



Appeal Decision

Site visit made on 10 December 2024

by **A Edgington BSc (Hons) MA CMLI**

an Inspector appointed by the Secretary of State

Decision date: 02 January 2025

Appeal Ref: APP/E2001/W/24/3353602

Land west of Highfield, Church Lane, Keyingham, Hull, East Riding of Yorkshire HU12 9SX

- 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 Kevin Thompson against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/00263/OUT.
 - The development proposed is Outline - Erection of 16 First Home dwellings including associated infrastructure (Access, Layout and Scale to be considered).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This is an application for outline permission, with landscape and appearance only to be considered as reserved matters.
3. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Where relevant I have referred to paragraph numbers in the recent revision of that document. I have also invited the parties to submit additional evidence and have taken the responses received into account.
4. The Council has not included harm to designated heritage assets in its reasons for refusal. However, I am able to consider the appeal as if the application had been made to me in the first instance. In this case a concern has been raised by Historic England in relation to the Grade I listed St Nicholas Church and I have considered this in my reasoning.

Main Issues

5. The main issues are:
 - Whether the development would accord with local policies with regard to location;
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of future occupiers;
 - The effect of the development on highway safety;

- The effect of the development on biodiversity and protected species, and protected European sites; and,
- Whether the development would preserve the setting of the Grade I listed St Nicholas church.

Reasons

Location

6. Keyingham is designated as a Rural Service Centre in Policy S3 of the Local Plan (LP). Church Lane, which forms the eastern site boundary, is also the defined settlement boundary. Residential development is supported under LP Policy S3. However, this site is outside the settlement boundary of Keyingham.
7. LP Policy S4 states that in the countryside, development will be supported where it will maintain the vibrancy of the countryside, be of an appropriate scale, encourages the use of previously development land, and does not involve the loss of the best and most versatile agricultural land. Such development should also accord with Part C of LP Policy S4. This sets out additional criteria for development. The only criteria that are relevant to this appeal are 3) which supports new dwellings where they are of exceptional quality or truly outstanding innovative design, and 4) which requires the provision of affordable housing for local people. The supporting text to LP Policy S4 also sets out that proposals for affordable housing will be considered against LP Policy H2. This states that affordable housing will normally be well related to development limits.
8. LP Policy H2 section C also sets out further criteria, including that the housing meets an identified need, is of a scale and design that is appropriate to the role, character and appearance of the settlement, and provides 100% affordable housing.
9. A Written Ministerial Statement¹ (WMS) states that exception sites for affordable housing should be supported unless the need for such homes is already being met within the council's area. Neither party has supplied information to indicate whether that need has been met or not.
10. Planning Practice Guidance (PPG) sets out that First Homes should be on land that is not already allocated, should be adjacent to existing settlements, comply with local design policies and standards.
11. The appeal site is a long narrow field located alongside Church Lane. Dwellings on its eastern frontage are seen as the settlement edge when approaching Keyingham from the west, and these dwellings have views over the site and the fields beyond. There is also development to the south on the other side of the road.
12. Given the proximity of existing development to the east and south of the appeal site, I find the site to be well situated in relation to local road infrastructure and spatial relationship with the settlement. In relation to location and taken in isolation, there would therefore be no conflict with LP

¹ 24 May 2021

Policy S4 or LP Policy H2. However, both these policies require the consideration of other criteria and I turn to these below.

Character and appearance

13. The proposals comprise two parallel building lines, arranged around three cul de sacs. The westernmost dwellings are located very close to the site's western boundary and their flank walls would be very prominent in views from the road as the relocated settlement edge. The appellant advances the argument that the dwellings could be screened by planting but the dwellings at the southern end of the site would have flank walls that are only about one metre from the site boundary. Even if there was no expectation of access around the side of the dwellings, this is insufficient space to create a landscape buffer. I disagree that there would be significant visual and ecological benefits.
14. At present, the eastern edge of the settlement is formed by a line of buildings with public facing frontages on Church Lane. This would be replaced by long views of flank walls and what would be largely private amenity space and parking areas. This would bring built form and activity almost to the very edge of the site. The abrupt transition from arable land to a highly developed site with minimal space to achieve an effective transition, would have a significant urbanising effect on the edge of Keyingham.
15. Moreover, the very tight layout is contrived and lacks coherence, and planting proposals will be constrained by the restricted layout. It seems unduly cramped along the site's western edge. Although the two lines of dwellings do give an underlying pattern, the associated parking areas and estate roads lack appropriate turning areas, which is discussed in more detail below.
16. I acknowledge that First Homes sites are exception sites, which are likely to be associated with the loss of open land. Nonetheless, although the dwellings on Church Lane are visible at a distance when approaching from the west, they have clear public frontage. The proposed settlement edge would fail to demonstrate high quality design or have regard to the specific characteristics of the site's wider context as required by LP Policy ENV1, and LP Policy ENV2 which requires development to be sensitively integrated into the existing landscape amongst other considerations. The development would therefore have an adverse effect on the character and appearance of the area, contrary to LP Policies ENV1 and ENV2 which are concerned with integrating high quality design. It would also conflict with Section 12 of the Framework which is concerned with high quality design.

