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## Appeal Decision

Hearing held on 8 January 2015

Site visit made on 8 January 2015

by **G D Jones BSc(Hons) DMS DipTP MRTPI**

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

Decision date: 9 February 2015

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**Appeal Ref: APP/D2510/A/14/2228085**

**Land off Mareham Road, Horncastle, Lincolnshire LN9 6RH**

- 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 Mrs A J Clark Settlement Trustees against the decision of East Lindsey District Council.
  - The application Ref S/086/02478/12, dated 30 November 2012, was refused by notice dated 29 April 2014.
  - The development proposed is described as outline planning application for residential development with all matters reserved other than access.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development with all matters reserved other than access at Land off Mareham Road, Horncastle, Lincolnshire LN9 6RH in accordance with the terms of the application, Ref S/086/02478/12 dated 30 November 2012, subject to the conditions contained within the Schedule at the end of this decision.

### Preliminary Matters

2. For the avoidance of doubt, the appeal proposal is for outline planning permission with approval sought at this stage for access only, with appearance, landscaping, layout and scale reserved for future consideration.
3. Prior to the hearing, the Council advised<sup>1</sup> that at its Planning Committee meeting on 18 December 2014, it resolved to withdraw its objection to the development and that it would offer no evidence against the proposal at the hearing.
4. The draft East Lindsey Core Strategy was published in October 2012. Although it has been the subject of public consultation, the Statement of Common Ground indicates that given its current status it can carry only limited weight. With reference to paragraph 216 of the National Planning Policy Framework (the Framework) I see no reason to disagree.

### Application for costs

5. At the hearing an application for costs was made by Mrs A J Clark Settlement Trustees against East Lindsey District Council. This application is the subject of a separate Decision.

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<sup>1</sup> Letter from Mr C Panton, East Lindsey District Council to The Planning Inspectorate dated 19 December 2014

## **Main Issue**

6. During the hearing I identified the main issue as whether the appeal proposal would be a sustainable form of development having particular regard to the need for housing in the area and the effect on surface water drainage. However, having heard the evidence it is clear that the main parties agree that there is not a five-year housing land supply in the area and I have found no good reason to disagree. Accordingly, the main issue is better expressed as whether reasonable arrangements can be made to put in place appropriate surface water drainage for the proposed development.

## **Reasons**

### *Background*

7. The proposal is to erect up to 129 dwellings with all matters reserved except for access, which would be gained via two new junctions with Mareham Road to the south of the site. The drawings submitted with the application include an illustrative masterplan and other details of how the proposed development might proceed. Whilst not formally part of the scheme I have nevertheless treated the details as a useful guide as to how the site could be developed.
8. The site is located on the eastern edge of the village of Horncastle such that its western boundary abuts existing residential properties. It is largely made up of fields that are in use for arable farming. The land slopes gently downward from the south-eastern corner of the site to the north-west. A drainage ditch runs along the site's northern boundary.
9. The Council's reason for refusal relates to its concern that at the time of determining the planning application the appellants had not adequately demonstrated that a deliverable sustainable urban drainage scheme (SUDS) could be provided to serve the appeal development. As described above, the Council subsequently withdrew its only reason for refusal and at the hearing it offered no evidence against the proposal.

### *Surface Water Drainage*

10. The reason for refusal refers to Policy ENV3 of the East Lindsay Local Plan Alteration 1999 (the Local Plan). Among other things, the Policy states that development will be permitted where it can be shown that surface water drainage of adequate capacity and design are available or that these can be provided in time to serve the development.
11. The evidence indicates that Thunker Drain, a tributary of the River Waring, drains the local catchment, and that the site currently drains to the ditch that runs adjacent to the northern boundary via overland flow routes. Although parts of the route and their alignment are not fully identified, from the information before me there is good reason to believe that this ditch connects to drains that discharge to Thunker Drain. Although these off-site drains are in third party ownership, the appellants' evidence indicates that they have rights to drain via this pipework to Thunker Drain and that responsibility for its maintenance falls upon the riparian land owner. While this has been contested by interested parties, there is no substantive evidence that gives me good reason to believe that such rights and responsibilities do not exist.

12. The information before me also indicates that the ditch to the north of the site is completely in the control of the appellants and that the development would be capable of incorporating on-site SUDS measures that would secure betterment over greenfield run-off rates. On this basis the proposed development would not result in a net increase in discharge of surface water via the off-site drains.
13. It is common ground between the main parties that a negatively worded condition could be used to prohibit development until a surface water drainage scheme for the appeal proposals has been submitted to and approved by the Council and that such a condition could also require the implementation of the approved scheme in accordance with an approved timetable. In view of the matters outlined above and the wider evidence, I agree. In making this assessment I have taken into account that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
14. I conclude, therefore, that reasonable arrangements could be made to put in place appropriate surface water drainage for the proposed development in accordance with the relevant objectives of Policy ENV3 of the Local Plan and the Framework in respect to drainage provision and flood mitigation.

