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## Appeal Decision

Site visit made on 10 May 2016

by **I Radcliffe BSc(Hons) MCIEH DMS**

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

Decision date: 28 June 2016

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**Appeal Ref: APP/Z2505/W/15/3141006**

**Yew Lodge, Wigtoft Road, Sutterton, Boston PE20 2EE**

- 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 Dan Sullivan against the decision of Boston Borough Council.
  - The application Ref B/15/0060, dated 15 February 2015, was refused by notice dated 19 August 2015.
  - The development proposed is the construction of 17 dwellings and new road access.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline, with all matters reserved. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site.
3. The appellant submitted plans with the application illustrating how up to 17 dwellings could be constructed on the site and access provided off Wigtoft Road between Greystones and Yew Lodge. As the application is in outline the appellant is not tied to the detail shown on the plans. However, I have treated the plans as indicative of the appellant's intentions and the application has been assessed on this basis.
4. The National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) are important material considerations. I have taken both into account in the determination of this appeal.

### Main Issues

5. The main issues in this appeal are;
    - whether the housing proposal would comply with the development plan in terms of its location;
    - its effect on the character and appearance of the area;
    - the effect of the development on education and affordable housing; and,
    - whether there are other material considerations, such as the sustainability of the proposed development and the supply of housing land, which would outweigh any conflict with the development plan and harm caused.
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## Reasons

### *Location*

6. The development plan consists of the Boston Borough Local Plan. The vast majority of the appeal site lies within the open countryside where policy CO1 of the Local Plan strictly controls new development in order to protect its character. Such an approach is consistent with a core planning principle of the Framework. The proposed development does not fall within the exceptions to this policy where development within the countryside is permitted. The location of the proposal would therefore be contrary to the development plan.
7. Part of the appeal site immediately to the rear of the houses along the front of the site is garden land. The Framework at paragraph 53 advises that local planning authorities should consider setting out policies to resist inappropriate development of garden land. Policy H2 of the Local Plan which, amongst other matters, seeks to prevent backland development is consistent with this advice. However, as this policy relates to proposed housing sites within settlements, and the land upon which the proposed housing would be located, along with the vast majority of the appeal site, lies outside the settlement boundary and within the open countryside, the proposal would not be contrary to this policy.

### *Character and appearance*

8. Sutterton is a rural village which lies within a flat arable landscape of large open fields. Development is focussed around the village centre where the roads that pass through the village meet. The appeal site is located at the western edge of the settlement where the two houses that form the front of the appeal site, Yew Lodge and Greystones, are amongst the last few dwellings included within the settlement boundary of the village.
9. The gap between the two houses, currently occupied by outbuildings, gives access to the open land to the rear which is within the open countryside and forms the bulk of the appeal site. It is characterised by grassland, an orchard and a large pond. Due to the screening effect of houses on its southern and eastern sides and the location of the pond towards the rear, public views of the central part of the site where housing would be constructed are limited to a brief medium distance view on the approach towards the village along Wigtoft Road. From this direction, depending on whether bungalow or houses were constructed, the roofs or upper walls of dwellings would be visible above the boundary hedges to the site. The site access road, which is indicated would be off Wigtoft Road, would also be likely to allow public views into the site.
10. Although a low density of development is proposed, the construction of dwellings on the site would result in the loss of open countryside to development and would therefore adversely affect its character and appearance. The loss of this open area of countryside would also be visible to some of the residents whose houses back onto that part of the appeal site where housing could be constructed. For them the urbanising effect of the development would also have an adverse impact on the character and appearance of the area.
11. In terms of the pattern of development of the village, linear development characterises its western edge. However, towards the centre of Sutterton the settlement is characterised by development in depth. As a result, the proposed development, which would extend development behind Wigtoft Road and Rainwall's Lane, would appear as a natural extension of the settlement. With

the retention of the large pond, which is a feature of the landscape, policy G2 of the Local Plan would be complied with. This policy seeks the incorporation of existing landscape features into development proposals. Subject to the control that could be exerted at reserved matters stage in terms of layout, scale, appearance and landscaping an attractively designed scheme could be delivered.

12. Reference has been made to policy H2 of the Local Plan which controls windfall housing schemes within settlements. Amongst other matters it seeks to prevent the loss of a frontage which contributes significantly to the character of an area. The garage and outbuildings behind it at Yew Lodge, which the indicative drawings show as being removed, front the road and are within the settlement. However, as utilitarian ancillary buildings they do not make a positive contribution to the streetscene and so their removal would not adversely affect the character and appearance of the road.
13. Notwithstanding my favourable findings regarding the effect of the proposed development on the form of the village and the quality of design that could be achieved, this does not negate the fact that some harm would be caused to the character and appearance of the area through the loss of countryside to development. Therefore, whilst the proposal in accordance with policy G1 of the Local Plan would not substantially harm the general character of the area, it would be contrary to policy CO1, which protects the countryside from development.

