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## Appeal Decision

Site visit made on 9 January 2018

**by Katie McDonald MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> January 2018**

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**Appeal Ref: APP/Y2003/W/17/3180923**

**Land at Holgate Road, Scunthorpe DN16 1JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Martin Phillips against the decision of North Lincolnshire Council.
  - The application Ref PA/2016/1698, dated 26 October 2016, was refused by notice dated 8 February 2017.
  - The development proposed is described as residential development of 16nr 1bed - 2person flats, arranged in 8 blocks each containing a ground floor flat and first floor flat. The proposals also include: the extension and joining of the existing footpaths along Holgate Road and Burghley Road; new vehicular access points; car parking and visitor parking; new boundary treatments; hard and soft landscaping proposals and external lighting.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Martin Phillips against North Lincolnshire Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues are:
  - i) Whether the proposal makes adequate provision to deliver affordable housing; and;
  - ii) Whether the proposal would provide acceptable living conditions for future occupants, with specific regard to air quality.

### Reasons

4. The site is a flat and undeveloped piece of land that is surrounded by 2 and 3 storey residential dwellings. The proposal is for 16 one bedroom flats that would be arranged in 8 blocks. The site is located within an Air Quality Management Area (AQMA) for Scunthorpe.

#### *Affordable housing*

5. The application form indicates that the proposal is for 100% Social Rented Housing (Affordable Housing). Based on the evidence before me, this would meet the North Lincolnshire Council's Affordable Housing Policy Interim Position

Statement (August 2015). Furthermore, there is no dispute from either party that the proposal could comply with Policy CS9 of the North Lincolnshire Local Development Framework Core Strategy (Adopted June 2011) (CS), which seeks to provide affordable housing.

6. Policy CS9 of the CS seeks to achieve a proportion of 20% Affordable Housing in Scunthorpe urban area. This proposal, on its face, proposes 100% Affordable Housing. However, there is no planning obligation before me to provide such provision, and as a result there is no means by which to secure such a level of affordable housing.
7. In order to make the development acceptable in planning terms, there would have to be a planning obligation to provide Affordable Housing. This would satisfy the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 204 the National Planning Policy Framework (the Framework).
8. I have noted that the Planning Practice Guidance<sup>1</sup> advises that a positively worded condition should not be used to require an applicant to enter into a planning obligation and that a negatively worded condition (i.e. limiting development until an obligation is entered into) is unlikely to be appropriate in the majority of cases. I have been presented with no exceptional circumstances to depart from this guidance.
9. Consequently, whilst I acknowledge the intentions of the appellant to provide 100% Social Rented Housing (Affordable Housing); in the absence of a planning obligation the proposal does not make adequate provision to deliver any Affordable Housing. Thus the appeal must fail on this first issue.

#### *Air Quality*

10. The Framework seeks to prevent new development from being put at unacceptable risk from, or being adversely affected by unacceptable levels of air pollution. To prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location and is consistent with the local air quality action plan. The effects (including cumulative effects) of pollution on health should be taken into account.
11. The AQMA was set up in November 2005 due to breaches of the daily mean objective for PM10. PM10 is a pollutant comprised of small dust particles known as particulate matter less than 10µm in size. In this AQMA, the predominant source of PM10 arises from industrial emissions. The Council's Action Plan for the Scunthorpe PM10 AQMA (AP) has a main aim of reducing PM10 concentrations so that they are lower than the Government's Air Quality Objectives as soon as possible and to ensure that they remain so in the future.
12. The site is located in Zone 2 of the AQMA and is within 700m of the Integrated Steelworks site (identified as a major source of PM10). I note that the 2012 Update on the Action Plan for the Scunthorpe PM10 AQMA North Lincolnshire Council (January 2012) does not preclude residential development in Zone 2, but requires an air quality assessment. I have had regard to the air quality assessment submitted by the appellant.

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<sup>1</sup> Reference ID: 21a-010-20140306

13. I recognise the Council's concerns that PM10 is a non-threshold pollutant which means it is not possible to determine a level below which there are no health effects. Nonetheless, there are objectives set out in the AP. For PM10, it states that in a 24 hour mean, a concentration of 50  $\mu\text{g}/\text{m}^3$  of PM10 should not be exceeded more than 35 times a year and an annual mean of a concentration of 40  $\mu\text{g}/\text{m}^3$  of PM10.
14. The East Common Lane air quality monitoring station is located within 100 metres of the proposed development site. Based on the evidence presented, the amount of exceedances in any year between 2011-2016 has never been more than the objective.
15. Therefore, although pollution concentrations experienced by residents are heavily dependent on meteorological conditions, there is no evidence presented to suggest that the PM10 levels at the monitoring station closest to the site are above the objectives set out in the AP. On the basis of this, I find that there is little evidence to assert that the site would be unsuitable for residential development.
16. On the balance of all the evidence before me, I find that the proposal would not provide unacceptable living conditions for future occupants, with specific regard to air quality. Consequently, there would be no conflict with Policies DS1 and DS11 of the North Lincolnshire Local Plan (May 2003) (LP). These policies seek to protect residents from unacceptable pollutants. I also find no conflict with Paragraphs 109, 120 or 124 of the Framework, the aims of which are set out above. Thus the appeal succeeds on the second issue.

### **Planning balance and overall conclusion**

17. Whilst I have found the proposal would provide acceptable living conditions for future occupants, with specific regard to air quality; there is clearly no means by which even the minimum requirement of 20% affordable housing would be provided. As indicated above, the proposal therefore does not make adequate provision due the lack of a planning obligation. This matter outweighs all benefits and for the reasons above, I conclude that the appeal should be dismissed.

*Katie McDonald*

INSPECTOR