



Appeal Decision

Site visit made on 3 September 2024

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Appeal Ref: APP/Y2003/W/24/3336598

Land and Barn next to Stables Restaurant, High Street/Scotter Road, Messingham DN17 3UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Philip Jackson of Jackson Philips Asset Solutions against the decision of North Lincolnshire Council.
- The application reference is PA/2023/1229.
- The development proposed is a 0.96ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved.

Decision

1. The appeal is allowed and outline planning permission is granted for a 0.96ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved at Land and Barn next to Stables Restaurant, High Street/Scotter Road, Messingham DN17 3UJ in accordance with the terms of the application, reference PA/2023/1229, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Philip Jackson of Jackson Philips Asset Solutions against North Lincolnshire Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. The application was submitted in outline, with all matters reserved for subsequent consideration. I have treated the submitted drainage strategy drawing, from which the internal site layout might be inferred, as being for illustrative purposes only.
4. Both main parties' evidence referred to an earlier appeal decision relating to a proposed development with the same description on the appeal site (PINS Ref: APP/Y2003/W/22/3297656 – "the 2023 appeal"). I address this at relevant points of my reasons below.
5. The appellant has submitted a signed and dated agreement under Section 106 of the Town and Country Planning Act 1990. This would ensure the provision of affordable housing and open space on site, and a financial contribution towards education provision. I return to the planning obligation below.
6. The Council's officer report and appeal statement (though not the decision notice) referred to draft policies in the then-emerging new North Lincolnshire Local Plan, which had been submitted to the Planning Inspectorate for examination on 11 November 2022. On 4 October 2024 that emerging plan

was withdrawn from examination; in determining this appeal I have therefore disregarded the draft policies to which the Council had previously referred.

Main Issue

7. The main issue is whether the proposed development would make adequate provision for surface water drainage.

Reasons

8. The appeal site is within the settlement boundary of Messingham, described as a "larger rural settlement" in the North Lincolnshire settlement hierarchy. It is an enclosed area of rough scrubland, with a surface watercourse "parish drain" running along its western boundary. There is an area of hardstanding and a somewhat dilapidated large shed or barn at its southeastern corner alongside the site entrance from Scotter Road. The site is surrounded by housing on the north, west and south sides, and has two restaurants on its eastern side abutting Scotter Road and the High Street (though one of the two, "The Stables", was not trading at the time of my site visit). It lies a short way to the south of the village centre, which provides a broad range of shops, services and other amenities.
9. Policy DS16 of the 2003 North Lincolnshire Local Plan ("the NLLP") seeks to limit development within floodplains. Policy CS18 of the 2011 North Lincolnshire Core Strategy ("the NLCS") sets out a range of requirements relating to the sustainable use of resources; among other things, it requires the use of sustainable drainage systems ("SuDS") where practicable, supports the improvement of surface water infrastructure to address the impact of climate change, and seeks to prevent development in high flood risk areas wherever practicable and possible.
10. Paragraphs 165 to 175 of the National Planning Policy Framework ("the Framework") set out national requirements for planning and flood risk¹. At Paragraph 175 it advises that:

Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

- a) take account of advice from the lead local flood authority;*
- b) have appropriate proposed minimum operational standards;*
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and*
- d) where possible, provide multifunctional benefits.*

For housing, "major development" is defined in the Framework as "development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more".

¹ The Council's decision notice referred to paragraphs 159 to 169; the numbering I have used here reflects changes made to the Framework (which did not have any bearing on the substance of the main issue) in December 2023.

