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## Appeal Decision

Site visit made on 30 June 2020

**by Diane Cragg DipTP MRTPI**

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

**Decision date: 02 November 2020**

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**Appeal Ref: APP/Y2003/W/20/3251184**

**Land west of Scotter Road, Messingham.**

- 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 A E & D M Swaby against the decision of North Lincolnshire Council.
  - The application Ref PA/2019/164, dated 22 November 2018, was refused by notice dated 13 February 2020.
  - Outline planning permission to erect up to 25 dwellings with all matters reserved for subsequent consideration.
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### Decision

1. The appeal is allowed and outline planning permission is granted to erect up to 25 dwellings with all matters reserved for subsequent consideration on land west of Scotter Road, Messingham in accordance with the terms of the application, Ref PA/2019/164 dated 22 November 2018 subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. The application was submitted in outline with all matters reserved. I have treated the submitted site plan as indicative insofar as it relates to matters reserved for future determination.
3. The application form refers to '25 houses' whereas the description on the appeal form and the decision notice refers to 'up to 25 houses'. I am satisfied that this amended wording has been agreed between the parties. I have therefore used the description on the appeal form and determined the appeal accordingly.
4. The Council confirms in its appeal statement that the reference to social impacts in the first reason for refusal was an error. I have taken this into account in reaching my decision.
5. No ecology statement was submitted with the planning application. However, a Preliminary Ecological Report<sup>1</sup> was submitted with the appeal which the Council has had the opportunity to comment on. No site-specific concerns have been brought to my attention that would prevent a range of features to support biodiversity, proportionate to the nature and scale of the development, being sought through an appropriately worded planning condition. Consequently, I consider that the development would meet the requirements of Policy CS17 of

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<sup>1</sup> Preliminary Ecological Appraisal - Land Off Scotter Road, Messingham, North Lincolnshire – March 2020

the North Lincolnshire Core Strategy (2011) (Core Strategy) which promotes effective stewardship of North Lincolnshire's wildlife. The Preliminary Ecology Report has addressed the Council's reason for refusal 3.

6. A signed and sealed agreement dated 20 July 2020 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) (S106 agreement) has been submitted during the appeal process. I provide further comment on this agreement later in this decision.

## **Main Issues**

7. The main issues are (i) the effect of the development on the character and appearance of the area (ii) the effect on the overall planning balance of other considerations including environmental factors.

## **Reasons**

### *Policy background - location*

8. The appeal site is outside of the development limits for Messingham and in the open countryside for the purposes of the development plan. Policies CS2, CS3, CS5 and CS8 of the Core Strategy and Policy RD2 of the North Lincolnshire Local Plan (adopted May 2003) (the Local Plan) seek to control development in the open countryside. Whilst the policies set out the types of development which could, as an exception, be permitted on sites outside of development limits, the appeal scheme does not fall into any of these categories. Consequently, the proposed development would conflict with the above-cited policies where these policies seek to control the type of development in the open countryside.

### *Housing supply*

9. The parties agree that the Council cannot demonstrate a 5-year housing land supply. The current supply figure is identified as four years of deliverable housing sites. The appeal decision referred to by the parties<sup>2</sup> indicates that this is a shortfall of some 450 dwellings. Therefore, in respect of housing land supply, the housing policies in the Local Plan and the Core Strategy which are most important for determining the appeal are out of date.
10. The parties agree that paragraph 11d(ii) of the National Planning Policy Framework (the Framework) is engaged. This states that where the policies which are most important for determining the application are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### *Character and appearance*

11. The appeal site is located on the southern side of Messingham. A short section of frontage development to the west side of Scotter Road fronts the highway on the entrance to the village. This frontage development is separated from relatively modern in-depth development adjacent to Scotter Road accessed from Gelder Beck Road. Housing fronting Trentholme Drive, Manor Farm Road and Gelder Beck Road adjoins the northern appeal site boundary. There is a section of undeveloped frontage to Scotter Road which forms the appeal site's

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<sup>2</sup> APP/Y2003/W/19/3233292

