

**Guildhall Gainsborough
Lincolnshire DN21 2NA
Tel: 01427 676676 Fax: 01427 675170**

AGENDA

This meeting will be recorded and the video archive published on our website

Planning Committee

Wednesday, 12th June, 2024 at 6.30 pm

Council Chamber - The Guildhall, Marshall's Yard, Gainsborough, DN21 2NA

Members: Councillor Matthew Boles (Chairman)
Councillor Jim Snee (Vice-Chairman)
Councillor Emma Bailey
Councillor John Barrett
Councillor Karen Carless
Councillor David Dobbie
Councillor Ian Fleetwood
Councillor Sabastian Hague
Councillor Peter Morris
Councillor Tom Smith

1. **Apologies for Absence**
2. **Public Participation Period**
Up to 15 minutes are allowed for public participation. Participants are restricted to 3 minutes each.
3. **To Approve the Minutes of the Previous Meeting** (PAGES 3 - 6)
 - i) **Meeting of the Planning Committee held on 22 May 2024, previously circulated.**
4. **Declarations of Interest**
Members may make any declarations of interest at this point but may also make them at any time during the course of the meeting.

5. **Planning Applications for Determination**

- a) 147639 - Land off Northumberland Avenue & (PAGES 7 - 26)
Westmoreland Avenue, Scampton

6. **Determination of Appeals**

(PAGES 27 - 39)

Ian Knowles
Head of Paid Service
The Guildhall
Gainsborough

Tuesday, 4 June 2024

Planning Committee- 22 May 2024
Subject to Call-in. Call-in will expire at 5pm on

WEST LINDSEY DISTRICT COUNCIL

MINUTES of the Meeting of the Planning Committee held in the Council Chamber - The Guildhall, Marshall's Yard, Gainsborough, DN21 2NA on 22 May 2024 commencing at 6.30 pm.

Present:

- Councillor Jim Snee (Chairman)
- Councillor Emma Bailey
- Councillor John Barrett
- Councillor Karen Carless
- Councillor David Dobbie
- Councillor Ian Fleetwood
- Councillor Peter Morris
- Councillor Tom Smith
- Councillor Stephen Bunney

In Attendance:

- Russell Clarkson Development Management Team Manager
- Daniel Galpin Senior Development Management Officer
- Danielle Peck Senior Development Management Officer
- Martha Rees Legal Advisor
- Maisie McInnes Democratic and Civic Officer

Apologies:

- Councillor Matthew Boles
- Councillor Sabastian Hague

112 PUBLIC PARTICIPATION PERIOD

There were no public speakers.

113 TO APPROVE THE MINUTES OF THE PREVIOUS MEETING

RESOLVED that the minutes of the Planning Committee meeting held on Wednesday, 24 April 2024, be confirmed and signed as an accurate record.

114 DECLARATIONS OF INTEREST

Councillor Dobbie declared a personal interest in application 148059.

115 UPDATE ON GOVERNMENT/LOCAL CHANGES IN PLANNING POLICY

Members heard that the scope for agricultural buildings to be converted to residential development, without requiring planning permission ('class Q' developments) was expanded on 21 May 2024. This specified that agricultural buildings could now be converted up to 10 dwellings (previously 5) up to 1000sqm total and have a single storey rear extension (up to 4m). However, the Government has abandoned plans to allow this within protected areas

such as the Lincolnshire Wolds AONB.

115a 147639 - LAND OFF NORTHUMBERLAND AVENUE & WESTMORELAND AVENUE, SCAMPTON

The Chairman introduced application 147639, to erect 9 dwellings with access to be considered and reserved for subsequent applications, on the land off Northumberland Avenue and Westmoreland Avenue, Scampton. The Planning Officer delivered his presentation and outlined the application for 9 dwellings and displayed the indicative location plan with the layout of housing and displayed photographs of the site.

The Chairman thanked the Planning Officer and advised the Committee there were three registered speakers.

Councillor Chris Bulteel, Scampton Parish Council, objected to the development on the site as the site would be uncoordinated with the existing housing stock, and the proposed site was a current green space for recreational activity. He emphasised the poor condition of the roads and explained there was insufficient infrastructure and access would be via unadopted roads to a single access support. He felt that with the closure of RAF Scampton, there was enough housing supply with vacant military housing coming back into use. He concluded that the Parish Council would have more consideration for the development if the road infrastructure was in place and if there were local amenities in place for residents.

