



Appeal Decision

Site visit made on 2 May 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/Y2003/W/22/3312723

Land to the rear of Southdown House, Grayingham Road, Kirton in Lindsey, Gainsborough DN21 4EL

- 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 Ben Bailey Homes Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2022/1408, dated 29 July 2022, was refused by notice dated 3 November 2022.
 - The development proposed is residential development up to 28 dwellings (with means of access to, but not within the site to be considered - all other matters reserved).
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Decision

1. The appeal is allowed and planning permission is granted for residential development up to 28 dwellings (with means of access to, but not within the site to be considered - all other matters reserved) on land to the rear of Southdown House, Grayingham Road, Kirton in Lindsey, Gainsborough DN21 4EL in accordance with the terms of the application, Ref PA/2022/1408, dated 29 July 2022, subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline with only access to the site to be determined at this stage. The illustrative plan that has been submitted as part of the application has been taken into account as far as it is relevant to my consideration of the principle of the development on the appeal site.
3. A new North Lincolnshire Local Plan was submitted for examination in November 2022. Given that it is in the early stages of being examined, the position of the local planning authority, uncontested by the appellant, is that only limited weight can be given to the plan and its policies. I agree with that assessment.
4. Following the site visit, a section 106 agreement was submitted on 25 May 2023. I have considered its terms as part of this appeal.

Main Issues

5. The main issues in this appeal are:
 - whether the location of the proposed development would comply with the development plan; and,
 - the effect of the proposed development on the character and appearance of the area.

Reasons

6. Paragraph 74 of the National Planning Policy Framework ('the Framework') advises that Local Planning Authorities should have a minimum of five years housing land supply. It is common ground between the local planning authority and the appellant that less than a five year housing supply exists. No figures for the housing land supply have been given by the local planning authority.
7. On the basis of an appeal decision in North Lincolnshire from last summer provided by the appellant, the content of which has not been contested by the local planning authority, a housing land supply of between 3.2 years and 4.8 years exists. As a consequence, relevant policies for the supply of housing are considered not to be up to date.

Location of the proposed development

8. The development plan for the area includes the saved policies of the North Lincolnshire Local Plan ('Local Plan') adopted in 2003 and the North Lincolnshire Local Development Framework Core Strategy ('Core Strategy') adopted in 2011. In order to further sustainability objectives and protect the countryside, policy CS2 of the Core Strategy focuses new housing development in order of preference on Scunthorpe, Market Towns and rural settlements.
9. Kirton in Lindsey is classified as a Market Town where policies CS2 and CS8 of the Core Strategy supports new residential development within the defined settlement limits of the settlement. Appropriate small scale greenfield extensions to meet identifiable local needs are also supported.
10. The majority of the appeal site lies outside the defined settlement boundary for Kirton in Lindsey. As a consequence, for planning policy purposes most of the site lies within the open countryside where new development is strictly controlled by saved policy RD2 of the Local Plan. It is no part of the appellant's case that the proposal accords with the types of development supported by the development plan within the open countryside. The location of the proposed new houses would therefore be contrary to policies CS2 and CS8 of the Core Strategy and saved policy RD2 of the Local Plan.

Character and appearance

11. Paragraph 174 of the Framework advises that the intrinsic character and beauty of the countryside should be recognised in decision taking.
12. The appeal site has a total area of 1.3 hectares and consists of open hedged fields of pasture not currently in productive use and part of Southdown House's rear lawn. It is located on the southern edge of the village and gently slopes downwards away from it. Partly enclosed by housing on two sides, it occupies a zone of transition between built development associated with the village and fields in active arable use that characterise most of the countryside around it. As the site is visible in medium distance public views on the approach to Kirton in Lindsey along Gainsborough Road and Grayingham Road from the south, and in private views from the dwellings that face the site, the proposal would result in the visible loss of countryside to development.
13. The proposal would result in the development of a larger area of countryside than in an earlier application that was dismissed on appeal for 12 houses on part of the appeal site¹. Given the partial enclosure of the appeal site by

¹ Ref APP/Y2003/W/20/3255387

existing development, the resulting adverse effect that urbanisation in the current appeal would have on landscape character would be limited. The resulting harm, although small, would be contrary to policy LC7 of the Local Plan, which requires that new development conserves and where possible enhances landscape character.