Living conditions

17. The plans show that openings on the rear elevations of the two-storey Plots 3, 4 and 5 would have the potential to overlook the rear elevations and gardens of Plots 2 and 7. Moreover, Plots 3, 4 and 5 would be on elevated ground relative to Plots 2 and 7. PPG states that *layout is the way in which buildings, routes and open spaces within the development are provided, situated, and orientated in relation to each other and to buildings and spaces outside the development*. Permission is being sought for the layout shown on the drawings. Although appearance is a reserved matter, layout is not.
18. Given the modest footprint of these dwellings, there are very few options for window openings, particularly as Plots 3, 4 and 5 are semi-detached. It seems

highly likely that there will be first floor windows on the rear elevations of Plots 3, 4 and 5, leading to unacceptable overlooking and a loss of privacy for occupiers of Plots 2 and 7. This would be contrary to LP Policy ENV1 which is concerned with the amenity of proposed properties, and Paragraph 135 of the Framework which requires development to provide a high standard of amenity for existing and proposed users.

19. The development would constitute a building frontage on the western side of Church Lane. The existing frontage on the eastern side of Church Lane would be on slightly elevated ground relative to the development. However, given the separation between these frontages I see no reason to conclude that the development would result in adverse effects on the living conditions of existing occupiers of Church Lane.
20. The officer's report notes that at this stage it is not possible to consider the provision of external amenity space. However, layout is not a reserved matter and some of the new dwellings would have very short rear gardens. Nonetheless, this has not been raised as a reason for refusal and I have not considered it further.
21. The development would have an adverse effect on the living conditions of future occupiers of Plots 2 and 7 which would be contrary to LP Policy ENV1 which requires development to have regard of the amenity of existing or proposed properties, and Paragraph 135 of the Framework as set out above.

Highways

22. Concerns have been raised by the Council and the police with regard to visibility from the southernmost Church Lane access point, as well as the lack of manoeuvrability within the site for refuse vehicles and parked cars, given that there are no turning points available within easy access of these dwellings. This would be likely to result in vehicles doing multi-point turns or excessive reversing, as well as refuse vehicles having to reverse either in or out of Church Lane which I noted at my visit appeared to be narrower than a standard two lane road. Moreover, Plot 11 would have tandem parking. These issues are reflective of the contrived and tight layout referred to above.
23. The appeal statement notes that refuse vehicles would be a rare visitor to the development. In my experience most households have weekly collections of one sort or another. In any case, a residential road layout should be able to safely accommodate the size of vehicle likely to need to visit, however infrequently. The appellant has noted in final comments that bins would be brought to a central collection point adjacent to the highway that would be accessible by refuse lorries. However, it is unclear where that central collection point would be, and some dwellings would be some 50 metres from Church Lane. If bins were to be wheeled that distance to Church Lane this would not be a satisfactory arrangement and reinforces my reasoning with regard to the cramped layout.
24. Highways Management notes that further information is required before a recommendation can be made. As such, I disagree with the appeal statement that the Council's consultant has not raised a concern. In any case, risk is a combination of severity and frequency. Even if I accepted that larger vehicles would not be frequent visitors, it does not necessarily follow that this would reduce risk to an acceptable level.

25. The development would therefore have an adverse effect on highway safety and would conflict with LP Policy ENV1 which requires development to promote safe access, movement and use as well as Paragraph 115 of the Framework which requires development to provide safe and suitable access for all users.

Nature conservation

International designations

26. The site lies some 4.7km from the Humber Estuary, which is a designated Special Area of Conservation, Special Protection Area and Ramsar site. The Council's evidence indicates that the site lies within the Tier 1 impact zone. As such in-combination impacts of recreational disturbance arising from an increase in dwellings cannot be ruled out. Mitigation against recreational disturbance would be effected through contribution to the Strategic Access Management and Monitoring Strategy (SAMMS). However, this is not addressed in the appellant's evidence and there is no mechanism before me to ensure that contributions would be made. As such, in the absence of the recommended mitigation I am unable to conclude that the development would not have an adverse effect on internationally designated sites.

