



Appeal Decision

Site visit made on 10 March 2026.

by F P Tinsley MA (Hons) MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: 6001293

Whitehouse Lane, Boston, PE21 0BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Opal Homes Ltd against the decision of Boston Borough Council.
 - The application reference is Ref: B/24/0121
 - The development proposed is 'Proposed residential development for 102 new dwellings'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was refused for the proposed development on 8 May 2025 for a single reason, relating to the impact of the proposal on the character and appearance of the area. Following the submission of the appeal, the Council, in its Statement of Case, confirmed, having regard to an updated position concerning its inability to demonstrate a five-year supply of housing land, that it would not be reasonable to contest the appeal on the basis of this reason for refusal. This position was reported to and noted by the Council's Planning Committee at its meeting in January 2026. However, as this matter has been raised by Interested Parties, it is retained as a main issue in the determination of this appeal.
3. The appeal site is located within Flood Zone 3. Environment Agency data indicates that it is at tidal and fluvial risk, but with a very low risk of surface water flooding. Interested Parties have made submissions questioning the robustness of the submitted Flood Risk Assessment (FRA). All parties have been given the opportunity to respond to these comments. Whilst further submissions have been received from the appellant, including reference to updated Environment Agency flood mapping, no substantive response has been provided in relation to all concerns raised by Interested Parties.
4. Given the flood risk designation of the site, together with the outstanding concerns raised, I have therefore treated flood risk as a main issue in the determination of this appeal.
5. Submissions have also been received from Anglian Water regarding the capacity of the foul drainage network to accommodate the proposed development. In correspondence dated 19 January 2026, Anglian Water objected to any connection to the existing foul sewer, indicating that the additional flows arising from the development could contribute to an increased risk of flooding. I have had

regard to this submission in elevating flood risk to a main issue. However, I also note that the site is allocated for residential development and that sewerage undertakers are subject to a statutory duty under the Water Industry Act 1991 to provide, improve and extend public sewerage infrastructure. Whilst this duty does not guarantee that capacity currently exists, it provides a mechanism through which any identified deficiencies can be addressed. The matter of foul drainage is therefore not addressed as a main issue in this appeal.

6. The Council's Statement of Case indicated that a Section 106 agreement, addressing a commuted sum for affordable housing, was in the process of being prepared. A draft version of the agreement was appended, as the Council stated that it was awaiting further information from the appellant's solicitors.
7. Both the Council and the appellant have been contacted and requested to provide a copy of the completed and executed Section 106 agreement. However, this has not been submitted by either party.
8. This has implications for the delivery of the proposed development. There is no dispute that a Section 106 agreement addressing certain matters is necessary to make the development acceptable in planning terms.
9. For this reason, the issue of whether the proposed development would provide appropriate financial contributions towards affordable housing, healthcare, education and public open space is treated as a main issue in the determination of this appeal. These matters, initially identified as requiring financial contributions, were set out in the Section 106 Heads of Terms submitted with the planning application and the financial contribution specifically in relation to affordable housing, in the draft Section 106 agreement lodged with the Councils Statement of Case (SoC).

Main Issues

10. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on flood risk; and
 - whether the proposed development would provide a financial contribution in relation to affordable housing, healthcare, education and open space.

Reasons

Character and appearance

11. The appeal site is located on the edge of Boston within an allocated site for residential development, surrounded on three sides by predominantly housing development. The site is generally flat and includes electricity pylons, which are a notable feature. This area of Boston has experienced significant residential development in recent years. Surrounding properties are predominantly two storeys in height.
12. The proposal would deliver a substantial residential development of 102 dwellings on a site of approximately 3 hectares. This equates to around 33.8 dwellings per hectare, which is slightly higher than the notional density of 29.9 dwellings per

hectare set out in the Local Plan. However, the proposed density and layout are broadly consistent with surrounding development. I am therefore satisfied that, in terms of overall density, the proposal is acceptable in planning terms.