Jadie Jackson spoke on behalf of local residents and explained there had been 46 objections received from residents at RAF Scampton. There were objections due to concerns with congestion on the A15, the limited parking on the site and maintenance of the roads which were already in poor condition with potholes. It was felt that with the additional properties and construction traffic that the roads would fall into further disrepair. There were objections relating to the lack of local amenities, with the school and medical practice both oversubscribed, and 3 miles away from the site and inaccessible without a vehicle. There were concerns regarding drainage and the potential for flooding. Finally, there were objections on nature grounds as there were bats, badgers and red kites on the site and the development would destroy their habitat.

Councillor Roger Patterson, ward member for Scampton, echoed points raised by the previous speakers and explained his reason for objecting was on the grounds that further housing was not required in Scampton. There were no proposals for management companies to be joined up and contribute to the maintenance of facilities or roads. It was difficult for residents to access medical facilities and other amenities and further pressure would be added with the 63 refurbished houses that were being brought back into use from the military.

The Case Officer responded to points raised by the speakers and explained in principle matters, Policy S4 stated that the development met the definition for suitable housing up to 10 dwellings. The grassland did not have any statutory designation for heritage and the development proposed 11% biodiversity net gain and an ecological survey had taken place and conditions would be in place for protected species. In terms of housing mix, the layout and design at the present was indicative and the developer would provide further detail at a later stage. The highway authority had not raised any concerns or objected to the proposed development.

Members discussed the application and raised the following points through the debate:

- Members discussed the impact of traffic, the condition of the roads and asked if the roads had been adopted by Highways. There were concerns regarding road maintenance and pot holes, and the use of construction traffic causing further damage.
- Members questioned whether the existing housing that had been recently refurbished had been taken into account when applying the planning policy.
- Concerns were raised regarding local amenities, infrastructure, and the drainage system. Members urged that adequate drainage would be in place and that planning would work closely with Anglian Water.
- In terms of trees and biodiversity, members expressed concerns regarding the replanting of existing trees and wildlife such as red kites on the site.

The Case Officer responded that the roads off the A15 were not adopted, and Highways had been consulted and expressed no concerns relating to the access. There would be marginal construction traffic movements for the building of the 9 dwellings. The existing settlement had been taken into account as defined in Policy S1. The applicant had provided an ecological assessment which encompassed wild birds as a legally protected species, it was a criminal offence to harm habitats and conditions would be in place to ensure this. It was found that the only nest found on site was a pigeon's nest, and the ecologist did not find any red kites on site.

Members received legal advice that the determination site for the application was tomorrow which would mean members could lose the ability to determine the application if an extension was not granted. Members were reminded that legislation was in place for managing the protection of wildlife, and it would be a criminal offence for any destruction or clearing during nesting season.

Members asked if the planning team could avoid where possible bringing applications to Committee a day before their determination deadline. The Development Management Team Manager explained that it was difficult to determine an application such as this within an 8-week period, and the applicant had a right to non-determination, but the appeal process would take considerably longer.

A Member of the Committee proposed a site visit, in order to view where the development would take place and understand the impact on the local area. This was seconded and upon the vote it was

RESOLVED that the application be deferred for a site visit to be held, to afford Members a greater understanding of the potential development site and the impact on the local area.

115b 148059 - 16 SILVER STREET, GAINSBOROUGH

The Committee considered the application seeking planning permission for the conversion of the three floors of 16 Silver Street into three flats. Members heard a presentation from the Case Officer and viewed the existing floorplans of the site.

Planning Committee- 22 May 2024
Subject to Call-in. Call-in will expire at 5pm on

Members praised the regeneration work and felt it was great to see buildings being brought back into use in the town centre. Members asked if there were any parking spaces with the application and it was confirmed by the Case Officer that there would be two parking spaces allocated.

On taking the vote, it was agreed that planning permission be **GRANTED** subject to conditions set out in the Case Officer's report.

116 DETERMINATION OF APPEALS

With no comments, questions or requirement for a vote, the determination of appeals was **NOTED**.

The meeting concluded at 19:39

Chairman

new driveways created off existing residential road, with garages set back from the houses to provide parking for up to 3 cars

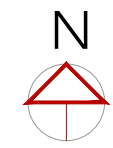
existing bank of trees retained

area of enhanced grassland separated from housing plots with timber paddock fence and hedgerows

new trees and hedgerow provided to reinforce the boundary conditions

private driveway with new hedgerow along boundary

maintaining the grass verge whilst ensuring any new access point is a minimum of 2x the radius of the junction away



DRAWING:
Indicative Site Plan

PROJECT:
proposed residential scheme

LOCATION:
land off Northumberland Avenue PL-002
Scampton,

SCALE:
1:500 @ A3

DRAWN:
nov 2023

0115 8700434
studio@redskyarchitects.com

red sky architects
Print Date: 7 May 2024, 5:10 PM

Officers Report

Planning Application No: 147639

PROPOSAL: Outline planning application to erect 9no. dwellings with access to be considered and not reserved for subsequent applications.

