



Appeal Decision

Site visit made on 21 September 2015

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

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

Decision date: 17 December 2015

Appeal Ref: APP/N2535/W/15/3129061 **Land off Lodge Lane, Nettleham LN2 2RS**

- 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 Messrs Clark, Mann & Weldon against the decision of West Lindsey District Council.
 - The application Ref 132063, dated 21 October 2014, was refused by notice dated 29 May 2015.
 - The development proposed is described on the application form as the erection of residential dwellings and class B1 (offices) / D1 (non residential institutions).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of residential dwellings and class B1 (offices) / D1 (non residential institutions) on land off Lodge Lane, Nettleham LN2 2RS in accordance with the terms of the application, Ref 132063, dated 21 October 2014, subject to the conditions in the schedule at the end of this decision.

Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. 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 the site could be developed for housing. As the application is in outline the appellant is not tied to the detail shown on this plan. However, the Design and Access Statement refers to 1500sqm of commercial floor space with associated parking and the plans show such development along with the remainder of the site occupied by 40 houses. I have therefore treated this as indicative of the appellant's intentions and have assessed the application on this basis.
4. A unilateral undertaking dated 26 August 2015 has been submitted to mitigate the effects of the proposed development on local infrastructure and services. The appellant states that this undertaking replaces the one dated 22 July 2015 previously submitted. I have therefore only taken the more recent undertaking into account. On 6 April 2015, Regulation 123(3) of the Community Infrastructure Levy Regulations also came into force. It permits only limited pooled contributions towards infrastructure that could be funded by a Community Infrastructure Levy. The Council was invited to comment on the agreement and the Regulation. The appellant was copied into this

correspondence. I have taken the comments received into account in considering the undertaking.

5. Following the site visit, several considerations were brought to my attention that were material; the appellant submitted a copy of a planning decision (ref 132090) in Cherry Willingham in support of the appeal; the Examiner's report into the Nettleham Neighbourhood Plan was published; and attention was drawn to the Central Lincolnshire Five Year Supply Report (October 2015). As a result, these considerations, and the comments of the parties that were received in relation to them, have been taken into account in the determination of this appeal.

Main Issues

6. The main issues in this appeal are;
 - the effects of the proposed development on employment land provision;
 - the accessibility of services, facilities and public transport from the site; and,
 - whether there are other material considerations, such as the supply of housing land in Central Lincolnshire and the sustainability of the proposed development, that would outweigh any harm caused and any conflict with the development plan.

Planning policy

7. The appeal site consists of fields outside the settlement boundary of Nettleham. As a consequence, for planning policy purposes it is within the open countryside where, in accordance with policy STRAT 12 of the West Lindsey Local Plan Review ('Local Plan'), development is strictly controlled and housing schemes are not supported. One of the circumstances where the development of such land is supported is if it meets an objective of another plan policy, such as providing land for employment. Policy STRAT 15 has allocated that part of the appeal site closest to Lodge Lane for this purpose.
8. Policy STRAT 1, amongst other matters, seeks satisfactory access to public transport, a reduction in the number and length of car journeys, the protection of the character and appearance of the countryside, and that development does not harm local infrastructure and facilities.
9. A Neighbourhood Plan for Nettleham has been prepared and the Examiner's report on it has recently been published. Based upon its recommended modifications and the Parish Council's response, policy B1 of the emerging Plan would either be deleted, or would not seek the long term protection of employment land if there was no reasonable prospect of the site being used for employment purposes. The National Planning Policy Framework (the Framework) is an important material consideration. The approach advocated in relation to employment land in the emerging Neighbourhood Plan is consistent with the Framework.
10. Policy H1 of the emerging Plan primarily focuses new housing development on four allocated sites adjacent to the settlement boundary. These sites are not on the southern side of the village and do not include the appeal site. Policy D7 supports new housing development adjacent to the continuous built form of the village. Under the accepted modifications, no part of the appeal site would fall within the Green Wedge identified by policy E1, which safeguards the gap separating the village from Lincoln.

