopted Neighbourhood Plan that would provide any grounds on which to refuse the application on this basis. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
24. Having had regard to the policies of the Framework as a whole, I conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. Consequently, it would amount to a sustainable form of

development and would thus be consistent with paragraph 14 of the Framework.

25. I accept that agricultural land would be lost, however, this would not be the most versatile or productive land given its classification. The PPG states that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. Consequently, the proposal would be consistent with the Government's views on this matter. I note concerns over disturbance arising from the new development, however, I observe from the plans that the separation distances in relation to existing properties are such that there would be no significant impact on living conditions. This would not only relate to noise but also privacy and outlook. Concerns have also been raised in relation to fire hydrant provision and disturbance of archaeological features, both of which can be addressed through suitably worded conditions. I note from the indicative plans that extensive tree planting is proposed and that the majority of the existing hedgerow along Hall Lane will be retained. Consequently, I am satisfied that there will be a net gain in trees that would adequately mitigate any localised losses.

Conclusion & Conditions

26. For the above reasons and having regard to all other matters raised I conclude that, subject to appropriate conditions, the appeal should be allowed.
27. I have considered both the wording and grounds for the conditions in the case officer's report in accordance with the tests set out in paragraph 206 of the Framework.
28. In addition to the three standard conditions relating to outline permissions, a condition requiring development to be carried out in accordance with the plans is necessary for the avoidance of doubt and in the interests of proper planning.
29. Conditions requiring a travel plan, improvement to the public highway and suitable access to the proposed dwellings are necessary in the interests of highway safety.
30. Conditions requiring the disposal of foul and surface waters are necessary in order to manage flood risk and protect the water environment. In order to ensure public safety, a condition requiring the provision of fire hydrants is also necessary.
31. A condition requiring biodiversity mitigation and enhancement measures is necessary in order to protect and enhance the natural environment whilst two archaeological conditions are necessary to help protect the historic environment.
32. I have not imposed two of the conditions in the case officers report as these relate to scale, appearance and landscaping, all of which are reserved matters and therefore not relevant to this appeal.
33. A further condition requiring the 'in perpetuity' management of the public open space has not been imposed as this cannot be ensured in the longer term and would therefore be unenforceable.

CONDITIONS

- 1) Details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: A/2710-04 REV A and 09/02/2014 REV B.
- 5) No dwelling shall be occupied until the works to improve the public highway by means of providing a bus stop and pedestrian crossing point as shown on the approved plan (Ref: A/2710-04 REV A) have been completed.
- 6) No dwelling shall be occupied until that part of the service road and footway which provides access to it from Hall Lane has been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. All works shall be carried out in accordance with the approved details.
- 7) No dwelling shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. This document shall set out required and proportionate outcomes, targets and measures that are tailored to the needs of the development as well as clear future monitoring and management arrangements. It shall also consider what additional measures may be required to offset unacceptable impacts if the targets are not met. The Plan shall be implemented and thereafter managed in accordance with the approved details. The results of the implementation and monitoring shall be made available to the local planning authority on request.
- 8) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include: an assessment of the hydrological and hydrogeological context of the development; evidence that the scheme would be able to accommodate extreme storm events of a 1 in 100 year interval with a 30% margin for climate change; surface water calculations taking into account the design requirements of the adopting authority; confirmation that the discharge rate will be no more than 5 litres per second from each pond; a timetable for its implementation; a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other

arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

- 9) No development shall take place until a foul drainage strategy has been submitted to and approved in writing by the local planning authority. Details shall include, among other things, detailed hydrological modelling to determine the impact of extreme weather events, similar to the storms that produced local flooding in 2014. No dwellings shall be occupied until all the necessary remedial works have been carried out in accordance with the approved strategy.
- 10) No development above ground shall take place until the location of fire hydrants have been submitted to, and approved in writing by the local planning authority. No dwellings shall be occupied until the necessary works have been carried out in accordance with the approved details.
- 11) No development shall take place unless in accordance with the mitigation and biodiversity enhancement measures specified in the submitted ecological report². Full details of the biodiversity enhancement measures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The local planning authority shall be notified no later than 14 days prior to the commencement of any archaeological works unless otherwise agreed in writing.
- 13) An archaeological report detailing the results of the investigation shall be submitted to the local planning authority within three months of the completion of site-based investigation unless otherwise agreed in writing. An archive shall be prepared and deposited with the County Museum Service or another public repository willing to receive it within six months of the completion of site-based investigation unless otherwise agreed with the local planning authority in writing.

² Ecology and Protected Species Survey. Land off Hall Lane, Burgh le Marsh, Lincolnshire. October 2014. Scarborough Nixon Associates Ltd.