14. With the control though that exists at reserved matters stage in relation to scale, layout, appearance and landscaping, I have no doubt that a well-designed housing development which protects the perimeter hedgerows with occasional trees, and which complements the form of the settlement could be achieved. As a result, the proposal would comply with saved policies H5, DS1 and LC12 of the Local Plan and policy CS5 of the Core Strategy which, amongst other matters, require good design and the protection of trees and hedgerows.

Other Matters

Access

15. In terms of the site access, the highway authority and Council have no objection to the proposal on highway safety or capacity grounds, subject to the use of conditions in relation to highway safety. I have no reason to disagree with those conclusions.

Flood risk and drainage

16. The appeal site is located in Flood Zone 1 which means that it is at low risk of flooding. In terms of local and national policy in relation to flooding, it is therefore suitable in principle for residential development. With regard to foul drainage, no objections have been raised by the statutory undertaker regarding the capacity of infrastructure to accommodate the development and a scheme to limit surface water run-off could be required by condition. As a result, I find that, subject to such a condition, satisfactory drainage would be provided to the site.

Living conditions

17. Houses neighbour the appeal site to the east and north. Based upon the illustrative plans, with the control that exists in relation to reserved matters, there would be sufficient space within the site for dwellings to be laid out without harming the living conditions of neighbouring residents by way of overlooking or overshadowing.

Biodiversity

18. The appeal proposal would result in the loss of much of the appeal site to development. However, with the control that exists at reserved matters stage the perimeter hedgerow and trees could be retained. This consideration, together with the requirement of policy CS17 of the Core Strategy for development to protect and enhance biodiversity, would mean that biodiversity on the site would not be harmed.

Public transport

19. The Parish Council state that the settlement has a very limited train service. This is a position that has not been contested by the appellant. However, it is still served by bus services. As a result, and with the wide range of services and facilities as a Market Town it has to offer, it remains a suitable settlement for residential development of the scale proposed.

Prematurity

20. The proposed development would not be sufficiently large to undermine the plan making process by predetermining decisions about the scale or location of new development central to the emerging Local Plan. As a result, having regard to paragraph 49 of the Framework, I find that the proposed development would not be premature.

Local Infrastructure and services

21. The submitted section 106 agreement has been properly completed. I have assessed it having regard to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and the tests in paragraph 57 of the Framework. The agreement secures the on-site provision of affordable housing and informal public open space. It also secures contributions towards the off-site provision of education, recreation and healthcare.
22. In relation to affordable housing, in order to comply with policy CS9 of the Core Strategy and the accompanying Affordable Housing supplementary planning document (SPD) so that the need for affordable housing in the area of the local planning authority is addressed, 20% of the housing to be built on the site would need to be affordable.
23. Turning to recreation, given the extent of local provision, in accordance with policy CS23 of the Core Strategy financial contributions are needed to mitigate the impact of the proposed development. Contributions are needed to help to provide a new artificial pitch, to improve existing natural turf pitches at Klassic Park, Kirton and to provide additional sports equipment. In relation to play areas, policy R2 of the Local Plan and supplementary planning guidance 10 (SPG) requires the provision of a Local Area of Play (LAP) for the development. With no LAP proposed on site a contribution is therefore required towards the improvement of existing play areas in the village. For the health and well-being of future residents, policy H10 of the Local Plan and the SPG require the provision of on-site informal recreational open space in new development.
24. Future residents of the proposed development will increase the demand on schools. The local education authority calculates that the secondary school system has the capacity to accommodate the demand created but that the local primary school would not. As a result, a contribution is needed.
25. With regard to healthcare, the evidence on behalf of NHS North Lincolnshire Clinical Commissioning Group is that the existing Kirton Lindsey Practice is not large enough and that the additional future residents of the proposed development would add to the pressure on that practice. Consequently, the surgery needs to be extended and reconfigured.
26. Financial contributions are therefore necessary in relation to recreation, education and health to make the development acceptable in planning terms.
27. Based upon the approach laid out in the development plan policies, SPG and calculators that I have been referred to, and the information provided, I am satisfied that the sums and provision sought are fairly and reasonably related in scale and kind to the proposed development. As provision would either be made on site, or locally, what would be provided would also be directly related to the proposal. Accordingly, these contributions pass the relevant tests and requirements.

