



Appeal Decision

Site visit made on 4 January 2024

by **J Downs BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/D2510/W/23/3323507

Station Farm, Sleaford Road, Tattershall, Lincolnshire LN4 4JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr Neil Harvey against East Lindsey District Council.
 - The application Ref S/175/02585/21, is dated 15 December 2021.
 - The development proposed is outline erection of up to 125 no. dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Neil Harvey against East Lindsey District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The Council has confirmed the correct postcode for the site is that on the appeal form and I have used this in my banner heading above.
4. The application was made in outline with all matters reserved. The supporting statement and transport assessment submitted in support of the appeal indicate that access would be taken from Sleaford Road, utilising one of the existing site accesses.
5. The appeal is against the non-determination of the application. The Council has not submitted an appeal statement. A rebuttal was submitted to the application for costs which included information relevant to the planning merits of the appeal and I have taken this into account in this decision.
6. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species (EPS) would be affected by the development. The Preliminary Ecological Appraisal (PEA) identified the potential for there to be great crested newts (GCN) within 500m of the site and recommended further work be carried out to determine their presence or absence. It also identified features that would have a high suitability for water voles which are protected under the Wildlife and Countryside Act 1981 (as amended). I have sought further comments from the parties on this and have considered it as a main issue.
7. A completed planning obligation, dated 28 February 2023 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted which sought to address affordable housing, first homes, education

and healthcare contributions. As I am dismissing the appeal on other grounds, I have not considered this further.

8. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. On the same day, updated Housing Delivery Test results were also published and it remained the case that the Council 'passed' the test. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.

Background and Main Issues

9. It is clear from the officer report that the Council was minded to approve the application. From the appellant's uncontested evidence, an objection from the Environment Agency with respect to the capacity of the Coningsby Water Recycling Centre to deal with foul water from the proposed development was not dealt with until a late stage in the application process.
10. Although an appeal against non-determination had been submitted, the Council nonetheless continued its dialogue with Anglian Water and the Environment Agency. While the Environment Agency maintained some concerns, they accepted that foul drainage could be addressed by condition and the main parties seem to me to be in agreement with this.
11. While the Council has not expressed any concern with respect to the proposed development, I am mindful of the advice in Circular 06/2005¹ (the Circular) that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". As a result, the main issue in this appeal is the effect of the proposed development on protected species.

Reasons

12. Pond 1 is close to the appeal site and has good suitability for GCN. The PEA is clear that habitats on the site have the potential to support great crested newts during their terrestrial life stage. The further work recommended by the PEA to establish their presence or otherwise has not been carried out. The PEA also identifies the wet ditch on the northern boundary as having habitat features with moderate to high potential suitability for water voles. It recommended further survey work if there would be anticipated impacts to that ditch, which has not been carried out. Consequently, I cannot be certain of the effect of the proposed development on protected species. Furthermore, any limitations on how the site could be brought forward would need to be addressed as part of the outline as protected species fall outwith the reserved matters.
13. The Circular is clear that surveys should only be secured by condition in exceptional circumstances. It is not unusual for larger housing developments to be the subject of outline planning permission and the effect this has on the time taken for the development to commence. Up to 125 dwellings is not a development of such scale that it is likely that it would be a multi-phase

¹ Circular 06/2005: Biodiversity and Geological Conservation

development. These therefore do not constitute exceptional circumstances that would justify the use of such a condition in light of the clear advice in the Circular and the Framework.

14. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species contrary to East Lindsey Local Plan Core Strategy adopted July 2018 (ELLP) Policy SP24 which requires development proposals to seek to protect biodiversity. It would also be contrary to the advice in the Framework at paragraph 180 that planning decisions should minimise impacts on biodiversity and at paragraph 186 that significant harm should be avoided, adequately mitigated or compensated for.