Protected species

27. The ecology report states that the trees to be felled do not sit within the site boundary, and that a preliminary bat roosting potential survey was carried out only in relation to the buildings on the site. I infer from this that the trees to be felled were not assessed for bat roosting potential. As such, I am unable to conclude that the development, would not have an adverse impact on protected species.
28. The site is currently a pastoral field and would become urbanised. There would be some scope for additional tree planting but the areas available for planting are very restricted, or are so close to buildings or access ways as to suggest that planting would be little more than cosmetic. It would not have the space to develop and make a meaningful contribution to biodiversity. Moreover, such planting would be very close to dwellings, gardens and parking areas which generate light, noise and disturbance which are not conducive to the establishment of local fauna.
29. The baseline Metric 3.1 calculation submitted appears to show that all existing habitat units would be removed, and none would be created or enhanced.
30. In the absence of evidence to the contrary I conclude that the development would have an adverse effect on biodiversity, protected species and habitats. This would be contrary to LP ENV4 which is concerned with the conservation and enhancement of biodiversity, and the Conservation of Habitats and Species Regulations (2017) as amended, which is concerned with protected European species.

Setting of Listed Building

31. The Grade I listed parish church of St Nicholas dates from the 12th century and despite the removal of its spire in 1969, has retained its visual prominence in the landscape. It is located to the north of the site, beyond the line of bungalows that forms the eastern building line of Church Lane. On approaching the church from the south there is a clear and distinctive sense of place

associated with the church's imposing presence in the street scene and its spatial relationship with the large plot containing a detached period house on the other side of the road.

32. I conclude that the church's significance is derived in part from its intact historic fabric, as well as its spatial relationship with older buildings in Keyingham's historic core and the visual locational cues afforded by its spire when seen across the fields to the west. However, the appellant's heritage statement is scant and contains no assessment of significance. It also appears to confuse setting with visibility and curtilage. As such, I am unable to consider whether the appeal site contributes to the church's setting and thus to significance.
33. Whilst I appreciate that the Council's conservation officer concluded that the proposals would not result in harm to the church's setting, as the church is now seen within the context of the modern residential development to its immediate south, Historic England has raised a concern. I am unable to conclude that the proposals would not diminish significance and conclude that they would amount to less than substantial harm, albeit this is likely to be to a minor degree only.
34. The development would therefore fail to accord with S66 of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) which requires the decision maker to have special regard to the desirability of preserving a building or its setting, and Section 16 of the Framework which is concerned with safeguarding heritage assets. There would also be conflict with LP Policy ENV3 which requires development to conserve the significance, views, setting and context of heritage assets.
35. However, Paragraph 215 of the Framework states that where a development will lead to less than substantial harm to the significance, that harm should be weighed against the public benefits of the proposal. In this case the provision of 16 dwellings in a location well related to an existing settlement would represent a public benefit sufficient to outweigh the minor harm identified above.

Affordable housing

36. The appeal statement sets out that the scheme has the support of the Council's housing team. However, although this is the case in principle, that consultee also notes that a S106 agreement would be required to ensure delivery of First Homes. It also sets out that to date there has been low demand for bungalows and the appellant has not provided any evidence that bungalows are needed in this location.
37. Consequently, as there is no mechanism to ensure that the proposals would provide any First Homes, I give no weight to the benefits arising from the provision of affordable housing.

Other Matters

38. The development would include an area of open space, but it is unclear how this would be maintained. The evidence also includes an open space assessment but this only sets out Council policy in this regard. It is unclear whether there is a local shortfall of public open space and as such the area of open space shown on the layout has neutral weight.

39. Interested parties have raised a number of concerns but as I have found harm in relation to the main issues there is no need to consider these further.
40. The appellant has drawn my attention to a successful application for housing in Pollington². This was an outline application with all matters reserved save access. The officer's report indicates that although the scheme would represent an encroachment into the countryside a suitable scheme could be submitted that would respect the local vernacular and character of the site in accordance with local policies and the Framework. That is not the case here and the schemes are not comparable.

Planning Balance

41. The Council is unable to secure a five year housing supply. The recently published Framework states that where the policies that are most important for determining this appeal are out of date as a consequence of insufficient housing supply, there is a presumption in favour of sustainable development.
42. However, this is only the case if the application of policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development proposed. Those areas and assets include designated heritage assets and international habitats sites. I have found that the heritage harm taken in isolation, would be outweighed by public benefits. However, as set out above, there would be no mitigation for the harm identified in relation to biodiversity.
43. The local development plan supports development on unallocated sites if First Homes are provided, amongst other considerations. However, as set out above, there is no mechanism to ensure that the dwellings provided would be First Homes. As such this carries very little weight in favour of the appeal. In addition, I have found harm in relation to character and appearance, highways and protected species and biodiversity. Although I have not given full weight to the LP Policies in this regard, their objectives are broadly supported by other guidance in the Framework.
44. There is nothing in the Framework to suggest that Council allocations have a ceiling and as such, even if the dwellings were not First Homes, there would be benefits arising from open market housing. However, this would remain insufficient to outweigh the aforementioned harm.

Conclusion

45. The proposals would conflict with the Act, the local development plan, the Framework and European legislation with regard to biodiversity and there are no material considerations of such weight to lead me to conclude other than that the appeal should be dismissed.

A Edgington

INSPECTOR

² Ref: 24/01255/OUT