- eastern boundary. The gap within the frontage has planning permission for 6 houses<sup>3</sup>.
12. Although the appeal site is set back from the Scotter Road frontage its clearly defined boundaries to the west and south and the preceding location of existing frontage development along Scotter Road restrict views of the site on the approach from the south. Direct views from the front of the site would be curtailed by the approved frontage development.
  13. From Manor Farm Road, where the estate road ends close to the appeal site boundary, and from Gelder Beck Road, views of the countryside beyond the appeal site are limited due to the maturity of landscaping along the site boundaries to the south and west. Although I accept that constructing development on the appeal site would inevitably result in some urbanisation, the appeal site is contained and makes a very limited contribution to the rural landscape and the wider open countryside.
  14. I appreciate that Policy LC15 of the Local Plan proposes a number of enhancement schemes including to the south-western boundary of Messingham, which is broadly the northern boundary of the appeal site. However, the Local Plan was adopted in 2003; the policy text suggests that the location of enhancement schemes is indicative, and the actual schemes would be defined by a process of negotiation. I have limited evidence before me that the landscape enhancement of the south-western boundary of Messingham has been pursued.
  15. Overall, the appeal site's contribution to the rural landscape is limited by its enclosed nature and its location adjacent to more concentrated development on the adjoining estate and the frontage development along Scotter Road. Consequently, development of the appeal site would not appear unduly prominent or out of character with the area. For these reasons, the proposal, subject to detailed design at the reserved matters stage, could readily assimilate with its surroundings.
  16. I therefore conclude that the proposal would not cause harm to the character and appearance of the area. In this respect the proposal would accord with Policies RD2, H5, DS1 and LC15 of the Local Plan and CS5 and CS8 of the Core Strategy, which seek to ensure that development is in keeping with the scale and character of the settlement and would not be detrimental to the character and appearance of the open countryside.

### **Planning Obligation**

17. The S106 agreement provides a mechanism to secure the provision of affordable housing, offsite financial contributions to deliver improvements to mitigate the pressures on education and open space and leisure contributions. The obligations in these regards are proportionate to the needs arising from the residential development's anticipated scale and nature.
18. In concluding that the obligation is proportionate and meets the needs arising from the development, I have had regard to Core Strategy Policy CS27: planning obligations, which relates to securing infrastructure. I have also been directed to Policies CS9, CS22 and CO1 of the Core Strategy as well as Supplementary Planning Guidance (SPG) 8- Developer Contributions to Schools

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<sup>3</sup> APP/Y2003/W/18/3195915

and SPG 10 – Provision of Open Space in New Developments. These policies and documents require developments to meet the reasonable costs of new and improved infrastructure made necessary by a proposal and necessary to mitigate the impacts of the development.

19. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in paragraph 56 of the Framework. I am satisfied that all the obligations are necessary, directly related to the development and fairly related in scale and kind. I am mindful that no evidence has been supplied which queries either the necessity or the viability of these obligations. Accordingly, I consider that these obligations can be taken into account in my assessment of the appeal.

### **Other considerations**

20. The illustrative layout plan indicates that access to the site would be from Manor Farm Road. The Council considers that there is a ransom strip that may affect the possibility of access from this estate road. The evidence, including the appellant's design and access statement, indicates that access would be sought from Scotter Road via the frontage land to the east of the appeal site. The location of the access is a reserved matter and is not therefore for me to consider here. I have reviewed the third-party concerns about the increase in traffic and the effects of access to the site from Manor Farm Road and on road parking. However, the Council has no objections on highway grounds, and it has not been demonstrated that the surrounding road network cannot accommodate the development.
21. I have been provided with some evidence of surface water flooding within Messingham and interested parties have made comments about the capacity of the existing drainage system to support the development. The description of the proposed development has been amended to 'up to 25 dwellings' to reflect the need to resolve drainage capacity through appropriate on-site attenuation. However, the Lead Local Flood Authority is satisfied that with appropriate conditions the site can be suitably drained. There is no substantive information to lead me to a different conclusion.
22. The Council confirms that Messingham is classified as a large service centre with a good range of key facilities. The Framework indicates that significant development should be focused on locations where the need to travel can be limited and which offers a genuine choice of transport modes. The proposal would deliver housing on a site at the edge of Messingham which is accessible to schools and other facilities in the settlement within a reasonable walking and cycling distance. There is some suggestion that the bus service is limited, however, I note that there are bus service connections to the wider area which would provide a choice of transport modes. As a result, not all trips to access services and facilities would be by car. The accessibility of the site to services and facilities is a benefit of the scheme which attracts moderate weight.
23. The proposal would provide contributions to education, leisure and open space facilities through the section 106 legal agreement. However, these contributions would largely offset the impacts of the new development proposed and are of neutral consequence in the planning balance.

