



Appeal Decision

Site visit made on 16 January 2025

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Ref: APP/Y2003/W/24/3351595

Land Between 18 & 20 Epworth Road, Owston Ferry, Doncaster DN9 1AS

- 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 Tony Webster of WFW Developments Limited against the decision of North Lincolnshire Council.
 - The application Ref is PA/2023/1307.
 - The development proposed is outline planning permission to erect 15 dwellings with appearance and landscaping reserved for subsequent approval.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2024. Comments have been requested from the parties, insofar as they relate to the matters raised in this appeal. In their comments, the Council provided the North Lincolnshire Council Five Year Housing Land Supply Statement 2024 – 2029. This is an update to the current housing land supply position. This is tantamount to new evidence. The Planning Inspectorate Appeals' Procedure Guide makes it clear in chapter 16 clearly indicates that information received outside of the normal time limits of the timetable of the appeal will usually be disregarded. However, the Appeals' Procedure Guide also notes that exceptional circumstances may indicate that new evidence can be accepted. One such circumstance will usually relate to a change that occurred after the appeal was submitted. As such, I turn to this evidence later in my decision.
3. The application is submitted in outline with details of access, layout and scale provided for consideration. All other matters are reserved for future approval. I have treated all plans, other than those relating to access, layout and scale as illustrative.
4. The Council had regard to the emerging North Lincolnshire Local Plan (2020-2038), which had been submitted to the Secretary of State for Independent Examination on 11th November 2022. The appellant has also had regard to this emerging local plan in their appeal evidence. In the time between the decision being made on this planning application and the subsequent submission of this appeal, the Council has withdrawn the emerging local plan. I have therefore not had regard to the emerging policies discussed in the Officers Report.

Main Issues

5. The main issues are:

- whether the site would be in a suitable location for housing;
- the effect of the scheme on flood risk and drainage;
- the effect of contaminated land on the proposed development;
- the effect of the scheme on biodiversity;
- the effect on the character and appearance of the locality, with particular regard to density and scale;
- the effect on the significance of the Isle of Axholme Area of Special Historic Landscape Interest as a non-designated heritage asset (NDHA); and,
- whether the development would provide an appropriate housing mix..

Reasons

Suitable location

6. The appeal site is accessed from an existing access point on Epworth Road in the rural settlement of Owston Ferry. Its boundary treatment along Epworth Road is made up of a hedge and a simple metal fence and gate arrangement. Its appearance is one of a farmyard, with areas of hard surfacing, rough but minimal areas of vegetation and a plethora of farm buildings which vary in their appearance and scale.
7. The development plan for the area comprises the North Lincolnshire Local Development Framework Core Strategy 2011 (CS), North Lincolnshire Local Development Framework, Housing and Employment Land Allocations, Development Plan Document 2016 (DPD) and those policies in the North Lincolnshire Local Plan (LP), adopted May 2003 which were saved by direction of the Secretary of State and have not been superseded by the CS and DPD.
8. Policy CS2 of the CS notes that a sequential approach to the delivery of future development will be adopted. This approach notes that development will be focussed in or on the edge of Scunthorpe and market towns. Smaller scale development will be permitted within the defined settlement limits of rural settlements to meet identified local needs. Policy CS2 further notes that any development outside of rural settlements will be limited. These restrictions are limited to development which is essential to the functioning of the countryside. Policy CS3 of the CS states how settlement limits will be applied and restricts development outside of these defined boundaries to that which is essential to the functioning of the countryside. Policy CS8 of the CS further sets out the focus of housing and its location in Scunthorpe and the market towns of Barton upon Humber, Brigg, Crowle, Kirton in Lindsey and Winterton.
9. Saved Policy RD2 of the LP provides further discussion on the restriction of development in the countryside which is beyond the settlement limits and the purposes of certain development which is permitted within the open countryside.