11. The appeal site is located within flood zone 1, meaning that it has a low probability of flooding from rivers and the sea². There is also a low risk of surface water flooding within the site³. The provisions of the development plan and the Framework relating to development in flood plains or other high flood risk areas are not therefore applicable, though of course other requirements such as incorporating SuDS where practicable remain relevant.
12. A preliminary drainage strategy was submitted as part of the planning application. This showed a SuDS scheme providing a soakaway for each dwelling, in the rear gardens, an infiltration basin within public open space (shown indicatively towards the western end of the site), and discharge (run-off/infiltration) being limited to greenfield rates. Commenting on the planning application, the Lead Local Flood Authority ("the LLFA") initially considered there to be insufficient information in respect of the proposed drainage arrangements. However, given the scale of the development it ultimately recommended that it would be appropriate to require the provision of information about discharge rates, the suitability of the ground for soakaways, and the adoption and maintenance of drainage features at the reserved matters stage. The LLFA therefore did not object to the proposed development, subject to the use of conditions to secure the necessary information and details as part of the reserved matters application⁴.
13. On the basis of advice from the LLFA, the Council's officer report recommended that the planning application be approved. The Planning Committee took a different view, and refused planning permission on the grounds that it was not satisfied that the development would result in an acceptable method of surface water drainage disposal. At appeal stage, the Council therefore commissioned a surface water drainage review for the scheme ("the drainage review")⁵.
14. The drainage review considered the submitted preliminary drainage strategy in the light of the surface water flood map for the locality, the likely increase in impermeable surface area on the site as a result of the proposed development, local geology, and assumed infiltration discharge rates. It concluded that more detail would be required in respect of:
 - A topographical survey of site levels;
 - Drainage calculations using industry-accepted programmes to ensure that there would be no increase in surface water run-off;
 - Infiltration testing carried out on site over a period of time;
 - Proposed layout and drainage plan indicating exact extent and siting of soakaways in each back garden; and
 - Drainage plan to include storage attenuation volume for each storage component, identify exceedance flow routes, and include drainage maintenance plan and schedule.

These requirements essentially reflect those set out by the LLFA in its advice to the Council, which it was satisfied could be addressed by conditions.

² Environment Agency Flood Map for Planning

³ Environment Agency Surface Water Flood Map

⁴ LLFA consultation responses to North Lincolnshire Council, 2 August and 16 August 2023

⁵ Surface Water Drainage Review, Waterman Infrastructure & Environment Limited, May 2024

15. As in the 2023 appeal, I was provided with some photographic evidence of highways flooding in the Messingham area, apparently as a consequence of sewers or drains surcharging. Although details are very limited, it is stated that at least one such incident has taken place in 2024. However, none of this amounts to substantive evidence that the appeal scheme would be likely to lead to, or increase the risk of, such incidents taking place. I also note that Severn Trent Water did not object to the 2023 appeal scheme⁶, having commented that a scheme for foul drainage could be achieved, and there is nothing before me to suggest that the same does not apply now.
16. Taking all of this together, I am satisfied that the design of the surface water drainage scheme is a matter which could, in line with the advice to the Council by the LLFA, be addressed by conditions requiring the submission of further information and detail at reserved matters stage. In this respect I am also guided by the comments of my colleague in the 2023 appeal decision, who in considering the matter (though not as a main issue in that case) noted that "there is no objective evidence to suggest that acceptable drainage and sewerage solutions could not be incorporated as part of the detailed matters".
17. Subject to such conditions, the proposed development would make adequate provision for surface water drainage. It would therefore comply with Policy DS16 of the NLLP and Policy CS18 of the NLCS which address drainage and flooding, the relevant requirements of which I have set out at paragraph 9 above. There would also be no conflict with the provisions of Paragraphs 165 to 175 of the Framework which set out national planning policy in respect of flood risk.

Other Matters

18. The appeal site is an area of open land identified as being an area of amenity importance by Policy LC11 of the NLLP. However, it is not accessible to the public, largely screened from public views, and is an area of poor-quality scrubland. The Council considered that it makes a limited contribution to the character or visual amenity of the area, and that its development for housing would be in keeping with the prevailing development pattern of that part of Messingham. None of the evidence before me leads me to disagree with that assessment. Similarly, I am satisfied that the proposed development would not lead to any unacceptable loss of amenity for neighbouring residents.
19. Interested parties raised several matters relating to the scheme, though many of the points made have been addressed in my consideration of the main issue above. Reference was made to another dismissed appeal on the site (PINS Ref: APP/Y2003/W/20/3265136); details were not provided but it appears that that proposal fell down at least in part due to a lack of compliance with the SuDS hierarchy, which is not the case here. That appeal decision does not therefore weigh significantly against this proposed development.
20. Matters were raised relating to land ownership, including whether access to the site from Willow Drive would be possible because of a "ransom strip", and whether all of the land within the "red line" site boundary is in fact within the appellant's ownership. The appeal scheme does not appear to rely on access from Willow Drive (though it was described as offering "the potential for further