LOCATION: Land off Northumberland Avenue & Westmoreland Avenue
Scampton Lincoln LN1 2UQ

WARD: Scampton

WARD MEMBER(S): Cllr R Patterson

APPLICANT NAME: Mr Edward Key

TARGET DECISION DATE: 19/01/2024 (EoT until May 23rd 2024)

DEVELOPMENT TYPE: Minor - Dwellings

CASE OFFICER: Dan Galpin/Ian Elliott

RECOMMENDED DECISION: Grant subject to conditions

Planning Committee:

This application was presented to the Planning Committee on 22nd May 2024. The planning committee resolved to undertake a member site visit to look at the impact of the development on local area. The members site visit took place on 31st May 2024 at 2pm.

Description: The application area is located at the western edge of Scampton (RAF) to the north of Lincoln and the A15 lies to the east. Directly to the north-west is the former RAF Scampton airbase. The application site is also located within a Limestone Mineral Safeguarding Area and is situated within Flood Zone 1 (low probability).

The site is 0.4-hectare area of modified grassland at the junction of Northumberland Avenue and Westmoreland Avenue with a belt of mature trees to the west of the site with some younger trees lining the north of the site. There is a group of garages to the immediate north of the site with residential dwellings to the north-east, east, and south-east of the site.

Outline planning permission is being sought for the erection of nine dwellings with access to be considered as part of this application. Matters of layout, scale, appearance, and landscaping are reserved for subsequent approval ("reserved matters"). The indicative site plan avoids the use of a singular site access instead utilising a number of individual accesses onto the road. This is likely in part a design feature due to the uniformity of the appearance of the residential dwellings in Scampton that exhibit a clear lack of a deep frontage where dwellings are set back from the road.

Relevant history:

None.

Representations:

The summary below represents a summary of any representations received. Full responses can be found on the Council website. A full assessment of the relevant material planning considerations are outlined within this report.

Chairman/Ward Member(s)

No representations received to date.

Scampton Parish Council

Objection – The proposed development is at odds with the WLDC plan to treat the site as a whole and not allow fragmented, disjointed and uncoordinated development. The proposed development is at odds with the WLDC sponsored study, undertaken by OpenPlan, which placed preservation of the existing green spaces at the core of its recommendations.

As yet, the exact nature and design of the houses has not been submitted; however, given the size of the site it is expected that the design of the proposed houses would not support mixed housing style development. The proposal also represents over development of a small area without consideration for the current residents and involves the removal of a number of well-established trees.

There is insufficient infrastructure, including access roads, on the Scampton estate to support existing accommodation. Access to the proposed development would have to be via management company owned roads. There is a single point of entry to the estate which unable to support the existing levels of traffic. Policy S75, Para D of the CLLP states that an adequate amount and range of infrastructure to support the community on the site to be delivered in tandem or ahead of development.

Local Residents

Representations have been received to the proposed development that raise the following points in summary:

- There is not a 'need' for more housing;
- Impact on character and appearance of the area;
- Drainage, flood risk and sewer capacity;
- A number of houses are currently unoccupied and that were previously occupied by RAF personnel – a new access to the A1500 is needed (more than 60 refurbished houses for sale). There is already enough housing;
- Concerns regarding highway safety in terms of access to and from the A15. Increased pressure due to an increase in the number of private cars especially at peak times. Potential for an increase in accidents;
- Lack of parking;
- A lack of infrastructure to support the development;

- Loss of green space; and
- A number of trees would need to be cut down. Concern about the impact wildlife; and
- Overdevelopment of the site.

LCC Archaeology

No reply received to date.

LCC Highways/Lead Local Flood Authority

No objection – *‘No objection in principle. The access to the proposal is via frontage access from Northumberland Avenue and Westmoreland Avenue which are private roads located within RAF Scampton. It's noted that most houses in the area do not have individual vehicle access points however this would not be detrimental to highway safety in the area and will not exacerbate on street parking issues.*

The Highways and Lead Local Flood Authority response is in relation to the impact the proposed development would be expected to have on the operation of the Public Highway. Northumberland Avenue and Westmoreland Avenue are private roads, and the highway authority has no jurisdiction over the use of these roads. The proposal is for 9 houses and will not have an unacceptable impact on access to the adoptable highway (A15) It is for the Local Planning Authority to determine whether the access provided by the private road is safe and suitable for all users.’