Overall conclusions: The planning balance

28. For the reasons I have set out earlier, the proposal would be in conflict with policies CS2, CS8 and LC7 of the Core Strategy and saved policy RD2 of the Local Plan. These policies seek to focus new development within the largest settlements in North Lincolnshire in order to further sustainability objectives, protect the countryside, and landscape character.
29. Applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is an important material consideration and contains a presumption in favour of sustainable development.
30. The Council does not have a 5 year housing land supply. As a consequence, paragraph 11d of the Framework directs that development plan policies relevant to housing land supply should not be considered up to date.
31. Policies of the development plan are consistent with the Framework in that they seek to focus development on the largest settlements and protect the countryside and landscape. However, the appeal site is of only limited landscape value, and I have found that the harm that would be caused by the proposal to the character and appearance of the landscape and countryside would be small. Moreover, the housing land supply is materially below five years.
32. Taking all these matters into account, I therefore attach limited weight to the policy conflict between the proposed scheme and the development plan.
33. In circumstances where relevant policies are out of date, the so-called 'tilted balance' in paragraph 11 of the Framework applies. It states that in such circumstances planning 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 as a whole.
34. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
35. Socially, the proposed development would contribute to helping address the shortage of housing in North Lincolnshire. I attach significant positive weight to the social benefits that up to 28 dwellings would provide with 20% of the units being affordable housing.
36. Environmentally, the proposed development would cause a small degree of harm to landscape character and would result in the loss of what is stated by the Parish Council to be good to moderate agricultural land to development. However, the proposed development would complement the form of the village and the character and appearance of built development within it. In addition, the settlement has a range of services and facilities accessible from the appeal site to meet many of the day to day needs of its residents together with accessible public transport links. The development would also be required to enhance biodiversity on the site. Environmentally therefore I attach modest weight to both the adverse impacts and benefits of the proposal.
37. Economically, the amount of agricultural land that would be developed would be limited. The development would generate construction employment and the additional households would increase the spending power of the local

community to the benefit of businesses and services in the area. I attach modest weight to the economic adverse effects and benefits of the scheme.

38. My overall conclusion in this case, having considered all the matters raised, is that the adverse impacts of the proposal are insufficient to significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework. Consequently, the proposal would represent sustainable development as defined in the Framework, and material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan. I therefore conclude that the appeal should be allowed.

Conditions

39. In the interests of certainty, I have imposed a condition specifying the relevant plans that the development is to be carried out in accordance with. Given that the site potentially contains archaeologically significant remains a mitigation strategy is necessary. To give the local planning authority oversight of the investigative work and ensure the site investigation and post investigation assessment are completed and the results deposited at the North Lincolnshire Historic Environment Record control needs to be applied. In the interests of protecting health any contaminated land that is encountered needs to be dealt with.
40. To protect the living conditions of neighbours from noise, light and particulates, work needs to be carried out in accordance with an agreed construction method statement and working hours on the site need to be controlled. In the interests of highway safety, required visibility splays at the site access and a construction phase traffic management plan need to be provided and further details on parking spaces, footway connections and the access road are needed. For the same reason, control needs to be exerted over the following matters: timing of occupation; service strips next to any shared services; the provision of parking, surfacing and access to individual properties.
41. As a large development a sustainable drainage scheme is required to comply with government guidance. To protect wildlife and enhance biodiversity a scheme for ecological further details, including a biodiversity management plan is necessary.
42. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.
43. Two conditions have been suggested in relation to preventing surface water run-off from hard paved areas within the site onto the highway and from the highway onto the developed site. In my judgement, they are unnecessary given the conditions relating to the proposed access road and sustainable drainage. As a result, I have not attached them.