⁶ There are no comments from Severn Trent Water before me for the planning application in this appeal, but it is unchanged from the 2023 appeal scheme as far as drainage is concerned.

vehicular and pedestrian access” in the submitted Planning Statement), and I note that it was declared on the planning application form that the entire site was owned by the appellant. The question of whether the nearest electricity substation (which is within the site boundary) has sufficient capacity to serve the proposed extra houses is a matter which a developer would necessarily need to resolve with the electricity provider. I have not sought further information on these matters as they are not relevant to the main planning issues in the appeal. Other comments related to the Council’s planning decision-making more generally, rather than to the planning merits of the appeal scheme. None of the other matters raised leads me to a different overall conclusion.

21. It was put to me by the appellant that the Council cannot currently demonstrate a 5-year housing supply, a matter which was not addressed in the Council’s evidence. However, as I have not found that the proposal conflicts with the development plan, it is not necessary for me to consider the question of whether the so-called “tilted balance” set out in Paragraph 11 of the Framework should be applied.

Planning Obligation

22. A completed agreement made under s106 of the Town and Country Planning Act 1990 (as amended) was submitted, making various provisions in respect of the proposed development. The agreement is dated 14 August 2024, and is signed and executed as a deed.
23. The Framework sets out policy tests for planning obligations which must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in Regulation 122 of the CIL Regulations⁷.
24. The obligation provides for two affordable dwellings to be provided for discounted market sale on the site, along with other provisions in relation to the phasing of, and nomination rights for, the affordable housing. This is in accordance with Policy CS9 of the NLCS which seeks a 10% provision of affordable housing.
25. The obligation also provides for the provision of 2,900m² of public open space within the site, along with other provisions for the phasing of that space and its subsequent management and maintenance. This is in accordance with Policy H10 of the NLLP which seeks the provision of recreational open space on a scale, and in a form, appropriate to serve the needs of residents.
26. Finally, the obligation provides for a financial contribution, calculated on a per-dwelling basis, towards secondary education, as well as details about the phasing of those contributions. The amount of the contribution has been calculated by the Council’s education team in the light of known and projected pupil numbers for the area, and is in accordance with Policy C1 of the NLLP which states that contributions may be sought where housing proposals would result in an increased demand for education facilities which cannot be met by existing schools and colleges.

⁷ Community Infrastructure Levy Regulations 2010 (as amended)

27. I am satisfied that all these obligations are necessary to make the development acceptable, and that they otherwise comply with the statutory tests.

