



Appeal Decision

Hearing held on 20 February 2014

Site visits made on 19 and 20 February 2014

by Matthew Birkinshaw BA(Hons) MSc MRTPI

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

Decision date: 30 April 2014

Appeal Ref: APP/R2520/A/13/2205808

Land at Moor Lane, Branston, Lincoln, LN4 1LE

- 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 Mr Robert Nelstrop (Robert Nelstrop Farms Limited) against North Kesteven District Council.
 - The application Ref 13/0605/OUT, is dated 24 May 2013.
 - The development proposed is an outline planning application for residential development of up to 73 dwellings with all matters reserved.
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Decision

1. The appeal is dismissed and outline planning permission is refused for residential development of up to 73 dwellings with all matters reserved on land at Moor Lane, Branston, Lincoln, LN4 1LE.

Application for costs

2. At the Hearing an application for costs was made by North Kesteven District Council against Mr Robert Nelstrop (Robert Nelstrop Farms Limited). This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline with all matters reserved for future consideration. I have therefore dealt with the appeal on this basis, treating the details of access, layout, scale and landscaping shown on submitted Drawing No. RDS-10722/05D as indicative only.
4. The appeal is made against a failure to give notice within a prescribed period of a decision on an application for planning permission. The Council confirm that, had it determined the application, it would have been refused as insufficient evidence has been provided to demonstrate that the proposal is deliverable, or, that it would make the necessary contributions towards community infrastructure and affordable housing to be considered sustainable.
5. At the appeal stage the appellant provided a Section 106 agreement proposing financial contributions towards education facilities and public open space. Although the agreement was not signed at the Hearing, its completion would not prejudice the interest of any party. Additional time was therefore agreed to obtain the requisite signatures, and I have taken the final document into account in reaching my decision.

6. At the Hearing both parties also confirmed that the draft *Central Lincolnshire Local Plan Core Strategy* has been withdrawn. I have therefore determined the appeal on this basis. Finally, following conclusion of the Hearing the national Planning Practice Guidance has been published. The main parties are aware of this and I have also taken their comments, and its content into account.

Main Issue

7. The main issue is whether or not the proposal would provide a suitable site for housing, having particular regard to the principles of sustainable development.

Reasons

8. The appeal site is located on the southern edge of Branston outside the settlement boundary and within the countryside. Of the policies referred to by the Council I consider *North Kesteven Local Plan* Policy C2 to be the most relevant. This requires development to maintain or enhance the environmental, economic and social value of the countryside, maintain or enhance its character, ensure that development is located within or adjacent to settlements, and ensure that it is accessible by sustainable modes of transport.
9. However, the Council confirm that the current supply of deliverable housing land across Central Lincolnshire is only roughly 3.5 years, or only about 3.1 years within/adjoining the Lincoln Policy Area. Both parties therefore agree that paragraph 14 of the National Planning Policy Framework ('the Framework') and its presumption in favour of sustainable development applies.
10. For decision taking this directs granting planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies indicate that development should be resisted. In achieving sustainable development the Framework identifies three dimensions; the environmental, economic and social. It also confirms that these roles are mutually dependant and I have therefore considered the proposal on this basis.

Environmental

11. The adopted *North Kesteven Local Plan* defines Branston as a second tier 'Service Village'. It is therefore formally recognised as a large village which plays a service role for its rural hinterland with both primary and secondary education and a range of convenience, community and recreational facilities.
12. Situated on the southern edge of the village the majority of Branston's services and facilities are within walking distance of the appeal site. The public footpath which runs through the site would also be retained and a new pedestrian access to the bus stop on Sleaford Road is proposed. Whether or not potential future occupiers would still chose to drive, the appeal site is therefore well placed to promote more environmentally sustainable modes of transport.
13. It is also bounded to the north and west by existing housing on Moor Lane and Sleaford Road and to the east by a recreation ground and multi-use games area. Moreover, when approaching Branston the appeal site is well screened by a substantial landscape buffer and the scheme would not extend the built envelope of the village any further south than the houses opposite. Subject to an appropriate design, I therefore consider that in principle the proposal would be capable of integrating well with its surroundings. Given the size of Branston it is also unlikely to adversely change the character of this large service village.