13. The proposed dwellings incorporate measures to address flood risk, primarily through the elevation of habitable areas. This results in development that appears marginally higher than traditional two-storey housing. However, I am satisfied that design features, including the use of dormers, varied roof forms, and articulation within the elevations, ensure that the increased height associated with raised finished floor levels would not result in development that is incongruous or out of keeping with the character and appearance of the area.
14. Whilst there is a degree of uniformity in the design approach to the dwellings, my attention has been drawn to Plots 93 and 94, which project forward of the prevailing building line along Whitehouse Lane at the primary vehicular access to the site. Although this results in Plot 94 being closer to dwellings on the western side of Whitehouse Lane than other proposed dwellings, I am satisfied that, given its prominent position at the gateway to the development, this design approach, which creates a more prominent building is acceptable.
15. For these reasons, I find that the proposed development would not harm the character and appearance of the area. Accordingly, it complies with Policies 2 and 3 of the South East Lincolnshire Local Plan 2019 (the Local Plan), which, amongst other things, seek to secure development of an appropriate size, scale, layout, density and quality of design, and to create distinctive places. I do not consider Policy 17, referred to in the Council's reason for refusal, which related to providing a mix of housing, to be relevant to this main issue.

Flood Risk

16. The planning application was supported by a Flood Risk Assessment (FRA). This did not include a sequential test or exception test as set out in Section 14 of the National Planning Policy Framework (the Framework). However, paragraph 180 of the Framework makes clear that, where development sites have been allocated through the development plan process following application of the sequential test, it is not necessary for applicants to apply the sequential test again at the decision-making stage. Based on the evidence before me, I am satisfied that the site was subject to the sequential test through the plan-making process, and therefore it is not necessary to reapply it in this instance.
17. Similarly, I have not been provided with compelling evidence to indicate that the exception test should be revisited at the application stage. This might be necessary where, for example, relevant aspects of the proposal were not considered at the plan-making stage, or where more recent evidence indicates a materially different flood risk position. No such evidence has been presented.
18. However, Interested Parties have raised concerns that the FRA does not adequately assess saturated ground conditions, off-site flood routing, or the behaviour of surface water within the site. No substantive justification has been provided to explain why such matters are not required to be assessed, nor has there been a detailed response addressing the concerns raised. Furthermore, I have not been provided with any comments from the Council in its capacity as Lead Local Flood Authority addressing these specific issues.

19. I have had regard to the submission provided by the Council, which includes correspondence with the Witham Fourth District Internal Drainage Board dated 17 March 2026, referring to consultation undertaken with the appellant in relation to drainage matters. Whilst this indicates that the Board raises no further objections subject to the imposition of conditions requiring detailed approval, it is not evident that the specific concerns raised by Interested Parties have been fully addressed through this process.
20. In this context, and based on the evidence before me, I cannot be satisfied that the proposed development would not give rise to unacceptable flood risk, either on-site or elsewhere resulting from the concerns raised by Interested Parties.
21. For the reasons set out above, it has not been demonstrated that the risk of flooding could be safely mitigated over the lifetime of the development, nor has it been demonstrated that it would not increase the risk of flooding elsewhere. This would be contrary to Policy 4 of the Local Plan and paragraphs 170 and 181 of the Framework which together, seek to ensure new development can be safely mitigated against flood risk and does not increase the risk of flooding elsewhere. I attach significant weight to this consideration.

Financial contributions

22. A Section 106 Heads of Terms document was submitted with the planning application. This indicated that the applicant initially intended to make contributions towards affordable housing, education, local NHS services, and public open space. During the course of the application, the development was subject to an independent viability assessment. This concluded that the scheme could only viably support a reduced Section 106 contribution of £131,000. As a result, the initial offer of 20% affordable housing provision was withdrawn, and no provision was made for contributions towards education or public open space.
23. The Council's committee report, presented at the meeting at which the application was determined, set out two options in relation to the allocation of the Section 106 contribution. The first option proposed that the overall sum be divided between healthcare services and affordable housing. The second option, which was recommended, was that the full £131,000 be directed towards affordable housing. The draft Section 106 agreement provided was prepared on the basis of this recommended approach.
24. Policy 6 of the Local Plan addresses developer contributions and requires developments of 11 or more dwellings to mitigate their impacts on infrastructure, services, and the environment to ensure that they are acceptable in planning terms. Reference is also made to Policy 18, which relates to affordable housing and sets out a requirement for developments of 10 or more dwellings to provide 20% affordable housing provision on site.
25. Notwithstanding the findings of the viability assessment, there remains a clear policy basis under Policy 18 which addresses affordable housing for developments of the scale proposed to contribute towards affordable housing. I am therefore satisfied that a financial contribution towards affordable housing is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind, thereby meeting the relevant statutory tests.