Conditions

28. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance, as well as the appellant's submissions. Where necessary I have altered the ordering or wording of conditions in the interests of clarity and effectiveness.
29. In addition to the "standard" conditions in respect of the submission and approval of the reserved matters and the commencement of development (1—3), in the interests of certainty a condition specifying the approved site location plan (4) is necessary.
30. To prevent an increased risk of flooding, and to ensure the implementation and future maintenance of the proposed SuDS scheme, and to ensure compliance with Policies CS18 and CS19 of the NLCS and the provisions of the Framework relating to flood risk, conditions relating to surface water drainage and run-off (5—7) are necessary. The last of these conditions, relating to the prevention of run-off onto highways, is also necessary in the interests of highway safety and to comply with Policy T19 of the NLLP.
31. Conditions relating to a construction phase traffic management plan (8), the provision of the access road into the site (9), arrangements for accessing and servicing dwellings (10), the provision of safe vehicular and pedestrian access to dwellings (11), the avoidance of loose material being placed close to the highway (12), and the provision and protection of visibility splays/areas and service strips (13 and 14) are necessary in the interests of highway safety, and to comply with Policies T2 and T19 of the NLLP.
32. Conditions requiring the submission and approval of a noise impact assessment (15) and restricting the times at which construction and related operations can be carried out (16) are necessary to protect living conditions for nearby residents and to comply with Policies DS1 and DS11 of the NLLP.
33. A condition in respect of the assessment and, if necessary, remediation of any contamination on the site (17) is necessary to minimise risks to site workers, local residents, and ecological systems, in accordance with Policy DS7 of the NLLP. Conditions requiring the submission and approval of, and compliance with, a construction environmental management plan (18), relating to biodiversity measures (19 and 20), and requiring compliance with the submitted preliminary ecological appraisal (21) are necessary to conserve and enhance biodiversity in the area, in the interests of ecology and species protection locally, and to comply with Policies CS5 and C17 of the NLCS, and Policies LC5 and DS11 of the NLLP.
34. A condition requiring the submission and approval of a scheme for the provision of electric vehicle charging points (22) is necessary to facilitate the uptake of low emission vehicles and reduce the emission impact of traffic arising from the development in line with the provisions of Paragraph 116 of the Framework.
35. The suggested standalone condition relating to the provision of wheel cleaning facilities (No 10 in the Council's original officer report) is not necessary, as condition 8 deals with the preventing the deposition of mud or other material

on the highway. The suggested conditions relating to the provision of access roads and footways to dwellings (Nos 12 and 14 in the Council's original officer report) are not necessary, as they duplicate provisions within condition 11.

Conclusion

36. I have found that the proposed development would comply with the policies of the development plan, and there are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above I conclude that the appeal should be allowed and outline planning permission granted, subject to the conditions in the attached schedule.

M Cryan

Inspector

Richborough

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale ("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 three years from the date of this permission.
- 3) The development hereby permitted shall take place 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 plan: Site Location Plan.
- 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 for the site and shall comply with 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) discharge from 'greenfield sites' taken as 1.4 lit/sec/ha (1:1yr storm);
 - c) no above-ground flooding to occur up to the 100 year plus climate change critical flood event (based on current national guidance);
 - d) a range of durations should be used to establish the worst-case scenario;
 - e) the suitability of soakaways, as a means of surface water disposal, should be ascertained in accordance with BRE Digest 365 or other approved methodology;
 - f) a scheme for the provision of a positive outlet of surface water from the site; and
 - g) adoption and maintenance agreements for all surface water and sustainable urban drainage system ("SuDS") drainage features.

If a full SuDS scheme is incapable of being delivered, then comprehensive justification of this must be submitted.
- 6) The drainage scheme shall be implemented in accordance with the approved submitted details required by condition 5 above, completed prior to the occupation of any dwelling or building within each phase or sub-phase of the development on site, and thereafter retained and maintained in accordance with the scheme for the life of the development unless otherwise agreed in writing with the local planning authority.
- 7) No above-ground works shall take place until details showing an effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been approved in writing by the local planning authority. These facilities shall be implemented prior to the access and parking facilities being brought into use and thereafter so retained.

- 8) No development shall take place until a construction phase traffic management plan showing details of:
- a) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - b) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - c) any abnormal load movements;
 - d) contractor parking and welfare facilities;
 - e) storage of materials; and
 - f) traffic management requirements, including the provision of wheel cleaning facilities and other means of controlling the deposition of mud and other material 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.
- 9) No other works shall be commenced on the site until the access road junction with the adjacent highway, including the required visibility splays, has been set out and established.
- 10) No dwelling served by any shared private driveway on site shall be occupied until it has been constructed in accordance with details including:
- a) the proposed method of forming access from the highway, including the required visibility splays;
 - b) the method of constructing/paving the drive;
 - c) the provision of adequate drainage features;
 - d) the provision of suitable bin collection facilities adjacent to the highway;
 - e) the provision of suitable lighting arrangements; and
 - f) 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.
- 11) No dwelling on the site shall be occupied until the vehicular access and footway to it, and the vehicle parking and turning facilities serving it, have been completed in accordance with details to be submitted to and approved in writing beforehand with the local planning authority and, once provided, the vehicle parking and turning facilities shall be retained.
- 12) No loose material shall be placed on any driveway or parking area within 10 metres of the adopted highway unless measures are taken in accordance with details to be submitted to and approved in writing by the local planning authority to prevent the material from spilling onto the highway. Once agreed and implemented these measures shall be retained.

