



Appeal Decision

Site visit made on 2 September 2025

by **K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Appeal Ref: APP/D2510/W/25/3366428

Land off Skegness Road and Ingoldmells Road, Burgh le Marsh, Skegness PE24 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Burgh Pastures Limited against East Lindsey District Council.
- The application reference is S/023/01531/24.
- The development proposed is the erection of 15 no. dwellings and creation of vehicular accesses.

Decision

1. The appeal is dismissed and planning permission for the erection of 15 no. dwellings and creation of vehicular accesses, at Land off Skegness Road and Ingoldmells Road, Burgh le Marsh, Skegness PE24 5HD, is refused.

Application for costs

2. An application for an award of costs has been made by Burgh Pastures Limited against East Lindsey District Council. This is the subject of a separate decision.

Procedural Matter

3. During the appeal, the Environment Agency (EA) published an updated flood risk mapping dataset (NaFRA2). I sought the views of the main parties and the EA as to the implications of this for the appeal, and have taken the responses into account.

Background and Main Issues

4. The appeal site has a long planning history but, in short, there are extant planning permissions to erect a total of 11 dwellings on the appeal site, within the southern part adjacent Skegness Road. The application proposes a revised layout that incorporates an additional four dwellings and extends development along the Ingoldmells Road frontage.
5. The Council did not issue a decision on the application within the prescribed time limit or within an agreed extension of time. Having regard to the Council's submissions, the main issue is whether the proposal would be an appropriate location for housing, having regard to flood risk.

Reasons

6. The appeal site is located on the eastern edge of the village of Burgh le Marsh, which is classed as a large village under the settlement hierarchy of the East Lindsey Local Plan Core Strategy (July 2018) (the LPCS). Policy SP3 sets out that, within large villages, housing growth on windfall sites is supported in 'appropriate

locations within the settlement and outside of, but immediately adjacent to, the developed footprint. For the purposes of the policy, 'appropriate location' is defined as a location that does not conflict, when taken as a whole, with national policy or policies in the LPCS.

7. The site is located immediately adjacent to the built-up area of Burgh le Marsh, and the Council accepts that the proposal would be acceptable in terms of its effect on the overall shape and form of the settlement and the character and appearance of the area. In these respects, the proposal would accord with relevant criteria of Policy SP3. However, for the proposal to be considered an appropriate location in overall terms, it must also accord with other relevant policies of the development plan, those relating to flood risk being relevant in this case.

Flood Risk

8. The site is indicated to be located in Flood Zone (FZ) 3 and the Coastal Hazard Zone (CHZ). Under Policy SP3 of the LPCS, housing growth in the Coastal Zone will be constrained to the existing settlements and subject to the criteria set out in Policies SP17 and SP18. The Council alleges conflict with the latter policy. Reference is also made to Policy SP17, but this is stated to apply to certain named settlements, of which Burgh le Marsh is not one.
9. Policy SP18 sets out support for sites which already have planning permission for housing if they come forward with improved layouts, designs or flood mitigation providing the numbers of homes do not increase. The proposal represents an increase in the number of dwellings proposed which would conflict with this first criterion of Policy SP18. None of the other criteria are argued to be relevant, and thus there is conflict with this policy overall.
10. In addition to the development plan, the Framework and the Planning Practice Guidance (PPG) require a sequential, risk based approach to the location of development in terms of flood risk. The Framework indicates that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within FZ2 and FZ3. Dwellings are categorised as 'more vulnerable' development, for which an exception test is required to be passed in addition to the sequential test.
11. The PPG has recently been updated and now states that where a site-specific flood risk assessment (FRA) demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development (therefore addressing the risks identified e.g. by EA flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied. However, this exemption only applies where surface water flooding is the only identified source of flooding. In this case, the appellant's FRA identifies tidal flooding as the main potential source of flooding. As such, a sequential test is still required to be passed.
12. The appellant has not undertaken a sequential test, arguing that the extant planning permissions for 11 dwellings means that assessing alternative locations for these dwellings would be inappropriate. I accept that 11 dwellings could be constructed to the Skegness Road side of the site even if the sequential test was

not passed, and it would serve no purpose to undertake a sequential test for these dwellings already with planning permission. However, the evidence before me does not establish that the land where the additional four dwellings are proposed has previously been considered as part of a sequential test, and the fact that other dwellings have been permitted on adjacent land, even if in the same ownership, does not negate the need for a sequential test in respect of the additional dwellings.