One informative was included stating that the layout has yet to be considered and that requirements for parking, visibility, turning and layout are all detailed within the Lincolnshire County Council Design Approach.

LCC Minerals & Waste

No reply received to date.

WLDC Tree Officer

No objection (verbal) – It was agreed with the Tree Officer that the trees which were likely to be lost as a result of the proposed development are not mature trees and do not have a high amenity value.

WLDC Strategic Housing

Comments – *‘This application does not trigger an affordable housing obligation in accordance with Policy S22 of the Central Lincolnshire Local Plan, as both the total number of dwellings and the site area are below the required thresholds.’*

Lincolnshire Wildlife Trust

No reply received to date.

ECM Checked: 3rd May 2024

Relevant Planning Policies:

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Here, the Development Plan comprises the provisions of the Central Lincolnshire Local Plan (CLLP) (adopted in April 2023); and the Lincolnshire Minerals and Waste Local Plan (adopted June 2016).

Development Plan

- **Central Lincolnshire Local Plan (Adopted April 2023)**

Relevant policies of the CLLP include:

Policy S1: The Spatial Strategy and Settlement Hierarchy
Policy S2: Growth Levels and Distribution
Policy S4: Housing Development in or Adjacent to Villages
Policy S6: Design Principles for Efficient Buildings
Policy S7: Reducing Energy Consumption – Residential Development
Policy S14: Renewable Energy
Policy NS18: Electric Vehicle Charging
Policy S20: Resilient and Adaptable Design
Policy S21: Flood Risk and Water Resources
Policy S45: Strategic Infrastructure Requirements
Policy S47: Accessibility and Transport
Policy S49: Parking Provision
Policy S53: Design and Amenity
Policy S56: Contamination
Policy S60: Protecting Biodiversity and Geodiversity
Policy S61: Biodiversity Opportunity and Delivering Measurable Net Gains
Policy S66: Trees, Woodland, and Hedgerows
Policy S75: RAF Scampton

- **Lincolnshire Minerals and Waste Local Plan (LMWLP) (Adopted June 2016)**

The site is in a Limestone Minerals Safeguarding Area and Policy M11 of the Core Strategy applies

- **Scampton Neighbourhood Plan**

The ‘Scampton Neighbourhood Area’ was designated on 19th May 2022. However, no Draft Neighbourhood Plan has been published at the time of this report being written. As such, there are no policies to consider and no weight

can be afforded to the neighbourhood designation.

National Policy & Guidance (Material Consideration)

- **National Planning Policy Framework (NPPF)**
- **National Planning Practice Guidance**
- **National Design Guide (2019)**
- **National Model Design Code (2021)**

Main issues

- Principle of Development
- Visual Amenity
- Residential Amenity
- Highways
- Ecology & Biodiversity
- Climate Change
- Flood Risk
- Other Matters

Assessment:

Principle of Development

Policy S1 of the CLLP sets out a spatial strategy and settlement hierarchy that is focused on delivering development that supports growth and jobs alongside providing all necessary infrastructure. The settlement hierarchy aims to steer development towards the largest urban areas within Central Lincolnshire with proportionate growth elsewhere. 'Scampton (RAF)' is designated as a 'Medium Village' which sits within Tier 5 of Policy S1. A Medium Village is defined as a settlement that had between 250 and 749 dwellings as of April 1st 2018. Beyond any site allocations for residential development, housing development will be based on the criteria in Policy S4 which relates to housing development in and adjacent to villages.

Throughout the CLLP, the terms *developed footprint* and *appropriate locations* are utilised. The aim of these definitions is to ensure that new development is situated within appropriate locations within the developed footprint of a settlement (unless specified within a particular policy). Any development that does not meet these definitions would be considered as development within the countryside. The developed footprint of a settlement is defined as a continuous built up area of a settlement and excludes the following:

- *individual buildings or groups of dispersed buildings which are clearly detached from the continuous built up area of the settlement;*
- *gardens, paddocks and other undeveloped land within the curtilage of buildings on the edge of the settlement where land relates more to the surrounding countryside than to the built-up area of the settlement;*

- *agricultural buildings and associated land on the edge of the settlement; and*
- *outdoor sports and recreation facilities and other formal open spaces on the edge of the settlement.*

The site is currently undeveloped but contains a combination of mature trees and several younger trees at the northern edge of the site. The rest of the site is comprised entirely of modified grassland. However, the site does not have any statutory or non-statutory designations with respect to green space and does not form part of any formal recreational facilities. Therefore, the main consideration is whether this undeveloped land relates more to the settlement of RAF Scampton or the open countryside.