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), nothing shall at any time be erected, retained, planted or allowed to grow over 1.05 metres in height above the level of the adjoining carriageway for a distance of 2 metres from the highway boundary across the site frontage.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 (or any order revoking and reenacting that order with or without modification), no development 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.
- 15) No development shall take place until a noise impact assessment has been submitted to and approved in writing by the local planning authority. The noise impact assessment shall be carried out with reference to:
 - National Planning Policy Framework (2019)
 - National Planning Practice Guidance (2014)
 - ProPG: Planning & Noise, New Residential Development (2017)
 - BS 4142:2014 + A1:2019 Methods for rating and assessing industrial and commercial sound
 - World Health Organisation Environmental Noise Guidelines for the European Region 2018
 - World Health Organisation Guidelines for Community Noise (1999)
 - World Health Organisation Night Noise Guidelines for Europe (2009)
 - BS8233:2014 Guidance on sound insulation and noise reduction for buildings
 - BS5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Noise
 - BS5228-2:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Vibration
 - BS7445-2:1991, ISO1996-2:1987 Description of environmental noise, Part 2: Guide to acquisition of data pertinent to land use

The noise impact assessment report shall provide details of existing background noise levels, likely noise sources which will impact upon the proposed development, mitigation methods to be employed and the resulting predicted level of noise at sensitive locations.

Any approved mitigation measures shall be carried out in their entirety before the use of the site commences and shall be retained thereafter.

Following installation of the mitigation measures in accordance with the approved technical specification, a verification report that demonstrates the effectiveness of the mitigation measures shall be undertaken. The verification report shall be submitted to and approved in writing by the local planning authority.

- 16) Construction, demolition 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 prior 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.

- 17) 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

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 or not 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:

- a) a survey of the extent, scale and nature of contamination;
- b) 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; and
 - archaeological sites and ancient monuments.
- c) 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, a 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.

- 18) No stage of the development hereby permitted shall commence until a construction environmental management plan ("CEMP") has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

A. Noise and vibration

The CEMP shall set out the particulars of:

- a) the works, and the method by which they are to be carried out;
- b) the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including any noise limits; and

- c) 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.

B. Light

The CEMP shall set out the particulars of:

- a) specified locations for contractors' compounds and materials storage areas;
- b) areas where lighting will be required for health and safety purposes;
- c) location of potential temporary floodlights;
- d) identification of sensitive receptors likely to be impacted upon by light nuisance; and
- e) proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors.

C. Dust

The CEMP shall set out the particulars of:

- a) site dust monitoring, recording and complaint investigation procedures;
- b) identification of receptors and the related risk of dust impact at all phases of the development, including when buildings and properties start to be occupied;
- c) provision of water to the site;
- d) dust mitigation techniques at all stages of development;
- e) prevention of dust trackout;
- f) communication with residents and other receptors;
- g) a commitment to cease the relevant operation if dust emissions are identified either by regular site monitoring or by the local authority; and
- h) a 'no burning of waste' policy.

D. Species protection

The CEMP shall set out the particulars of:

- a) measures to avoid harm to hedgehogs, bats and nesting birds during demolition, vegetation clearance and construction works.
- 19) Within three months of the commencement of development, the applicant or their successor in title shall submit a biodiversity metric assessment and biodiversity management plan to the local planning authority for approval in writing. The document shall include:
- a) an assessment of biodiversity loss based on the submitted location plan;
 - b) details of measures required to provide at least 1% biodiversity net gain in accordance with the Defra Small Sites metric;
 - c) details of bat boxes and nest boxes to be installed;

- d) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
- e) prescriptions for the creation and management of the pond and raised landforms;
- f) prescriptions for the planting and aftercare of locally native wildflowers, hedgerows, trees and shrubs of high biodiversity value; and
- g) proposed timings for the above works in relation to the completion of the dwelling.