26. In the circumstances before me, the development, on viability grounds, would make an off-site financial contribution towards affordable housing. This is consistent with Policy 18, which allows for such a mechanism where it is demonstrated that on-site provision would be impractical to deliver.
27. However, despite indications from both the Council and the appellant that a completed and executed Section 106 agreement securing the affordable housing contribution would be provided, no such agreement has been submitted by either party. Consequently, there is no mechanism in place to secure the financial contribution towards affordable housing.
28. For this reason, the proposal conflicts with Policy 18, which requires the delivery of affordable housing, whether on-site or via a secured financial contribution, for developments of the scale proposed. Paragraph 66 of the Framework states that, where major housing development is proposed, planning decisions should expect the resulting mix of affordable housing to meet identified local needs. In this case, the absence of a completed and executed Section 106 agreement means I cannot be certain affordable housing will be secured. I attach significant weight to this conflict.

Other Considerations

29. The proposed development would not have an unacceptable impact on the living conditions of surrounding occupiers in terms of overlooking, overshadowing, or overbearing effects, including in relation to Plots 93 and 94, which project forward of the prevailing building line along Whitehouse Lane. This is primarily due to the separation distances being sufficient to prevent harm in these respects. Accordingly, this matter attracts neutral weight in the planning balance.
30. The proposal would deliver a 10% biodiversity net gain. However, this is a statutory requirement for development of this nature and is therefore afforded very limited weight.

Planning Balance and Conclusion

31. It is not disputed that the Council is currently unable to demonstrate a five-year housing land supply (5YHLS). The appellant refers to a 4.6-year supply, and this has not been challenged by the Council in its response to the Grounds of Appeal. I have therefore determined the appeal on the basis that the Council cannot demonstrate a five-year supply of deliverable housing sites, and that the level of shortfall is moderate.
32. Under paragraph 11(d)(ii) of the Framework, where a Council cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer), the presumption in favour of sustainable development is engaged. In this context, relevant policies for the supply of housing are out of date, and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
33. The moderate shortfall in the supply of deliverable housing sites, when taken together with the Government's objective of significantly boosting the supply of homes, weighs in favour of the proposal. Furthermore, the proposed development

would deliver a substantial number of dwellings (102 units). I therefore attach substantial weight to this benefit.

34. I have found that the proposal would not harm the character and appearance of the area. However, this is an outcome that would reasonably be expected of a development of this scale and nature, rather than a positive benefit weighing in favour of the scheme. Accordingly, I afford this matter very limited weight in the planning balance.
35. The proposal would deliver a 10% biodiversity net gain. However, as this is a statutory requirement for development of this nature, it is also therefore afforded very limited weight in the planning balance.
36. Given the concerns raised by Interested Parties regarding the robustness of the Flood Risk Assessment (FRA), and in the absence of a substantive response to those concerns, it has not been demonstrated that flood risk could be safely mitigated over the lifetime of the development, nor that the proposal would not increase the risk of flooding elsewhere. I attach substantial weight to this harm.
37. Furthermore, no mechanism has been secured to provide affordable housing, in the absence of a completed and executed Section 106 agreement. Given the scale of the development and the importance of affordable housing provision, I also attach significant weight to this harm.
38. Taken together, the potential adverse impacts of the development in terms of flood risk which have not been adequately addressed and the failure to provide a mechanism to deliver financial contributions towards affordable housing would significantly and demonstrably outweigh the benefits of delivering 102 homes in a manner which accords with the character and appearance of the area and delivers 10% biodiversity net gain.
39. For the reasons given above, the proposal would conflict with the development plan as a whole, and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

F P Tinsley

INSPECTOR