11. The location of a significant number of the new dwellings required to meet local housing needs on the appeal site would be contrary to the aims of policy H1, which seeks to focus development on allocated sites elsewhere in the village. The proposal in this regard would therefore be contrary to the emerging Neighbourhood Plan.
12. The Neighbourhood Plan is at an advanced stage of preparation. Subject to certain changes, it has been found to be consistent with the Framework and meets all the necessary legal requirements. The Parish Council accepts the majority of the recommended modifications. Where amendments have been suggested, they do not deviate significantly from the Examiner's recommendations. Although a referendum must still be held for it to be adopted, as it has been drawn up on the basis of significant community support and engagement, it is a reasonable assumption to make that the majority of the community is generally supportive of it. It is anticipated that the referendum will take place in January 2016 with adoption in March 2016. I therefore attach a fair degree of weight to the emerging Neighbourhood Plan and its policies.

Reasons

Employment land

13. As noted above, part of the appeal site has been allocated for use class B1 employment development¹ by policy STRAT 15 of the West Lindsey Local Plan. This use class includes offices and other employment development that is suitable to be carried out in a residential area. The employment element of the development proposed would be located within the allocated site, but would occupy only part of it. Paragraph 22 of the Framework advises that the long term protection of sites allocated for employment purposes should be avoided where there is no reasonable prospect of a site being used for that purpose. If retained, policy B1 of the emerging Neighbourhood Plan would have a similar thrust.
14. The appeal site has been unsuccessfully marketed for employment purposes for over seven years. However, given that this period covers the recession of 2008, and the slow recovery from it, such a lack of interest, in itself, is not necessarily indicative that during more normal economic times the site would be surplus to requirements. I am mindful, in this regard, of the evidence from the most recent assessment of employment land in the area as contained within the Central Lincolnshire Economic Needs Assessment 2015 (CELA). As this document has been prepared using a range of information, and utilising comments from developers and agents in the area, I attach significant weight to it. It found that demand for offices in the wider Lincoln area, which includes Nettleham, is increasing and that there is high demand and insufficient supply.
15. Therefore whilst Nettleham is within a secondary office location in the Lincoln area, based on the evidence before me, there seems to be a reasonable prospect of that part of the site which is allocated for employment purposes being required to meet the identified demand for use class B1 employment land. The proposed development would result in approximately only half of this allocated site being developed for office and related uses, the remainder, together with the greenfield land beyond, being shown as being developed for housing. The proposed development would therefore undermine the supply of

¹ Site reference N(E)2

employment land in the area, contrary to policy STRAT 15 of the Local Plan and the Framework.

Accessibility

16. In relation to the settlement, the appeal site is located next to its south eastern edge. At slightly over 1km away from the village centre, the site is located further away from the majority of local services and facilities than the allocated sites in the emerging Neighbourhood Plan. The evidence is that whilst there are bus stops nearby for services to nearby settlements, the stop for the bus service to Lincoln, Welton (senior school), Grimsby, Market Rasen and Skegness is in the village centre. In terms of walking, such a distance exceeds the maximum walking distance of 800m sought by the Institute of Highways and Transportation document '*Providing for Journeys on Foot*'. A distance of up to 800m is also identified as a characteristic of a walkable neighbourhood' in national guidance². As a result, I find that whilst the village has reasonable public transport provision, the appeal site is less than ideally located in terms of accessibility on foot to some of the bus stops, services and facilities in the village which would be required by future residents on a daily basis.

Other material considerations

Housing land supply

17. Paragraph 47 of the Framework advises that Local Planning Authorities should have sufficient deliverable sites to provide five years of housing against their housing requirements. The recently published Central Lincolnshire Five Year Land Supply Report (October 2015) states that a 5.37 year housing land supply exists. This is a change to the position when the application was determined, when a 3.5 year supply was considered to exist. However, the appellant notes that the updated housing land supply position is, in part, derived from emerging allocations in the Central Lincolnshire Further Draft Local Plan. Given its early stage of preparation, I agree that limited weight should be given to this plan and the allocations it contains. As a result, I find that the evidence that has been provided as to whether a five year housing land supply exists is inconclusive.