#### *Education and affordable housing*

##### *Education*

14. The Council seeks a contribution towards primary education. However, no planning obligation to secure payment has been submitted by the appellant. The provisions sought have been assessed having regard to the tests in paragraph 204 of the Framework and the requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
15. The local primary school has no spare places to cater for the additional children that would live in the amount of housing that could be built on the appeal site. A financial contribution is therefore necessary to mitigate the effect of the development by expanding education provision. The contribution sought has been calculated based upon the additional demands on the local primary school the development would generate and the cost of providing additional places. The sum sought is reasonably related in scale and kind to the proposed development. In relation to this matter, it is also clear that as the sum would be spent on an identified programme of local infrastructure provision they is directly related to the proposal. As a consequence, the contribution sought satisfies the tests in the Framework and accord with Regulation 122.
16. Regulation 123(3) came into force on 6 April 2015. Other than in relation to certain exemptions, such as affordable housing, it prevents the pooling of more than five planning obligations made since 6 April 2010 towards a specific infrastructure project, or particular type of infrastructure. The Council states that in relation to education, only one contribution has been made to expanding education provision at the local primary school during this time. As a result, their view is that the obligations are compliant with this Regulation. The appellant has not disagreed with the Council's position. On the basis of the evidence submitted, I agree. I therefore find that the contribution sought complies with Regulation 123(3).

17. In the absence of a section 106 agreement the question which arises is whether this matter could be dealt with by condition as the appellant suggests. However, Planning Practice Guidance (PPG) advises that a positively worded condition should not be used to require a payment of money or other contribution. It also advises that a negatively worded condition limiting the development that can take place until a planning obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would be put at risk<sup>1</sup>. Such circumstances do not exist in this case. I therefore conclude that this matter cannot be dealt with by condition.

*Affordable housing*

18. In relation to affordable housing, in accordance with the Council's Adopted Affordable Housing Policy, on site provision needs to be made to help meet the need for such housing in the Borough. The provision of such housing is therefore necessary to make the development acceptable in planning terms, directly related to the proposal, and on the basis of the Affordable Housing Policy, reasonably related in scale and kind to it. The provision sought therefore complies with paragraph 204 of the Framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

19. No planning obligation has been provided securing such provision. As I have noted above, PPG advises that a negatively worded condition limiting the development that can take place until a planning obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances. Such circumstances do not exist in this case. I therefore conclude that this matter also cannot be dealt with by condition.

*Conclusion on education and affordable housing*

20. I therefore find that conditions should not be used to secure the contribution sought towards education and the provision of affordable housing on the site. In the absence of obligations dealing with these matters the proposal would cause significant harm to the provision of primary education and affordable housing.

*Drainage & flooding*

21. On the basis of the submitted drainage statement, which involves the use of the pond on the site, the Internal Drainage Board does not object to the scheme. Similarly, the Environment Agency having considered the Flood Risk Assessment has no objection subject to conditions. Various criticisms have been made of the drainage proposals, including the need to obtain permission from owners before flow rates from the site into watercourses could increase. This latter point however is a matter of civil law and is a matter between the appellant and those who own, or who have an interest in, the drainage ditches and watercourses concerned. As a planning application is determined on its planning merits, this consideration therefore has not altered my assessment of the appeal. On the basis of the available evidence, it appears to me that satisfactory arrangements for surface water drainage could be achieved in compliance with policy G3 of the Local Plan. A condition preventing

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<sup>1</sup> Planning Practice Guidance ID 21a-010-20140306 (Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?)

development until details of a sustainable drainage scheme are approved by the Council would ensure that this matter is properly addressed.

#### *Living conditions*

22. The outlook from the rear of the houses that back onto that part of the appeal site where housing could be built is currently of open undeveloped land. The loss to development of such a view would have a minor adverse effect on living conditions. However, given that the occupiers of houses in the area currently enjoy good living conditions, the slight harm that would be caused would not result in a standard of amenity lower than that sought by the Framework. With the space available on the site sufficient separation distances could be achieved to avoid problems with overlooking, loss of light or poor outlook for existing residents and future occupiers of the proposed houses. The proposed development would therefore comply with policy G1 of the Local Plan, which amongst other matters, seeks to resist development that would harm the amenity of nearby residents.
23. A representation was made by a local resident to the effect that the rights of the occupiers of the houses adjacent to the appeal site under Article 1 of the First Protocol to the Convention<sup>2</sup> and under Article 8, as incorporated by the Human Rights Act 1998, would be violated if the appeal was allowed due to the affect of the development on privacy and outlook. For the reasons given in the preceding paragraphs on this issue I do not consider this concern to be well-founded. As a result, violation of the human rights of the occupiers of these dwellings would not occur.