10. Owston Ferry itself is a rural settlement. The appeal site is located beyond the defined settlement limits of Owston Ferry and therefore would be contrary to Policy CS2 and CS8, which limit development to the limits of rural settlements and note the location where housing will be provided. As such, in following Policy CS2, the proposal must be essential to the functioning of the countryside. The proposal is for new housing. There is no established local need for affordable housing, it would not relate to employment development, be related to outdoor sport or countryside recreation or the diversification of an established business or the other exceptions listed in Policy RD2 of the LP and CS3 of the CS for development in the countryside. Therefore, there would be a conflict with policy in this regard.
11. Nevertheless, I have had regard to the characteristics of the site. The site contains large areas of hard standing and a significant number of farm buildings which all contrast in their size. The site is also surrounded by existing development located on Sandars Close and Epworth Road with a small exception along the eastern boundary. Beyond this eastern boundary, the open countryside is clearly evident and is of a different appearance to that of the appeal site.
12. As such, whilst this site is located in the open countryside, its current use, appearance and condition do not host similar characteristics found of the surrounding countryside which is visible beyond the site's boundary to the east. The appeal site does not appear to form a part of the countryside, but does have a strong connection with the built form of Owston Ferry. Therefore, there would be no material harm with regard to the location of the proposed development in this particular case.
13. The proposal would conflict with Policies CS2, CS3 and CS8 of the CS and Policy RD2 of the LP. However, the characteristics of the appeal site indicate that a decision should be taken other than in accordance with these policies to which I find no material harm.

Management of flood risk and drainage

14. The appeal site is located in Flood Risk Zone 1. As such, there is a low risk of flooding in this locality. Policies CS18 and CS19 of the CS and Saved Policies DS13 and DS14 of the LP are concerned with flood risk, foul sewage and surface water drainage and their removal from the site. Policy DS14 of the LP specifically requires satisfactory provision to be made for the disposal of foul and surface water before permission is granted or by imposing a planning condition. The application was not supported by a Flood Risk Assessment or a drainage strategy. The site layout is not a reserved matter and it has not been demonstrated how surface water would be discharged from the site through the identification of existing infrastructure in this configuration.
15. The appellant refers to a previous appeal decision¹ and notes that in this decision, the Inspector imposed a planning condition requiring details of a sustainable surface water drainage scheme. This appeal was an outline application, where all matters with the exception of access were reserved for future consideration. This is an important distinction between this scheme and this appeal decision.
16. Given that the site layout would be established by an approval of the appeal scheme as an outline application, it would not be appropriate to secure full details

¹ APP/Y2003/W/17/3185421

of surface water drainage via a planning condition. This is because such a condition would not pass the tests of enforceability due to the fixed layout of the scheme if that were required to be amended to provide drainage details.

17. Therefore, on the basis of the information before me, it has not been demonstrated how surface water drainage can be delivered. The proposal therefore would conflict with Policies CS18 and CS19 of the CS, and Saved Policies DS13 and DS14 of the LP.

Contaminated land

18. Policy DS1 of the LP notes that proposals should ensure that there is no pollution which poses a danger. In the case for proposals on land which is suspected as being contaminated, proposals will be required to demonstrate that the level of contamination can be overcome by remedial measures by Policy DS7 of the LP. Furthermore, this policy notes that permission will only be granted on contaminated sites where a detailed site survey has been submitted and a suitable scheme of remedial measures has been agreed to overcome any existing contamination. Policy DS15 of the LP states that development will not be permitted which would adversely affect the quality of water resources and other matters through pollution of the development.
19. The appeal site hosts a selection of farm buildings and equipment in its existing form and therefore, may have the potential to be contaminated due to this use of the land. The application was not supported by any supporting land contamination documentation. As such the application has not established, through the provision of a site survey, a baseline to understand this site's potential to be contaminated.
20. The appellant refers to the previously cited appeal decision in their evidence, suggesting that an appropriately worded planning condition could be utilised to address contaminated land issues. It is also the appellant's contention that a condition would require a preliminary geo-environmental assessment to be undertaken at stage 1, and it would likely recommend intrusive site investigations with a subsequent remediation scheme.
21. In my assessment of the cited appeal, I note that in paragraph 30 of their decision, the Inspector states that the potential for contamination was identified in that appeal. Therefore, the condition imposed in that appeal sought the submission of a remediation strategy, a verification report and the reporting of unexpected contamination after a site survey which identified contamination had been identified. This appeal is not alike this example as the possibility of contamination has not been identified through an appropriate site survey. As such, the provision of a planning condition would not be enforceable, as the potential for contamination has not been identified to inform a subsequent remediation strategy.
22. To conclude, on the basis of the information before me, it has not been demonstrated that the site is free from contamination, or that any potential contamination risks have been identified and can be remediated. The proposal would therefore conflict with Policies DS1, DS7 and DS15 of the LP.