Affordable housing

18. With regards to affordable housing, there is a shortage and in accordance with policy RES6 of the Local Plan, the proposed development needs to make provision for such housing. The Council prefers the use of a section 106 agreement to secure such provision, because of the greater certainty and detail it provides. However, I am satisfied that adequate affordable housing could be secured on the site through the use of suitable negatively worded condition. Planning Practice Guidance³ advises that exceptionally such a condition requiring an agreement to be entered into before development commences may be appropriate. Given that the proposal is a relatively complex development that would make a noteworthy contribution towards the strategically important housing land supply, and the scheme would be unable to go ahead if affordable housing was not provided, I find use of such a condition in this instance would be appropriate.

Access and traffic generation

² Manual for Streets, section 4.4.1

³ 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?'

19. Access into the site would be created from Lodge Lane. The road is straight and has good visibility in both directions. The Transport Assessment of the proposal identifies that Lane would have sufficient capacity to cater for the number of vehicle movements the scheme would generate. It also identifies that in comparison to the allocated employment land use of the site the proposed scheme would create fewer daily vehicle movements. As a result, the scheme would lessen the likelihood of congestion in the area. The Council has no objection to the proposed access or highway implications of the proposal subject to the submission of further design details which could be required by condition. I have no reason to disagree with those conclusions.

Living conditions

20. Although from the nearby sporting clubs there may be some noise, and in the evenings lighting would be visible on the western part of the site, this would not be incompatible with the proposed residential use on the site. In terms of privacy, given the control that exists at reserved matters stage regarding landscaping (including boundary treatments) and layout a suitable scheme could be designed to prevent material overlooking. The outlook from the rear of the few houses along Lacy Close that face the appeal site is currently of an open undeveloped field. The loss to development of such a view would have a minor adverse effect on living conditions. However, given that the occupiers of these houses currently enjoy very 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.

Sustainable development

21. The Framework confirms that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development.
22. In terms of the economy, there would be economic benefits associated with construction and an increase in population, albeit this would be at the expense of a reduction in the local supply of employment land. Socially, the additional houses would contribute to addressing housing need, including the need for affordable housing, and as I confirm in paragraphs 26 – 30 the effects of the development on the local school and Medical Practice would be mitigated.
23. In relation to the environment, the appeal site is less than ideally located in terms of accessibility on foot to services, facilities and public transport. However, satisfactory living conditions would be achieved for neighbours and future residents. A safe access could be created and in comparison to the allocated employment use of the site the proposal would lessen the likelihood of congestion. In terms of surface water flooding, I note that the proposal would help resolve problems in the area.
24. Although the proposal would result in the loss of open countryside to development, the unallocated area of open countryside within the site is only readily visible in private views from the rear of a few houses along its northern edge. This part of the site is not readily visible from public vantage points. As a result, it is of comparatively little value to the character and appearance of the countryside and the setting of the village. With the built edge of the village and the approved housing scheme (ref 130845) along the northern side of the site the countryside that would be lost to development would be adjacent to

the continuous built form of the village. The proposal therefore would comply with policy D7 of the emerging Neighbourhood Plan. Given the control that exists at reserved matters stage, a well designed scheme could be achieved that would complement surrounding development.

25. Taking all these matters into account, I therefore conclude that the proposed development would constitute a sustainable development. As such it would comply with the objectives of policy STRAT 1 of the Local Plan and policy D7 of the emerging Neighbourhood Plan.