The site is constrained by residential development on three sides (north, east and south) with garages being located to the north and residential dwellings being situated to the north-east, east and south-east. The former military base is located to the west of the site. The amount of development that is directly adjacent to the site in combination with the presence of modified grassland results in the site having a reduced verdant feeling and the surrounding development creates an increased urban character, much the same as being in a public park. The site can also be considered as an infill plot as the CLLP definition of infill is the development of a site between existing buildings. For these reasons, it is considered that the site falls within the developed footprint as the land relates more to the continuous built-form of RAF Scampton than the surrounding countryside.

To accord with Policy S4, a site also has to be situated within an appropriate location within the developed footprint. To classify as being an appropriate location, a site and any development proposal should comply with the following criteria:

Appropriate locations means a location which does not conflict, when taken as a whole, with national policy or policies in this Local Plan. In addition, to qualify as an ‘appropriate location’, the site, if developed, would:

- *retain the core shape and form of the settlement;*
- *not significantly harm the settlement’s character and appearance; and*
- *not significantly harm the character and appearance of the surrounding countryside or the rural setting of the settlement.*

It is considered that the proposed development would retain the core shape and form of the settlement. Despite being located on the south/western side of Northumberland and Westmoreland Avenue, the site in principle would relate well to its surroundings and would not project beyond the westernmost extent of the dwellings that front onto Westmoreland Avenue to the south. The broad shape of the southern portion of the settlement would also be preserved. This can be illustrated as follows:



Figure 1: Existing built-form of Scampton (RAF)

The existing built footprint of Scampton (RAF) in terms of the south-western extent is illustrated in *figure 1* above with the application site inside the red line. The western extent of the proposed development would not extend beyond the junction of Westmoreland Avenue and Sussex Gardens further to the south. Assessing the spatial context outlined above, it is considered that the core shape and form of the settlement would not be unacceptably altered or harmed.

Although no details of the layout, scale and appearance of the proposed development have been provided, an indicative layout has been submitted and it is considered that this indicative layout demonstrates that in principle, the proposed development would not be expected to result in unacceptable harm to the character and appearance of the settlement or the wider landscape character and the open countryside. It is therefore considered that the proposed development would comply with the requirements of Policies S4 of the CLLP.

Furthermore, the comments from Scampton Parish Council regarding the housing mix of the proposed development are noted. However, the layout at this stage is only indicative and therefore can only be afforded very limited, if any weight in the planning balance. It is considered that the site can accommodate nine dwellings in principle. The indicative layout suggests a housing mix of six semi-detached dwellings and three detached dwellings. In principle, this is considered to be an acceptable mix for a development of this

scale and indicative layout would in principle be in keeping with the prevailing character and built-form of the area, subject to satisfactory details at the Reserved Matters stage.

It is noted that there is a development less than 200 metres to the south-west (147198) which was refused planning permission, on multiple grounds. Whilst every application is determined on its own merits as a matter of planning judgement, the close proximity of the two developments has been noted in some of the submitted representations. This should not be interpreted as a full reassessment of that proposal as this is detailed within the Officer Report for that decision.

However, to summarise, the development not only exceeded the upper limit of 10 dwellings for unallocated sites but it was not considered to fall within the development footprint and was not considered to be an appropriate location. Despite the close proximity of the two sites, this site is located at the far south-west of the settlement on what is currently neutral grassland. There are also arable fields which are unequivocally open countryside to the south and west of the site. There are only residential dwellings directly to the east of the site. The site if developed was also considered to be unacceptably harmful to the core shape and form of the settlement and the character and appearance of the area. The layout of this development would have significantly altered the core shape and form of the settlement as shown in *figure 1*. There were also substantial concerns with regard to design, energy efficiency, biodiversity and mineral safeguarding which are not relevant to this current application.

For all the reasons explained in this section of the report, it is considered that the proposed development would accord with Policies S1 and S4 of the CLLP and is therefore considered acceptable in principle.