24. The outlook of those properties that face towards the appeal site would change as a result of its residential development. Nevertheless, matters of the proposed development's scale, layout and appearance are reserved for future determination. Careful design at the reserved matters stage would ensure that harmful effects in respect of the availability of sunlight or daylight, overbearing structures and outlook could be avoided. Therefore, these matters do not weigh against the proposal.
25. Local residents and Councillors have also expressed a wide range of concerns including, but not limited to the following; inadequate publicity; precedent for further development, cumulative impact with the approved scheme to the east of the appeal site, devaluation of properties and the inadequate services and facilities within the village. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal. Whilst I can understand the concerns of local residents and Councillors, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

### **Planning Balance**

26. The proposal conflicts with Policies CS2, CS3, CS5 and CS8 of the Core Strategy and RD2 of the Local Plan in so far as they seek to restrict residential development outside of development limits. Nevertheless, as the restrictions set out in the above policies act as a constraint on housing land supply and there is a confirmed under supply the policies are out of date for the purposes of the Framework. There is no dispute that paragraph 11 d (ii) should apply.
27. The appeal site could provide up to 25 dwellings, which could include a mix of house types and would include a small number of affordable houses. Although the number of dwellings is modest it would make a contribution to the supply of housing, where there is an acknowledged under supply, and support the governments objective of significantly boosting the supply of housing, including through the contribution of small and medium sized sites. It would also, in a small way, address the needs of groups with specific housing requirements through the provision of affordable housing. The site would be accessible by other means than the car. I attach moderate positive weight to these social benefits.
28. The scheme would result in a degree of economic gain to the area through the construction and occupation of the development. Those jobs associated with construction would be temporary and limited, however, household expenditure would help support the local shops and facilities and provide local jobs. I attach moderate positive weight to these economic benefits.
29. The environmental objectives of the Framework are to contribute to protecting and enhancing the natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
30. The site is not designated as a heritage asset and it does not contain archaeological features of significance. The site is in flood zone 1 and the evidence is that with suitable attenuation the site can be adequately drained. The Preliminary Ecological Appraisal identifies the need to retain the boundary hedges and trees, to provide measures to enhance biodiversity and provide

suitable habitats for bats, nesting birds and hedgehogs. These measures can be achieved through appropriate conditions.

31. For the reasons set out above, and having had regard to the Council's case, I have concluded that the development would not cause harm to the character and appearance of the area and in this respect, it complies with the development plan. Taking the above matters together, I consider the environmental impacts of the development would be neutral in the planning balance.
32. Overall, the limited harm associated with the conflict with the development plan due to the sites location outside the development limits does not significantly and demonstrably outweigh the moderate benefits attributable to the development when assessed against the Framework taken as a whole. In such circumstances, the Framework indicates that development should be permitted.
33. I therefore conclude that there are no adverse impacts, including environmental factors, that would significantly and demonstrably outweigh the benefits. Although there would be limited conflict with Policies CS2, CS3 and CS8 of the Core Strategy and RD2 of the Local Plan in so far as they seek to restrict residential development outside of defined development limits, the proposal would comply with the development plan when read as a whole. Accordingly, I consider that the appeal should be allowed.

### **Conditions**

34. I have provided the parties with an opportunity to comment on a list of conditions. My consideration has taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. I have had regard to the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification. The Appellant has confirmed acceptance in writing of those pre-commencement conditions that have been imposed.
35. All matters were reserved for later submission and the wording of the conditions reflects this. The standard time limit conditions for outline applications has been applied and I have imposed a condition requiring the development to be carried out in accordance with the site location plan so that there is certainty regarding the site area.
36. A condition setting out parameters for the design of the highways is required to ensure sustainable transport measures are incorporated into the development, to ensure that the highway is suitably drained and the connection to the existing highway network is designed to ensure the safety of road users and pedestrians.
37. To prevent the development being an inconvenience to nearby residents during the construction phase it is necessary to ensure that construction is carried out in a considerate manner. The agreement of a Construction Environment Management Plan is therefore necessary for this purpose. The condition needs to be approved before commencement of development takes place for obvious reasons.
38. It is clear from the response of the Lead Local Flood Authority that the numbers of dwellings which can be accommodated on the site would in part be

determined by the method of drainage of the site, and this is reflected in the wording of the description which refers to 'up to 25 dwellings'. Therefore, it is necessary to require details of the drainage scheme.