Other matters

Local Infrastructure

26. A completed unilateral undertaking has been submitted to secure contributions towards education and health care sought in accordance with policy STRAT 19 of the Local Plan. The provisions of the undertaking 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).
27. The proposed development would increase pressure on education facilities locally which are already at capacity. Whilst the education contribution within the submitted unilateral undertaking only relates to Nettleham Primary School, the Education Authority has advised that it no longer seeks a contribution towards secondary education. The undertaking therefore makes provision necessary to make the development acceptable in planning terms. The contribution has been calculated based upon the cost of providing the necessary additional school places. The sum sought therefore is reasonably related in scale and kind to the proposed development. As it would be spent on a classroom extension it would also be directly related to it.
28. The proposed scheme would increase demands on the local Nettleham Medical Practice. In order to cater for the additional patients that it has been calculated would live in the proposed new dwellings, the internal space of the Practice would need to be reconfigured. A financial contribution is therefore necessary to mitigate the effect of the development by expanding the Doctor's Surgery. The sum sought would directly relate to the development and reasonably related in scale and kind to it. As a consequence, both contributions satisfy the tests in the Framework and accords with Regulation 122.
29. Since the date of the site visit Regulation 123(3) has come into force. It prevents the pooling of more than 5 planning obligations made since 6 April 2010 towards a specific infrastructure project, or particular type of infrastructure. The Council states that only a single development has made a contribution towards improving the local medical practice in the area during this time. Similarly, only a single contribution has been identified that has been made towards expanding education provision at the local primary school. This has not been challenged by the appellant. On the basis of the available evidence, I therefore find that the contributions sought comply with Regulation 123(3).
30. For all of these reasons, I have therefore taken into account both provisions of the submitted unilateral undertaking.

Overall Conclusions: The Planning Balance

31. For the reasons that I have set out earlier the proposal would be contrary to the development plan and the emerging Neighbourhood Plan. This is because it would not comply with policies STRAT 12 and STRAT 15 of the Local Plan and policy H1 of the emerging Neighbourhood Plan. These policies seek to restrict new housing development to within the settlement, or on sites allocated for housing development, and to protect land identified for employment purposes. Such contraventions normally weigh heavily against a proposal.
32. However, although I have found that the evidence as to whether a five year housing land supply exists is inconclusive, the position of the Council, based upon published minutes of a recent Planning Committee⁴, is that policies of the development plan relevant to the supply of housing⁵ are out of date. On the basis that the spatial strategy of the current Local Plan does not have sufficient allocations to meet the five year supply, and departures from the Plan to accommodate emerging allocations are necessary to make up the shortfall, I agree with that position.
33. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development. I have found that the development would constitute a sustainable development. Where relevant policies, as in this case 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.
34. In terms of adverse impacts, although the proposal would result in the development of approximately half the allocated employment land for employment purposes the proposal would reduce the overall supply of such land in the area. The site is also less than ideally located in terms of accessibility and some limited harm would be caused to the character and appearance of the area through the loss of countryside. These factors are of noteworthy weight in favour of dismissing the appeal.
35. In terms of the benefits, the proposal would be a mixed use scheme that would contribute towards the supply of housing, including affordable housing, whilst also delivering employment premises. It would also be a sustainable development. Collectively, these considerations are of very significant weight in favour of favour of allowing the appeal.
36. My overall conclusion in this case, having considered all other matters raised, is that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The appeal should therefore succeed.
37. Reference has been made to a recent appeal decision⁶ which refused permission for four dwellings on Deepdale Enterprise Park within the village. However, that proposal would have resulted in the loss for employment purposes of the whole appeal site in a well occupied business park. In contrast, this proposal is for a far larger mixed use scheme that would develop approximately half of the allocated employment land for employment purposes,

⁴ 21 October 2015

⁵ Policies STRAT 12 and STRAT 15 of the Local Plan and by implication policy H1 of the emerging Neighbourhood Plan

⁶ Appeal reference: APP/N2535/W/15/3014904

whilst providing a significant number of new dwellings. As a consequence, the balance of considerations in each appeal is different. The Inspector in the appeal referred to would have exercised his judgement on the evidence in relation to that particular case. I have similarly used my judgement in respect of the evidence before me. As a result, that decision has not altered my conclusions in relation to this appeal.

38. There is no doubt that there is strong local feeling about this proposal, as reflected by the volume of objections received at every stage. I recognise that this decision will be disappointing for local residents and am mindful in this regard of the Government's 'localism' agenda. However, even under 'localism', the views of local residents and the Parish Council, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, the Framework and Planning Practice Guidance. For the reasons set out above, that balance of the various considerations leads me to conclude that the appeal should be allowed.