Biodiversity

23. It is the appellants contention that as the current application predates the national position on Biodiversity Net Gain, this would not be applicable for this proposal.

Nevertheless, Policy CS17 of the CS notes that it will ensure that development seeks to produce a net gain in biodiversity by designing in wildlife, amongst other things. Therefore, this policy is in general conformity with the Framework.

24. The application did include a Preliminary Roost Assessment (Haslam Ecology, 2022), but this was deficient of a biodiversity metric or net gain plan. It is essential that the provision of a completed, full survey with an accompanying metric is provided prior to the submission of a planning application. It is important to understand the biodiversity presence on site and the impact of development in metric terms. The proposal therefore is not adequately informed by the biodiversity presence within the appeal site and as such, does not appropriately mitigate and compensate for the possible loss of biodiversity.
25. It is suggested that a scheme for biodiversity enhancement could be addressed through the use of a suitably worded planning condition at a time when the landscaping of the appeal site is determined. However, the need to ensure surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. From the evidence before me, it is not considered that these exceptional circumstances exist.
26. To conclude, the development would have an unacceptable effect on biodiversity. Due to the absence of information, it would conflict with Policy CS17 of the CS, which seeks to ensure that development will produce a net gain in biodiversity.

Character and appearance

27. The layout and scale of the proposal is not reserved and included for consideration. The proposal in this layout would create 15 dwellings across the site, with a mixture of detached and semi-detached properties. With regard to scale, the proposed dwellings take a two-storey appearance with space in the roof space due to the presence of a third bedroom in the attic space which utilises a dormer structure to the front and rear of the roof.
28. The Council suggests that the required density range for proposals for housing in rural settlements is 30 to 35 dwellings per hectare and that this proposal would be over this density range. This is not established by any of the policies cited in the reason for refusal in relation to this matter. Nevertheless, the appellant has provided a copy of Policy CS7 of the CS in their evidence. This policy notes that within rural settlements and the countryside, a density of 30 to 35 dwellings per hectare should be achieved at least.
29. The proposed development would have a higher density range than that established by Policy CS7 of the CS. Nevertheless, in following the wording of this policy, this proposal would not be in conflict with this policy. Turning to the appearance of this density, the immediate area surrounding the appeal site is characterised by a mixture of detached and semi-detached residential properties which feature large rear gardens and shorter, yet still significant front garden spaces. The separation distances between these properties create a level of spaciousness between each plot. These surrounding properties generally are located along Epworth Road, and take a modern appearance except for a few examples.
30. This proposal would achieve a development with a similar, but not identical, spatial layout to those found in the vicinity. Whilst the layout is not completely

identical to its surroundings due to the smaller width of properties and their plots, this would not create a significant harm when viewed in an area of mixed housing types and designs. As such, the higher density of properties proposed would not cause an unacceptable harm to the character and appearance of the area with regard to the density proposed.

31. The scale of the proposal is fixed and is not a reserved matter to be considered in this appeal. The appeal proposal indicates that three-bedroom homes would be provided. These buildings would be two storeys in height, with the provision of accommodation within the roof space which would be supported by a dormer to both the front and rear roof. Properties along Epworth Road contrast in their design and appearance. Dormers are not a common feature but the proposed development would have a similar scale to those found in the vicinity and therefore, would not cause an unacceptable harm to the character and appearance of the area with regard to scale.
32. To conclude, the proposal would accord with Policies H5 and DS1 of the LP and Policy CS5 of the CS. These policies require development proposals to be in keeping with the scale, layout and height of the immediate environment and the settlement as a whole and consider the relationship between any buildings and the spaces around them, amongst other things.