39. A condition is necessary to ensure that the mitigation and enhancement measures set out in the Preliminary Ecological Appraisal dated March 2020 are implemented in order to protect ecological interests and improve biodiversity. Although landscaping is a reserved matter, it is appropriate at this stage to ensure that protective measures are in place to retain hedgerows on the southern and western boundaries of the site during construction in order to protect wildlife and visual amenity.
40. I have not imposed conditions relating to materials and landscaping as these will be considered at reserved matters stage.

### **Conclusion**

41. For the reasons given above, the appeal is allowed.

*Diane Cragg*

INSPECTOR

## **Schedule of Conditions**

### **Outline Timing/Plans**

1. Details of the access, 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 takes place 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 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 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: Drawing Number PA/2019/164/01 (site location plan).

### **CEMP**

5. No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall provide for:
  - i. the parking of vehicles of site operatives and visitors;
  - ii. loading and unloading of plant and materials;
  - iii. storage of plant and materials used in constructing the development;
  - iv. wheel washing facilities;
  - v. measures to control the emission of dust and dirt during construction;
  - vi. delivery and construction working hours.

The approved CEMP shall be adhered to throughout the construction period for the development.

### **Contamination**

6. Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning authority in writing until part 4 has been complied with in relation to that contamination.

#### **Part 1: Site Characteristics**

A Phase 1 desk study shall be carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk study shall establish a 'conceptual

model' of the site and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk study and a non-technical summary shall be submitted to the local planning authority for approval prior to proceeding to further site investigation.

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and a proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the management of Land Contamination, CLR 11'.

## **Part 2: Submission of Remediation Scheme**

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

## **Part 3: Implementation of Approved Remediation Scheme**

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report)

that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

#### **Part 4: Reporting of Unexpected Contamination**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part 3.

#### **Ecology/biodiversity**

7. No development shall take place until a biodiversity management plan has been submitted to and approved in writing by the local planning authority to identify and protect any habitats and biodiversity on and around the site.

The plan shall include:

- Details of measures to avoid nesting birds and hedgehogs during vegetation clearance and construction works;
- Details of bat roosting features and bird nesting sites to be installed;
- Restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
- Provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland;
- Prescriptions for the planting and aftercare of native trees, shrubs and hedgerows of high biodiversity value;
- Proposed timings for the above works in relation to the completion of the buildings.

The development shall thereafter be carried out in accordance with the approved measures.

#### **Highways**

8. The details required by condition 1 shall include but not be limited to:
- i. the layout, drainage, including an effective method for preventing surface water run-off from hard paved areas within the site on to the highway, construction, services and lighting of the proposed access and estate roads, including the junction with the adjacent highway;
  - ii. the number and location of vehicle parking spaces and cycle parking spaces on the site;
  - iii. Electrical Vehicle Charging Points designed to take account of good practice guidance as set out in the Institute of Air Quality

- Management Land Use Planning and Development Control  
<http://www.iaqm.co.uk/text/guidance/air-quality-planningguidance.pdf> and contemporaneous electrical standards;  
iv. A programme for the completion of the works

## **Landscaping**

9. The landscaping details required by condition 1 shall include details of all existing trees and hedgerows on the land, including details of the method by which the existing hedges on the western and southern boundaries of the site will be retained and set out measures for their protection throughout the course of development.

## **Drainage**

10. No building hereby permitted shall be occupied until foul and surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and the Lincolnshire Council's SUDS and Flood Risk Guidance Document, and the results of the assessment shall have been provided to the local planning authority. Surface Water discharge rate from the development must not exceed 5 litres/second. 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,
  - iii) 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.