### **Other Matters**

15. A signed Unilateral Undertaking (UU) dated 14 January 2015, made under Section 106 of the Town and Country Planning Act 1990, was submitted shortly after the hearing. Draft versions of the UU were circulated before the hearing, and during it the Council advised that it was content with the revised draft. I have considered the UU in the light of the Framework and the statutory tests of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, 2010.
16. In the event that planning permission is granted and implemented, the UU would secure contributions to provide student places in local schools and health service provision in Horncastle, and the delivery of on-site open space and its maintenance.
17. The Council has submitted a detailed statement<sup>2</sup> (the S106 Statement), which sets out the planning policy and guidance it considers provide support and justification for the open space planning obligation within the UU. The evidence also contains detailed submissions from NHS England (Leicestershire and Lincolnshire Area)<sup>3</sup> and the County Council as the Local Education Authority<sup>4</sup> regarding the requested health and education contributions respectively. Although the details provided by the NHS also refer to another proposed residential development in Horncastle the principles appear to apply to the appeal proposals and these have not been directly challenged by the appellants.
18. The obligations contained in the UU are in line with the local policies referred to in the Council's S106 Statement, notably Local Plan Policy H12 and supporting paragraph 8.93, which states that it should be the responsibility of those major

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<sup>2</sup> Hearing Document 7

<sup>3</sup> Emails and attachments from Amanda Anderson, NHS England (Leicestershire and Lincolnshire Area) and from Hannah Dolby NHS Property Services Ltd (Leicestershire & Lincolnshire) to the Council dated 11 December and 31 October 2013 respectively,

<sup>4</sup> Letters from Steve Mason, Children's Services, Lincolnshire County Council to the Council dated 4 October 2013 and 24 November 2014

housing developments which cumulatively add to the need for social and community facilities to provide for them, at least in part. They would also accord with the aims of paragraphs 7 (bullets 2 and 3), 17 (bullets 7, 9 and 12), 58, 70, 72 and 73 of the Framework.

19. Having regard to this policy context and the submissions outlined above, I am satisfied that the obligations within the UU are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.
20. In addition to the foregoing matters, concern has been expressed locally in respect a number of considerations. These include the effect of the proposed development on the character and appearance of the area including in respect to development density, on highway safety, on sewage and foul water drainage, on wildlife, on the living conditions of neighbouring occupiers including in respect to the noise and privacy, on archaeology and on security to neighbouring properties. Other issues raised concern provisions for non-car based access and links to and from the site from the existing settlement and nearby potential development sites, provision of bungalows as part of the development, the lack of demand/need for housing in the area, the site's location beyond the existing settlement and that it has not been identified for development via the development plan process, and the adequacy of local services and employment opportunities.
21. These matters are identified and considered in reasonable detail within the Council's Planning Committee reports and the Council has concluded that they would not amount to reasons to justify withholding planning permission. Subject to the provisions of the UU and the imposition of planning conditions, I see no good reasons to disagree.

### **Conditions and Conclusion**

22. The Council has suggested a number of conditions, including the standard outline conditions. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.
23. For the avoidance of doubt and in the interests of proper planning and highway safety, a condition would be necessary to control the quantity of dwellings permitted and, bearing in mind that access is not a reserved matter, require that the site access is constructed in accordance with the relevant approved plan. Conditions to secure the implementation of highway works in respect to the access would also be necessary in the interests of highway safety.
24. To mitigate flooding and ensure that the site is adequately drained, a condition to secure the implementation of a scheme for surface water drainage would be necessary as outlined in my Reasons section above. To ensure the provision of adequate on-site public open space and play equipment, conditions controlling the details and timing for the provision of these facilities would also be necessary.
25. With reference to the comments of the County Archaeology service, conditions would be necessary to ensure that features of archaeological interest are properly examined/recorded. A condition to secure the provision of on-site affordable housing would be necessary to assist with the provision of homes

that are affordable for local people. The submission and approval of a Construction Management Plan would also be necessary to safeguard the living conditions of local residents and in the interests of highway safety.

26. The suggested condition 11 would be unnecessary as the management of the public open space would be controlled via the UU and as landscaping would be reserved for future consideration.
27. For all of the reasons given above, I conclude the appeal should, subject to the identified conditions, be allowed.