13. The appellant's case is that the additional dwellings would be located along the Ingoldmells Road frontage, where land levels have been raised with earth excavated for ponds on the appellant's wider land next to the appeal site. It is argued that, as a result of these groundworks, this land now lies outside of FZ3 and the CHZ. The EA has not objected to the content of the appellant's revised Flood Risk Assessment (FRA), but it has not agreed that the site now falls outside of FZ3 due to different modelling parameters used by the appellant. The EA has further confirmed that the site remains in FZ3 in the updated flood risk modelling. There is also no indication from the Council that the site of the four dwellings is outside of the CHZ, such that the sequential test would be deemed to be passed pursuant to the Council's Strategic Flood Risk Assessment (SFRA). In this respect, I draw a distinction with the permission¹ for three dwellings to the north of the site, where the Council accepted the site fell outside of the CHZ. Therefore, I assess the proposal as being in FZ3 and the CHZ and consider that a sequential test is required.
14. No assessment of other potential sites has been undertaken as required by the sequential test. Given the presence of land in FZ1 and outside of the CHZ a short distance away to the west, the likelihood of there being no other sequentially preferable site nearby for residential development is low. As such, the sequential test is not passed.
15. Tidal flooding is identified as the main source of flood risk for the site, with a 0.5% (1 in 200) chance of flooding occurring in any given year, assuming no flood defences exist. These do exist along the coast, with a breach of defences shown to pose the higher risk compared to overtopping of defences. The 2010 data upon which the EA's hazard mapping is based shows no effect on the appeal site based on 2006 levels, but a risk of flooding exists when sea level rise associated with climate change is factored in (the 2115 event).
16. The appellant has sought to update this evidence to reflect the present day conditions of the site, including updated modelling using 2024 tidal level data, site specific topographic surveys and more recent LIDAR data. The evidence shows that the site would not be at risk in a 0.5% AEP present day event, but would be at risk in a 0.1% AEP present day event, with peak water levels of 2.42m AOD indicated to be above the ground levels recorded during the 2020 topographic survey. In the climate change scenario, even higher water levels of 2.73m AOD are recorded, with overtopping to both Skegness Road and Ingoldmells Road.
17. The evidence goes on to set out that the earthworks undertaken have raised the ground levels to the Ingoldmells Road frontage to a level where, alongside a proposed raising of the internal ground floor levels by 300mm, the proposed dwellings on Plots 11-15 would stand above the peak water levels and would be flood-free during the 0.1% AEP (2024) event and the 0.5% AEP (2125) event except for part of the garden of Plot 11.

¹ Council Ref S/023/01522/17

18. I have no technical evidence from the Council to challenge these findings. As such, I am satisfied that, within the site, the additional dwellings proposed could be designed to remain flood-free for their lifetime. However, the evidence nevertheless indicates that the site and immediate surroundings are at risk from flooding in the assessed events, in particular that both roads surrounding the development would be overtopped, meaning access to and from the dwellings would still be at risk of flooding irrespective of the earthworks within the site. Indeed, the evidence shows that the other dwellings fronting Skegness Road would suffer flood depths of some 0.46m in a breach with a 0.5% AEP (2125) event, requiring finished floor levels to be nearly half a metre above ground level to remain flood free. I accept dwellings have already been approved in this part of the site, but it is an indicator of the flood risk which exists and the significant mitigation required to address it.
19. Moreover, although the earthworks and proposed mitigation measures would be considerations in the exception test, the PPG is clear that the exception test should only be applied following application of the sequential test. As I have found the proposal does not accord with the sequential test, it matters not whether it would pass the exception test, as this alone would not satisfy the requirements of the Framework and PPG.
20. Therefore, I conclude that the proposal fails to accord with the sequential test in relation to development in areas at risk of flooding and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. Accordingly, the proposal conflicts with Policy SP18 of the LPCS, the Framework and the PPG in relation to development in areas at risk of flooding.

Other Matters

21. The Council has not pursued any other reason for refusal at appeal stage. I note its conclusions that the proposal would be acceptable in respect of design and effect on character and appearance and neighbours' living conditions. From my observations on site, I have no reasons to disagree.
22. In other respects, the Council has sought conditions to address matters of detail relating to the design and layout of the entrance and internal road and footpaths, and details of proposed surface water and foul drainage systems. I am content that these matters could be addressed by condition were the appeal to be allowed.
23. The evidence makes reference to financial contributions being sought in respect of education and healthcare provision, on the basis of increased demand for these services locally from new occupants of the development. However, whilst noting the reasoning from the respective consultees, the Council has not pursued these matters at appeal and has not provided reasoning to justify seeking these contributions. Therefore, the evidence before me is not conclusive that such contributions are necessary to make the development acceptable in planning terms, and the absence of a completed legal agreement to secure contributions does not weigh against the proposal in the planning balance.
24. The appellant retains a fall-back position to implement permissions for 11 dwellings. However, it follows from my analysis above that these developments would not be comparatively more harmful than the proposal before me in flood risk terms, given the lesser number of dwellings overall that would be affected. The fall-back position does not therefore weigh materially in favour of the appeal.