Other Matters

15. National policy remains to boost significantly the supply of housing. The Council is satisfied that the site meets the requirements of ELLP Policy SP3 with respect to housing growth in towns and I have no reason to disagree. The delivery of potentially some 125 dwellings, of which a proportion would be affordable, would be an undoubted benefit, irrespective of the Council meeting its obligations with regard to the supply and delivery of housing.
16. The effect on the operation of the surrounding highway network was assessed as being acceptable and a travel plan was revised during the course of the application to seek to reduce reliance on the use of the private car. While it may be that there are localised issues arising from surrounding employment and leisure uses, there is no substantive evidence that the proposed development would exacerbate these in a way that would result in a severe residual cumulative impact.
17. Appropriate measures to ensure drainage and archaeology are suitably controlled could be secured by condition. Issues in relation to living conditions and design would be addressed at the reserved matters stage, as would the specific access to the site. However, the indicative layout demonstrates that in principle the site could be developed in an appropriate manner which also addresses other principles of good planning such as open space and play facilities. While I have not considered the planning obligation in detail, it demonstrates that in principle, affordable housing and social infrastructure could be addressed in a manner consistent with the development plan. However, all of these matters amount to policy compliance and a lack of harm. They would therefore be neutral.

Conclusion

18. I cannot be certain that the proposed development would not have an adverse effect on protected species. This harm would outweigh the benefits of the delivery of additional housing and affordable housing. The appeal proposal would therefore conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR



Costs Decision

Site visit made on 4 January 2024

by **J Downs BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Costs application in relation to Appeal Ref: APP/D2510/W/23/3323507 Station Farm, Sleaford Road, Tattershall, Lincolnshire LN4 4JG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Neil Harvey for a full award of costs against East Lindsey District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline erection of up to 125 no. dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG¹ sets out examples of unreasonable behaviour by local planning authorities which includes preventing or delaying development which should clearly be permitted.
3. The applicant has sought an award of costs on this basis, as the Council did not determine the appeal within agreed extensions of time, that it was clear that issues related to capacity to deal with foul drainage were subject to separate controls and that a condition could provide sufficient certainty for planning purposes. The Council rebuts this, with reference to the detailed objections from the Environment Agency (EA) and the obligation under Regulation 33 of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD) to have regard to river basin management plans (RBMP) when exercising their functions.
4. I do not doubt that it was an unfortunate error that meant the original response from the EA was not seen by the case officer. I also note the Council continued its active engagement on this issue after the submission of the appeal. While this took some time, this is not unusual in complex issues that involve a number of parties. I do not consider these to be unreasonable behaviour.
5. The drainage report submitted with the application included a copy of pre-application advice from Anglian Water (AW) which clearly set out that there was not capacity at the Coningsby Water Recycling Centre (CWRC) to deal with

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

foul water from the proposed development, that AW would be obliged to deal with this were permission to be granted and that they would do this. Further comment from the EA would appear to cast doubt on these assurances, as it highlighted non-compliance with the Environmental Permit over a number of years at the CWRC.

6. I am mindful of the advice in the National Planning Policy Framework at paragraph 194 that the focus of planning decisions should be on whether the proposed development is an acceptable use of land and that it should be assumed that separate pollution control regimes will operate effectively. However, this has to be balanced against the policies of the development plan which require development to show how adequate foul water treatment will be provided and the advice at paragraph 180 of the Framework that development should, wherever possible, help to improve local environmental conditions such as water quality and the obligations placed on all public bodies in the WFD. I note that the waterbody has a moderate ecological status and that sewage has been a factor in it not achieving a good status.
7. The PPG identifies² that water quality can be a significant planning consideration where a proposal would indirectly affect a water body through a lack of adequate infrastructure to deal with wastewater. It also confirms³ that there is a general duty on all public bodies to provide information and such assistance as the EA may reasonably seek in connection with exercising their responsibilities for implementing the WFD.
8. Ultimately, this was an issue which could be addressed appropriately by condition. However, it was necessary for the Council to be satisfied that it had had full regard to all material considerations in making its decision, was imposing a condition which met the tests set out in paragraph 56 of the Framework and was discharging its duty under the WFD.
9. Taking all of these considerations into account, the Council's actions in considering the issue of foul water were an appropriate, proportionate response. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Downs

INSPECTOR

² Water supply, wastewater and water quality Paragraph: 016 Reference ID: 34-016-20140306 Revision date: 22 07 2019

³ Water supply, wastewater and water quality Paragraph: 018 Reference ID: 34-018-20161116 Revision date: 22 07 2019