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 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: 021/031/SLP – Site Location Plan, 021/051/SL/A - Site Layout, but only in respect of those matters not reserved for later approval.
 - 5) The details to be submitted in respect of reserved matters for any phase of development shall include a scheme for the provision of surface water drainage works which shall include the following criteria:
 - (a) any proposal to discharge surface water to a watercourse from the redevelopment of a brownfield site should first establish the extent of any existing discharge to that watercourse
 - (b) peak run-off from a brownfield site should be attenuated to a minimum of 70% of any existing discharge rate (existing rate taken as 1.4 litres/second/hectare or the established rate whichever is the lesser for the connected impermeable area)
 - (c) discharge from 'greenfield sites' taken as 1.4 litres/second/hectare (1:1yr storm)
 - (d) no above-ground flooding to occur up to the 100 year plus climate change critical flood event (based on current national guidance)
 - (e) a range of durations should be used to establish the worst-case scenario
 - (f) the suitability of soakaways as a means of surface water disposal should be ascertained in accordance with BRE Digest 365 or other approved methodology
 - (g) a scheme for the provision of a positive outlet of surface water from the site
 - (h) adoption and maintenance agreements for all surface water and SuDS drainage features.

If a full sustainable urban drainage system (SuDS) scheme is incapable of being delivered, then comprehensive justification of this must be submitted.

The drainage scheme shall be implemented in accordance with the submitted details required by this condition that have been approved in writing by the local planning authority. The approved drainage scheme shall be completed prior to the occupation of any dwelling or building within each phase or sub-phase of the development on site and shall thereafter be retained and maintained in accordance with the scheme for the life of the development, unless otherwise agreed in writing with the local planning authority.

- 6) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of an archaeological mitigation strategy, to be defined in a Written Scheme of Investigation that has been submitted to and approved in writing by the local planning authority. The strategy shall accord with a brief provided by North

Lincolnshire Historic Environment Record and shall include details of the following:

- (i) measures to ensure the preservation by record of archaeological features of identified importance within the footprint of the development
- (ii) methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts
- (iii) post-fieldwork methodologies for assessment and analyses
- (iv) report content and arrangements for dissemination, and publication proposals
- (v) archive preparation and deposition with recognised repositories such as North Lincolnshire Museum and the ADS digital archive
- (vi) a timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy
- (vii) monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record of the commencement of archaeological works and the opportunity to monitor such works
- (viii) a list of all staff involved in the implementation of the strategy, including sub-contractors and specialists, their responsibilities and qualifications.

- 7) The applicant shall notify the local planning authority in writing of the intention to commence the archaeological site works at least 7 days before commencement. Thereafter, the archaeological mitigation strategy shall be carried out in accordance with the approved details and timings. No variation shall take place without the prior written consent of the local planning authority.
- 8) The final dwelling constructed on site shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved written scheme of archaeological investigation, and provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 9) A copy of any analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the North Lincolnshire Historic Environment Record within six months of commencement of the archaeological programme of work or such other period as may be agreed in writing by the local planning authority.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall set out the particulars of:
 - i) the erection and maintenance of security hoarding;
 - ii) measures to control the emission of dust and dirt during construction;
 - iii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

Noise and vibration

 - iv) the works and the method by which they are to be carried out;

- v) the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including noise limits; and,
- vi) a scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

Light

- vii) areas where lighting will be required for health and safety purposes;
- viii) the location of temporary floodlights;
- ix) the identification of sensitive receptors likely to be impacted upon by light nuisance; and,
- x) proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No development shall commence until details of:
- (i) the layout, drainage, construction, services and lighting of the proposed access road, including the junction with Grayingham Road;
 - (ii) the number and location of vehicle parking spaces on site;
 - (iii) footway connections to the existing footway on the eastern side of Grayingham Road;
- have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No development shall take place until a construction phase traffic management plan showing details of:
- (i) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - (ii) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - (iii) any abnormal load movements;
 - (iv) contractor parking and welfare facilities;
 - (v) storage of materials; and
 - (vi) traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway, as may be required;
- has been submitted to and approved in writing by the local planning authority. Once approved the plan shall be implemented, reviewed and updated as necessary.
- 13) No work shall commence on the site until the access road junction with the adjacent highway, including visibility splays, has been set out and established in accordance with details that have been submitted to and approved in writing by the local planning authority.