Planning Balance

25. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites, with supply stated to be 3.08 years. In this scenario, Paragraph 11 of the Framework is engaged and policies which are most important for determining the application are deemed to be out-of-date. However, that does not mean they are not afforded any weight. Rather, I find the aforementioned Policies SP1 to SP4 and SP18 remain broadly in accordance with the Framework aims of directing development to the most sustainable locations, including in terms of accessibility and flood risk. Therefore, they still merit considerable weight.
26. I accept that the proposal would deliver additional housing in an accessible location close to the amenities in Burgh le Marsh. Whilst this would contribute to addressing the Council's housing shortfall and the four additional dwellings proposed would be capable of remaining flood-free, they would still be located in an area at risk of flooding, which tempers the positive weight attaching to this benefit. Benefits arising in the delivery of the other 11 dwellings could be realised outside of the appeal scheme, given the existence of other planning permissions. In light of this, I afford limited weight overall to the provision of housing in this instance.
27. There would be some temporary economic activity generated by construction of the dwellings and subsequent engagement by residents with local businesses, though this would attract limited weight. There would also be a requirement to deliver mandatory 10% biodiversity net gain, which would be a benefit, but again one of limited weight given the modest overall scale of the development.
28. Importantly, Paragraph 11(d)(i) sets out that the presumption in favour does not apply where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Areas at risk of flooding are one such area or asset as made clear by Footnote 7. Given my findings above in relation to the failure to apply the sequential test in respect of the additional dwellings, there is conflict with the Framework policies relating to areas at risk of flooding. The benefits of housing and economic development, though supported by the Framework, would not outweigh the conflict with the approach of the Framework to flood risk. Therefore, I find that this represents a clear reason for refusing the development, and the presumption in favour of sustainable development under Paragraph 11 does not apply.
29. In the final planning balance, the proposal would conflict with the requirements of Policy SP18 in terms of the appropriateness of development within the coastal area, and by extension would conflict with the overall spatial strategy for the area as set out under Policies SP1 to SP4. This results in conflict with the development plan, taken as a whole. Even in the context of the Council's housing position, material considerations in the proposal's favour do not outweigh this conflict and do not indicate that permission should be forthcoming.

Conclusion

30. Therefore, I conclude that the appeal should be dismissed and planning permission refused.

K Savage

INSPECTOR



Costs Decision

Site visit made on 2 September 2025

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Costs application in relation to Appeal Ref: APP/D2510/W/25/3366428 Land off Skegness Road and Ingoldmells Road, Burgh le Marsh, Skegness PE24 5HD

- 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 Burgh Pastures Limited 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 planning permission for the erection of 15 no. dwellings and creation of vehicular accesses.
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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.
3. The applicant's case is that the Council failed to determine the application and delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and relevant material considerations. The Council has not responded to the costs application.
4. It will be seen from my main decision that I have determined that the proposal, having regard to the development plan and other material considerations, is not acceptable in planning terms. As such, it does not amount to a development that should clearly have been permitted, and in defending the appeal, the Council has not engaged in unreasonable behaviour on substantive grounds.
5. As to procedural matters, the PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
6. In this case, the evidence indicates that the applicant engaged in ongoing dialogue with the Council beyond the statutory determination period of the application. This was with a view to agreeing suitable amendments to the proposal to accord with relevant development plan policy, notably Policy SP18. That the applicant chose not to amend the proposal was a choice it made and the pursuit of an appeal against non-determination was the procedural option available.

7. Ultimately, there is little evidence to suggest the delay in determining the application was due to wilful inaction by the Council or a refusal to communicate with the applicant. Rather, email correspondence put to me indicates the applicant was aware of the Council's concerns during the application process. I find that the Council's behaviour in this respect was not unreasonable, given the duty on local planning authorities to work with applicants in a positive and proactive manner during applications. Furthermore, I have no firm evidence to suggest the Council has otherwise caused unnecessary delay in any procedural matter at the appeal stage.

Conclusion

8. For the reasons set out, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award of costs is made.

K. Savage

INSPECTOR

Richborough