Biodiversity units should be delivered on site, within the red line boundary shown on the submitted location plan. Those that cannot viably be delivered on site should be delivered locally, according to a local plan or strategy.

- 20) The species protection plan and 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 final dwelling, 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.
- 21) The development shall be carried out in accordance with the recommendations set out within the preliminary ecological appraisal by Archer Ecology (June 2021) unless otherwise agreed in writing with the local planning authority.
- 22) No above-ground works shall take place on the site until a scheme for the provision of electrical vehicle charging points has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.



Costs Decision

Site visit made on 3 September 2024

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Costs application in relation to Appeal Ref: APP/Y2003/W/24/3336598 Land and Barn next to Stables Restaurant, High Street/Scotter Road, Messingham DN17 3UJ

- 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 Philip Jackson of Jackson Philips Asset Solutions for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of outline planning permission for a 0.96ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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.
3. Paragraph 049 of the PPG sets out examples of the types of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. These include "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations", "failure to produce evidence to substantiate each reason for refusal on appeal", "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis", and "refusing planning permission on a planning ground capable of being dealt with by conditions [...] where it is concluded that suitable conditions would enable the proposed development to go ahead".
4. The application to which the appeal related was for outline planning permission, and was refused by the Council's planning committee against the recommendation of its officers. The reason given related to the drainage strategy for the site and, in particular, whether sufficient information had been provided to demonstrate that the scheme would not either lead to flooding on the appeal site or increase the risk of flooding elsewhere in Messingham.
5. That the committee did not accept the recommendation of its officers is not in itself an indication that the Council acted unreasonably; it is entitled to disagree with the recommendation put before it. However, that needs to be substantiated at appeal. The matter of drainage had been considered at planning application stage; the consultation response from the Lead Local Flood

Authority ("the LLFA") advised that it would be acceptable and appropriate to impose a condition requiring the submission of further information (relating to, among other things, ground infiltration rates, the detailed design of attenuation schemes including storage volumes, and a scheme for the adoption and maintenance of surface water drainage infrastructure) at the reserved matters stage.

6. The Council commissioned a surface water drainage review for the appeal, but although this was more detailed and "technical" than the LLFA response at the planning application stage, it did not set out any significant requirements for information or design detail beyond those which had been identified previously. The reason for refusal was not therefore substantiated at appeal and, for reasons set out in more detail in my main decision, I was content that the matter could be satisfactorily dealt with by conditions.
7. I also note that the Council did not make the risk of flooding a reason for refusing planning permission for a previous identical scheme in 2022¹. Considering surface water flood risk among "other matters" in the light of anecdotal evidence of surface flooding in the village, the Inspector determining the appeal in respect of that earlier scheme^{2 3} found in 2023 that "there [was] no objective evidence to suggest that acceptable drainage and sewerage solutions could not be incorporated as part of the detailed matters". No substantive evidence was put before me to demonstrate that the picture in respect of surface drainage has changed materially since that previous appeal.
8. The minutes of the planning committee attribute to one councillor the comment that as "the applicant had took no notice of what was requested [...] she was minded to refuse the application". While that strikes me as an unusual observation, in the absence of any further context or explanation I cannot interpret it as illustrating unreasonable behaviour on the Council's part.
9. However, taking my previous points together, I consider that the Council acted unreasonably in refusing planning permission on a planning ground capable of being dealt with by conditions, and that its reasons for doing so were not adequately substantiated at appeal stage. This led directly to unnecessary expense for the applicant in preparing additional information for and submitting the appeal. The Council's actions have meant that the appellant has incurred unnecessary expense, and an award of costs is justified.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Lincolnshire Council shall pay to Mr Philip Jackson of Jackson Philips

¹ LPA Ref: PA/2021/1330

² PINS Ref: APP/Y2003/W/22/3297656

³ The main issues in the 2023 appeal related to impacts on living conditions, and the provision of affordable housing, recreation facilities, and a contribution towards education provision, which were not main issues in this appeal.

Asset Solutions, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to North Lincolnshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Cryan

Inspector

Richborough