- 14) No development shall take place until the applicant or their successor in title has submitted a biodiversity metric assessment and biodiversity management plan to the local planning authority for approval in writing. The document shall include:
- (i) details of measures required to provide more than 1% biodiversity net gain in accordance with the Defra biodiversity metric 3.0 compared to the baseline assessment described in the submitted Ecological Impact Assessment report reference MAN.1298.005.EC.R.001;
 - (ii) details of sensitive working practices to avoid harm to bats, hedgehogs, badgers and nesting birds;
 - (iii) details of bat boxes and bat bricks to be installed on at least 15% of dwellings;
 - (iv) details of swift boxes and sparrow terraces to be installed on at least 15% of dwellings combined;
 - (v) details of nesting sites to be installed to support a variety of other species, including barn owl, starling, house sparrow and tree sparrow;
 - (vi) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
 - (vii) provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland;
 - (viii) prescriptions for the retention, planting and aftercare of native trees, shrubs, hedgerows and UK origin perennial wildflowers of high biodiversity value;
 - (ix) details of wetland habitat, including ponds, to be created and managed as part of sustainable drainage;
 - (x) procedures for monitoring and ongoing management of created habitats;
 - (xi) prescriptions for the provision of a wildlife gardening leaflet for each new resident;
 - (xii) proposed timings for the above works in relation to the completion of the dwellings.
- Biodiversity units should be delivered on site, within the red line boundary shown on submitted location plan number 021 / 031 / SLP.
- 15) The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter, unless otherwise approved in writing by the local planning authority. Prior to the occupation of the 20th dwelling hereby approved, the applicant or their successor in title shall submit a report to the local planning authority, providing evidence of compliance with the biodiversity management plan.
- 16) No loose material shall be placed on any driveway or parking area within 10 metres of the adopted highway unless measures are taken to the satisfaction of the local planning authority to prevent the material from spilling onto the highway. Once agreed and implemented these measures shall be retained.
- 17) Construction and site clearance operations shall be limited to the following days and hours: 8am to 6pm Monday to Friday, 8am to 1pm on Saturdays. No construction, demolition or site clearance operations shall take place on Sundays or public / bank holidays. HGV movements shall not be permitted outside these hours during the construction phase without the written

approval from the local planning authority. Installation of equipment on site shall not be permitted outside these hours without prior written approval from the local planning authority.

- 18) If during development any odorous, discoloured or otherwise visually contaminated material is found to be present at the site then no further development shall be carried out until a written method statement, detailing how this contamination shall be dealt with, has been submitted to and approved by the local planning authority. The approved method statement shall be implemented in full prior to development recommencing on the site.
- 19) No dwelling on the site shall be occupied until the vehicular access to it and the vehicle parking facilities serving it have been completed in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and the parking area shall thereafter be kept available at all times for the parking of vehicles.
- 20) No dwelling served by the private driveway shall be occupied until it has been constructed in accordance with details including:
 - (i) the proposed method of forming access from the highway, including the required visibility splays;
 - (ii) the method of constructing/paving the drive;
 - (iii) the provision of adequate drainage features;
 - (iv) the provision of suitable bin collection facilities adjacent to the highway;
 - (v) the provision of suitable lighting arrangements; and
 - (vi) the provision of street name plates that shall include the words 'Private Drive';which have been agreed in writing by the local planning authority. Once constructed the private driveway shall be retained.
- 21) No dwelling on site shall be occupied until the access road and footway has been completed to at least base course level and adequately lit from the junction with the adjacent highway up to the access to the dwelling.
- 22) The penultimate dwelling on site shall not be occupied until the access roads and footways have been completed.
- 23) No development, whether permitted by the Town and Country Planning (General Permitted Development) Order or not, shall take place within any service strip adjacent to any Shared Surface Road, and any planting or landscaping within this service strip shall be of species which shall be agreed in writing with the local planning authority prior to planting.

-----End of Schedule-----