Conditions

39. For the avoidance of doubt and in the interests of proper planning, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans in respect of the matters not reserved for subsequent approval. In the interests of meeting the housing needs of the whole community in accordance with policy RES6 of the Local Plan, affordable housing needs to be provided. To comply with national policy a sustainable drainage scheme should also be provided. To safeguard public health drainage for foul sewerage needs to be delivered.
40. In the interests of highway safety, technical details of the streets, a phasing and completion plan and arrangements for the management and maintenance of the streets are required. For the same reasons, the site access road needs to be constructed from its junction with the highway into the site before buildings are erected; a footway needs to be provided across the front of the site and the estate road, and vehicular access completed to serve each dwelling before it is first occupied. To minimise the risk of surface water flooding, culverts works need to be carried out and the floor levels of the offices finished above a minimum height.
41. Given the potential for nuisance to nearby residents control needs to be exerted on the hours of construction. Weekends and bank holidays are particularly valuable and construction noise on such days would be particularly intrusive. Other than on Saturday mornings I have therefore prevented construction on these days.
42. I have required all these matters by condition, revising the Council's suggested conditions where necessary to better reflect the requirements of Planning Practice Guidance.
43. The requirements of conditions Nos 11 and 17 suggested by the Council, where necessary, have been incorporated into the listed conditions. As a result, they have not been included as stand alone conditions.

Ian Radcliffe

Inspector

Schedule

- 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 be carried out in accordance with the following approved plans: J1443(08) 01, J1443(08) 05 Rev B but only in respect of those matters not reserved for later approval.
- 5) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have 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: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 25% of housing units;
 - ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii. the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v. 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.

The affordable housing shall be retained in accordance with the approved scheme.

- 6) No development shall take place until details of a scheme for the disposal of foul drainage from the site has been submitted to and approved in writing by the local planning authority. No building shall be occupied until the foul water drainage works serving it have been implemented in accordance with the approved details.
- 7) No development shall be commenced until an Estate Street Phasing and Completion Plan ('The Plan') has been submitted to and approved in writing by the local planning authority. The Plan shall set out the

development phases and the standards that estate streets serving each phase of the development will be completed to. No dwellings shall be occupied until the estate streets affording access to those dwellings has been completed in accordance with the Plan.

- 8) No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the local planning authority. The streets thereafter shall be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 9) No development shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, unless otherwise agreed in writing with the local planning authority.
- 10) No development shall take place before a scheme has been agreed in writing by the local planning authority for the construction of a 1.8m wide footway across the whole frontage of the site. The agreed works shall be fully implemented before first occupation of any of the buildings on the site hereby permitted.
- 11) No development shall take place within the areas identifies at risk of surface water flooding until;
 - a) improvements to the culverted watercourse adjacent to the western side of Lodge Lane, including removal of trees, opening up the culverted section and redesigning the downstream chamber, have been carried out.
 - b) the restriction within the culverted watercourse under Lodge Lane has been resolved and the 250mm gas main has been redirected out of the culvert.
- 12) No dwellings (or other development as specified) shall be commenced before the first 60m of estate road from its junction with the public highway, including visibility splays, as shown on drawing number J1443 (08) 05 rev B has been completed.
- 13) Before any dwelling is commenced, all of that part of the estate road and associated footways that forms the junction with the main 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 and approved by the local planning authority.
- 14) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in Planning Practice Guidance, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 15) The individual dwellings shall not be occupied until the associated vehicular access has been completed. The access shall thereafter be retained and maintained.
- 16) Construction works shall not take place outside 07.00 hours to 18.00 hours Mondays to Fridays, and 08.00 hours to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays.
- 17) The proposed office accommodation finished floor level shall be raised a minimum of 300mm above ground level and flood resilient construction shall be used above the predicted surface water flood depth of 600mm above ground level.

Richborough Estates