#### *Highway safety*

24. The indicative site access would join Wigtoft Road close to where the speed limit of 30mph increases to 40mph. The highway authority has assessed the proposal and has no objection to the proposal subject to conditions. Having viewed the site access, and the good visibility that exists in both directions, I have no reason to disagree with those conclusions.

#### *Ecology*

25. Local residents have noted the presence of bats in the area. However, the Ecological Survey of the site found that no protected species, including bats, were roosting on the site and that subject to precautions being taken during development wildlife would not be harmed. The Council has accepted the findings of the survey. I agree with their position and therefore find that policy G2 of the Local Plan, which amongst other matters requires that wildlife resources on a site are protected, would be complied with.

#### *Other planning permissions*

26. The appellant has referred to three other applications where planning permission was granted for housing development located immediately outside Local Plan settlement boundaries. On the basis of the information I have been provided with there is no evidence that the Council granted permission for development on these sites without planning obligations that secure the provision of affordable housing or mitigate the effect of the development on local infrastructure, such as schools. As a result, these decisions are not directly comparable to the proposal before me. Consequently, they have not therefore altered my findings in relation to this appeal.

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<sup>2</sup> European Convention on Human Rights

### *Housing land supply*

27. Paragraph 47 of the Framework advises that Local Planning Authorities should have sufficient deliverable sites to provide 5 years of housing against their housing requirements. The Council confirms that it has less than a 5 year supply of housing land.

### *Sustainable development*

28. Sustainable development and the presumption in its favour are at the heart of the Framework. The policies of the Framework, taken as a whole, constitute the Government's view of what sustainable development means in practice. One of the core planning principles is that planning should be plan led. In this regard, the location of the appeal site is contrary to policy CO1 of the Local Plan. However, for the reasons given in my overall conclusions below this policy is out of date. This considerably lessens the weight I attach to it.
29. The Framework advises that there are 3 dimensions to sustainable development: social, environment, economic and social. Socially, the scheme would increase demand for primary school places, but as there is no planning obligation to ensure that its impact would be mitigated by the funding of new places education provision locally would be significantly harmed. Similarly, whilst new houses would help address the shortage of open market dwellings in the Borough, affordable housing to meet the need for such dwellings would not be secured on the site. This would result in significant harm to the supply of such housing.
30. In terms of the environment, open countryside would be lost to development. However, for the reasons previously given this would only cause limited harm to the character and appearance of the area. Within comfortable walking and cycling distance of the appeal site the village has a primary school, convenience store, post office, church, play area and a number of places of employment. It is therefore capable of meeting a number of the day to day needs of residents. It is also served by a regular bus service to Spalding and Boston and the wider range of service and facilities that these settlements have to offer. I therefore find that the appeal site is in an accessible location for development.
31. I have found that there would be an absence of harm in relation to surface water drainage, flooding, highway safety, living conditions and ecology. However, as this is a requirement for development these are not benefits as such to be weighed in its favour. In terms of construction, the houses would be built to meet current building regulations and so would be energy efficient.
32. In relation to the economy, construction and furnishing of the new houses would generate employment.
33. Taking all these matters into account, I find that the positive aspects of the scheme would not overcome the harm that would be caused. I therefore conclude, based upon the overall balance of considerations, that the proposal would not be a sustainable development.

### **Overall Conclusions: The Planning Balance**

34. The location of the proposal would be contrary to policy CO1 of the Local Plan. This is because the appeal site is within the countryside where development is strictly controlled. This is a consideration that normally weighs heavily against the proposal. However, the Council does not have a 5 year housing land

supply. As a consequence, paragraph 49 of the Framework directs that development plan policies relating to housing land supply such as policy CO1 should not be considered up to date. This is a material consideration in this appeal.

35. Paragraph 49 of the Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development. However, I have concluded in the previous section that the proposal would not constitute such a development. Where relevant policies, as in this instance, are out of date paragraph 14 of the Framework applies. It states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
36. The proposal would cause limited harm the character and appearance of the area, and significant harm to the provision of local education and affordable homes. As a result, I have found that the proposal would not constitute sustainable development. Collectively, these factors weigh very heavily in favour of dismissing the appeal. The proposed development would contribute towards the supply of open market housing in an accessible location. This is a factor of noteworthy weight in favour of allowing the appeal.
37. My overall conclusion in this case, having considered all other matters raised, is that the adverse impacts of the proposal are considerable. These impacts significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

*Ian Radcliffe*

Inspector