*G D Jones*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANTS:

Mr D Hardy	Eversheds
Mr D Frosoni	Cole Easdon Consultants
Mr S Williams	Masons
Mr I Turvey	Turvey Consultancy

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Allen	East Lindsey District Council
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BSc DipTP MRTPI

### INTERESTED PERSONS:

Dr D Lawrence	Horncastle Historic and Heritage Society
Mr R Barker	Horncastle Town Council
RIBA	
Cllr B Burbidge	Horncastle Town Council
Cllr F Martin	District Ward Councillor
Mr S Mason	Lincolnshire County Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Costs application on behalf of the appellants
- 2 Letter from occupant of Mapleside, 36 Wesley Way, Horncastle
- 3 Drawings from Appendix 1 to the Factual Off-Site Drainage Report Issue 2, December 2014
- 4 Submission from Dr D Lawrence on behalf of the Horncastle Historic and Heritage Society
- 5 Planning Application Drawing Nos UP00008-1-F, UP00008-2, and UP00008-8
- 6 Response of the Council to the application for an award of costs made by the appellants
- 7 Justification for S106 provision of open space within the development site and its future maintenance on behalf of East Lindsey Council

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/D2510/A/14/2228085:

- 1) Details of the appearance, landscaping, layout 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 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 comprise of no more than 129 dwellings and the site access shall be carried out in accordance with the approved plan drawing number UP00008-1-F received by the Local Planning Authority on 21 August 2013.
- 5) Prior to the first occupation of any dwelling hereby approved the roads and/or footways providing access to that dwelling, for the whole of its frontage, from an existing public highway, shall be constructed to a specification to enable them to be adopted as highways maintainable at the public expense, less the carriageway and footway surface courses. The carriageway and footway surface courses shall be completed within three months from the date upon which the construction is commenced of the penultimate dwelling within the development.
- 6) Prior to the commencement of construction of any dwelling hereby approved, all of that part of the estate road and associated footways that forms the junction with Mareham Road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 7) No development shall take place until a surface water drainage scheme for the site, based on sustainable urban drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall:

- a) Provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;
- b) Provide attenuation details and discharge rates which shall be restricted to  $Q_{bar}$  12.2 litres per second;
- c) Provide details of the timetable for and any phasing of implementation for the drainage scheme; and
- d) Provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.

The development shall be carried out in accordance with the approved drainage scheme and no dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full in accordance with the approved details.

- 8) No development shall take place until a programme for the implementation of the development including public open space and equipped areas of play has been submitted to and approved in writing by the Local Planning Authority. The phasing of the development shall be implemented in accordance with the approved programme or in accordance with such other programme as may be submitted to and approved in writing by the Local Planning Authority.
- 9) No development shall take place until a scheme for provision of a Local Area for Play (LAP) within the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, siting and design of the LAP, its finished features, surfaces and any boundary treatment along with the timetable for its completion and the arrangements for securing its future maintenance. The approved scheme shall be implemented in accordance with its terms.
- 10) No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority.

The scheme should include:

- a) An assessment of significance and proposed mitigation strategy (i.e. preservation by record, preservation in situ or a mix of these elements);
- b) A methodology and timetable of site investigation and recording;
- c) Provision for site analysis;
- d) Provision for publication and dissemination of analysis and records;
- e) Provision for archive deposition; and
- f) Nomination of a competent person/organisation to undertake the work.

The approved details shall be implemented in accordance with the approved timetable. The Local Planning Authority shall be provided with at least 14 days' notice in writing of the intention to commence both the archaeological work and the development hereby permitted.

- 11) Within 3 months of the commencement of development a report of the archaeologist's findings shall be submitted to the Local Planning Authority and the Historic Environment Record officer at Lincolnshire County Council unless otherwise agreed in writing by the Local Planning Authority.
- 12) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it.

The scheme shall include:



- a) The numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 20% of the housing units;
  - b) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing and shall provide that no more than 80% of the market housing shall be occupied before the affordable housing is completed and ready for occupation;
  - c) The arrangements for the transfer of the affordable housing to an affordable housing provider or for the management of the affordable housing (if no registered social landlord is involved);
  - d) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - e) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 13) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall include details of:
- a) An overall strategy for managing environmental impacts which arise during construction;
  - b) Measures to control noise and emission of dust and dirt during construction;
  - c) The hours of construction work;
  - d) The location, scale and appearance of contractor' compounds and storage arrangements for materials, plant, equipment and temporary infrastructure;
  - e) Construction and delivery vehicles access, egress, on-site circulation and directional signage;
  - f) Provisions for emergency vehicles;
  - g) Provisions for loading and unloading;
  - h) Provisions for site operatives and employees travel to work;
  - i) The parking and turning of vehicles of site operatives and visitors;
  - j) Provisions to prevent mud and other such material migrating onto the highway from vehicle's leaving the site;
  - k) A scheme for the routing of construction vehicles that are under the developer's control; and
  - l) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.