14. In addition, no objections have been raised by the Environment Agency in relation to flood risk, or the County Council Highways Officer regarding either congestion or highway safety in the vicinity of the site. Anglian Water also confirm that there is capacity in the local sewerage system for the development and the Lincolnshire Wildlife Trust advise that retaining the hedgerow along Sleaford Road would protect the integrity of the designated Local Wildlife Site. Based on the evidence provided, I see no reason to disagree with these conclusions.
15. Consequently, in terms of the environmental dimension of sustainability, the proposal would provide a suitable site for housing and there is no conflict with either Local Plan Policy C2 or the Framework in this regard.

Economic

16. The proposal would deliver demonstrable economic benefits during the construction phase whilst the additional expenditure generated by potential future occupants would be of benefit to the local economy. That being the case, the Council has raised concerns that the scheme would not deliver the necessary financial contributions towards community infrastructure in Branston. This primarily stems from uncertainties regarding the deliverability of the scheme in response to viability concerns expressed by the appellant.
17. However, the greenfield appeal site is relatively flat, is unlikely to be contaminated from previous uses and is accessed from two main roads. Whilst I appreciate that the appellant's submission introduced viability as an issue, there is nothing to suggest that the scheme would be undeliverable in the short-medium term. This is also reflected in the *Central Lincolnshire Strategic Housing Land Availability Assessment* which found that other than its countryside location, the site did not appear to be constrained.
18. Moreover, the appellant's Section 106 agreement establishes a mechanism for providing the necessary contributions towards education and public open space. Although some local residents suggest that other services in Branston are at capacity, no detailed evidence has been provided to substantiate this. Both parties also agree that the financial contributions proposed would meet the relevant tests for planning obligations set out in the Framework, and based on the information provided, I do not disagree.
19. Under the terms of the Section 106 agreement a financial contribution would be calculated based upon the final scale of residential development proposed. This would ensure that a proportionate contribution would be delivered against the number and type of houses built, and any deficit in public open space. With nothing to suggest that the site is undeliverable, I see no reason why the proposal would not provide the necessary contributions sought by the Council. Any deviation from the agreement would also need to be appropriately assessed as part of a future application.
20. I therefore conclude that in terms of the economic dimension of sustainability, the proposal would provide a suitable site for housing. As a result, there is no conflict with Local Plan Policy C2 or the Framework in this regard. Moreover, following completion of the Section 106 agreement the fair and reasonable costs of providing the necessary additional services and facilities would be met, in accordance with Local Plan Policy C4.

Social

21. However, the Framework also seeks to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Local Plan Policy H5 is broadly consistent with this and requires 35% of dwellings on all relevant sites to be affordable provided that there is a need, that the site is within reasonable distance to local services and viability will not be prejudiced.
22. In terms of need, the supporting text to Policy H5 suggests that there is a shortage of affordable housing in North Kesteven, with 462 new affordable housing units required per annum between 2004 and 2014. Whilst this only covers the period up to 2014 and the data behind it is likely to be largely out of date, no alternative evidence has been presented by the appellant to suggest that this need no longer exists, and there was no dispute between the parties as to the relevance of Policy H5 to the appeal. The only evidence before me therefore points to a demonstrable need for affordable housing in the area.
23. Despite this, the appeal proposal does not include any formal mechanism to provide the affordable housing required by Policy H5. At the Hearing the appellant gave a verbal indication that the scheme would provide somewhere in the region of 25%-35% provision on site. However, this is extremely ambiguous, and there is nothing to suggest how even the lower figure would be adequately controlled or delivered as part of the development before me.
24. I appreciate that Policy H5 allows for a consideration of viability, and recognise that providing a detailed assessment at the outline planning application stage is difficult given the variables involved. However, if the requirements of the development plan concerning local affordable housing provision cannot be met then the onus is on the appellant to demonstrate why. It has also been established already that the appeal site contains very few constraints and would be deliverable in the short-medium term future. With this in mind, and in the context of an identified need, I consider that a verbal commitment to provide in the region of 25%-35% falls significantly short of a robust case to demonstrate how the scheme would be acceptable in principle.
25. I have also taken into account the suggestion by both parties that affordable housing could be secured through a planning condition. However, the appellant has not provided any certainty that the 35% required by Policy H5 would actually be delivered, or any detailed evidence to indicate why not. Because of this ambiguity, I am not persuaded that the condition proposed would be precise enough to meet the tests set out in the national Planning Practice Guidance, and there is no certainty as to what the scheme required by the proposed condition would actually entail.
26. The appellant has also suggested that the granting of planning permission would still be within the Council's future control as development could not proceed until the final details had been agreed. However, only matters of access, scale, landscaping, appearance and layout would need to be addressed. As the provision of affordable housing goes to the very heart of determining whether or not the scheme is acceptable, I consider that simply deferring this consideration until after planning permission had already been granted would not be appropriate in this instance. Although the appellant needs to maintain a degree of flexibility, this does not justify approaching the scheme without a thorough consideration of the requirements of development plan policy.