Effect on the significance of a NDHA

33. The appeal site is within the Isle of Axholme Area of Special Historic Landscape. Riverside Ancient Open Strip Fields form part of the most significant historic character zone in the Isle of Axholme Area of Special Historic Landscape Interest. This is a non-designated heritage asset.
34. The Framework requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
35. The significance of the Isle of Axholme Area of Special Historic Landscape Interest is largely derived from its range of fields which reflect the last examples of open-field cultivation. This was a system used by agricultural communities in pre-20th century Northern Europe where areas of land were communally managed. This example has persisted since medieval times. Means of enclosure are not evident in the landscape, with the main boundary defining features made in the form of drainage ditches. The enclosure of the open fields has been resisted, and the communal arrangements of the land for farming has continued through to the present day.
36. The proposal would be sited in an existing farmyard where buildings and hard standing are evident, with existing development of residential properties along much of its boundaries. The appeal site has a strong relationship with the built settlement due to its proximity and location within Owston Ferry and does not incorporate the characteristics and features of the NDHA. It would not extend further into this landscape than the buildings found within the existing site. As such, having had regard to my duty set out in Paragraph 216 of the Framework in undertaking a balanced judgement, I find that the proposal would not have an unacceptable effect on the significance of the non-designated heritage asset.

37. In conclusion, the proposal would comply with the Framework. In addition, it would not conflict with Policies CS5 and CS6 of the CS and Policies DS1, LC07 and LC14 of the LP. These policies require development to respect the local landscape and not adversely effect its setting or any of its features, amongst other things.
38. The Council have cited Policy RD2 of the LP in their reason for refusal on this matter. This policy relates to development in the open countryside, and not development which may have an effect on NDHA. Therefore, this policy is not directly applicable to this main issue.

Housing mix

39. The North Lincolnshire Housing and Economic Needs Assessment 2020 (NLHENA) suggests that a mix of housing sizes should be encouraged. This assessment identifies that three-bedroom dwellings are in the greatest need, which is then followed by two-bedroom properties. The proposal suggests that three-bedroom homes would be provided. The predominant and highest demand of properties is for three-bedroom dwellings as noted in the NLHENA.
40. Policies H5 and DS1 of the LP and Policy CS5 of the CS do not set out a requirement for property sizes to be reflective of the NLHENA. Therefore, whilst I recognise that there would be no mix of property sizes to reflect the suggestions of the NLHENA, there would be no conflict with the development plan in this regard.

Other Matters

41. The appellant has undertaken a discussion of planning obligations in their evidence. This matter did not form a reason for refusal. As the appeal is dismissed for other reasons, and a conclusion on this matter could not affect this overall conclusion to dismiss the appeal, I have not sought to address this matter further.

Planning Balance

42. The Council has noted that they have a Five-Year Housing Land Supply (5YHLS) position of 6 years and 10 months' worth of supply. The Council have since indicated that their new updated position in the North Lincolnshire Council Five Year Housing Land Supply Statement 2024 – 2029 is five years and 1 month worth of supply. Both positions are questioned by the appellant, who contends that the Council do not have a 5YHLS and that the CS and LP are out of date. Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. This statement was submitted as late evidence by the Council. I am unsure if this updated 5YHLS position is accurate as this position does not appear to have been published and therefore, could be subject to amendment.
43. However, I have found harm on matters relating to biodiversity, contaminated land and flood risk and drainage. On that basis, I conclude that there is conflict with the development plan as a whole. Under the Framework, Paragraph 193 (a) notes that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused. With regard to contaminated land matters, Paragraph 196 (a) notes that decisions should ensure that a site is suitable for its proposed use and in Paragraph 196 (c), an adequate site investigation should inform an assessment. Paragraph 182 of the Framework notes that applications which could affect drainage on or around the site should

incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal. As such, the policies cited in relation to these matters are in general conformity with the Framework and the conflict with them should be given significant weight in this appeal.

44. The Framework also refers to significantly boosting the supply of housing. The provision of 15 additional units would make a strong contribution to the current supply. Whilst in conflict with the development plan with regard to its location, the characteristics of the appeal site indicate that a decision should be taken otherwise in accordance with it. Due to its siting, the proposal would not have an unacceptable harm to a NDHA, nor would it have harmful implications to the character and appearance of the area with regard to density and scale. Furthermore, it would not be in conflict with the development plan due to the limited mix of properties proposed. The proposal would also provide local economic benefits during the construction period. The future occupiers would also provide economic benefits to the local area once the development would be complete through their use of local shops and services.
45. However, even if for the purposes of this appeal I were to adopt the appellants position on the 5YHLS and that the CS and LP are out-of-date, the adverse effects to biodiversity, contaminated land and flood risk and drainage would significantly and demonstrably outweigh the benefits highlighted in this appeal.

Conclusion

46. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations that indicate that the development should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed.

J Smith

INSPECTOR