27. I therefore conclude that without contributing positively towards a balanced and mixed community sought by the Framework the proposal would not provide a suitable site for housing. By not creating a development that is accessible to all sections of the community the scheme would also fail to maintain the social value of the countryside contrary to Local Plan Policy C2. Finally, in the absence of any affordable housing provision or robust viability case the scheme also conflicts with Local Plan Policy H5.

Other Considerations

28. At the Hearing the appellant referred to a new car park proposed opposite the recreation ground which would help alleviate some of the parking problems identified by local residents. However, no information has been provided to confirm exactly what is proposed, that allowing the appeal would be the only way of facilitating these improvements or that they are dependant upon one another. Consequently, this carries only very limited weight.
29. I have also been referred to appeal decisions where significant weight was given to a lack of five-year housing land supply (Ref APP/P1133/A/11/2158146 and Ref APP/W3005/A/12/2179635). However, both cases make reference to the provision of a Unilateral Undertaking in order to facilitate the delivery of affordable houses. This is not the case before me. Consequently, the circumstances facing the other Inspectors were materially different.

Balancing Exercise

30. The Council cannot currently demonstrate a deliverable five-year supply of housing land and work on the new Local Plan has been significantly delayed. The site is also located in a sustainable location, any harm to the environment would be relatively limited and the necessary financial contributions would be provided for under the terms of the legal agreement. I have also borne in mind paragraphs 47-49 of the Framework which seek to boost significantly the supply of housing. These factors therefore all weigh in favour of the scheme.
31. However, no precise details have been provided to confirm how many affordable homes would be provided and there is no robust mechanism in place to secure their delivery. As a result, and in the absence of any information to suggest why this would be unviable, the scheme conflicts with Local Plan Policies H5 and C2. In the context of an identified need for affordable housing in the area, these factors therefore weigh against the development.
32. On balance, even though there are several benefits in its favour, I consider that by not providing any affordable housing and not contributing towards the balanced and mixed communities sought by national guidance, the harm caused by the scheme would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. Consequently, it is not the sustainable development for which there is a presumption in favour.

Conclusion

33. For this reason, and having considered all other matters raised, I conclude that the appeal should be dismissed and outline planning permission refused.

Matthew Birkinshaw

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Nelstrop	Appellant
Steve Catney	J H Walter
John Morrison	J H Walter

FOR THE LOCAL PLANNING AUTHORITY:

Nick Feltham	Principal Planner, North Kesteven District Council
Vanda Pollard	North Kesteven District Council

INTERESTED PERSONS:

Malcolm Ross	Branston and Mere Parish Council
Neville Lilley	Local Resident
Julia Valleley	Local Resident
Christine Kinneu	Local Resident
Sarah Stead	Local Resident
Lesa Appleyard	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Attendance list
- 2 Notification of Hearing, dated 9 January 2014
- 3 North Kesteven Local Plan Locational Strategy
- 4 North Kesteven Local Plan Policies H2, H3, H4, and H5
- 5 Letter from David Vickery regarding Central Lincolnshire Local Plan Core Strategy, dated 16 December 2013
- 6 Letter from North Kesteven District Council regarding draft Section 106 Agreement and Additional Planning Condition, dated 5 February 2014
- 7 Draft Section 106 Agreement Ref JMB/NK029.460, Version 2
- 8 Red Line Location Plan of appeal site
- 9 Lincolnshire Road Safety Partnership speed survey results and photographs
- 10 Extract from North Kesteven Local Plan Inspector's Report, dated 23 June 2006
- 11 Drawing No.SK02 illustrating previous, alternative development proposal for the appeal site
- 12 Costs Application on behalf of North Kesteven District Council