Access

Development proposals which contribute towards an efficient and safe transport network that offers a range of transport choices for the movement of people and goods will be supported. All developments should demonstrate, where appropriate, that they have had regard to the following criteria:

- a) Located where travel can be minimised and the use of sustainable transport modes maximised;*
- b) Minimise additional travel demand through the use of measures such as travel planning, safe and convenient public transport, car clubs, walking and cycling links and integration with existing infrastructure;*
- c) Making allowance for low and ultra-low emission vehicle refuelling infrastructure.*

This is also reiterated by paragraph 115 of the Framework which makes it clear that development proposals should achieve safe and suitable access for all users. The proposed development constitutes minor development and would utilise the same network as other traffic. There would be dedicated off-street parking, a small new section of footway and verges. There would be a

'staggered access' with each dwelling having an individual access connected to either Northumberland Avenue or Westmoreland Avenue. This has been considered to be acceptable by the Local Highway Authority who did not raise an objection to the proposed development.

It is therefore considered that the proposal is in accordance with Policy S47 of the CLLP and the paragraph 115 of the NPPF.

Visual Amenity

Policy S53 of the CLLP requires that all development proposals must take into consideration the character and local distinctiveness of the area (and enhance or reinforce it, as appropriate) and create a sense of place which demonstrates a sound understanding on their context. As such, and where applicable, proposals will be required to demonstrate, to a degree proportionate to the proposal, that they are well designed in relation to siting, height, scale, massing, and form. Important views into, out of and through a site should also be safeguarded.

The proposed development is an outline application with all matters reserved except for access. Matters of scale, appearance, layout and landscaping will all be subject to Reserved Matters approval in a subsequent application in the event that this recommendation is accepted. However, it is considered that the assessment above satisfactorily demonstrates that the siting of nine dwelling in this location, in principle would not result in an unacceptable impact on the character and appearance of the area and would preserve the core shape and form of the settlement.

An indicative layout has been provided which illustrates that eight of the nine dwellings would directly front onto Northumberland and Westmoreland Avenue with a ninth dwelling situated to the rear. Whilst this may deviate from the prominent build-form of the existing dwellings, this harm would be likely to be considered to be very modest. The overriding character of the proposed development, subject to appropriate details could be developed in principle in a manner that respect the existing design pastiche and based on a sound understanding of the local context. This plan is also only indicative at this stage so would be subject to a full robust assessment should a Reserved Matters application be submitted.

It is noted that the proposed development would result in a loss of some greenspace but the main groups of the most mature trees would be entirely preserved and the space identified within the submitted representations is not subject to any statutory/non-statutory green space or landscape designations.

For the reasons explained above, it is considered that the proposed development would, subject to final approval of the outstanding reserved matters, be expected to be in accordance with Policy S53 of the CLLP and Section 12 of the NPPF.

Residential Amenity

Policy S53 of the CLLP requires that development proposals do not have an unacceptable impact on residential amenity. This includes considerations such as compatibility with neighbouring land uses, noise, vibration, odour, and the creation of safe environments amongst other things. Furthermore, paragraph 135 f) of the NPPF requires that development proposals provide a high standard of residential amenity for both existing and future users.

The overall density of the site is relatively low at approximately 20 dwellings per hectare (DPH). The overall scale of the site is 0.44 hectares in size and it is considered that the site can comfortably accommodate nine dwellings from the perspective of ensuring a high standard of residential amenity for any future users in principle. This would be subject to an acceptable layout and scale of development at the Reserved Matters stage. The indicative site plan provided suggests that there would be a separation distance between the new and existing residential dwellings of approximately 20 metres which is considered to be an acceptable spatial relationship which would not constitute either an overdevelopment of the site nor would it unacceptably harm the residential amenity of existing or future users of the immediate locality.

Some existing dwellings would inevitably experience a loss of existing views, but this in itself is not a material planning consideration. In addition, some of the representations received have raised the prospect of a loss of green space. Whilst the proposed development would see the introduction of nine dwellings on an undeveloped site, there are no statutory or non-statutory designations that relate to green space and as such the loss of this green space in isolation cannot be afforded any weight in the planning balance.

As such, it is considered that the proposed development would accord with Policy S53 of the CLLP and paragraph 135 f) of the NPPF.

Highways

Policies S47, S48 and S49 collectively require that development proposals do not have an unacceptable impact on highway safety or a severe cumulative impact on the wider highway network. Policy S48 requires that development proposals should facilitate active travel. It also requires that first priority should be given to pedestrians, cyclists, and people with impaired mobility. Policy S49 of the CLLP sets out minimum parking standards that are required for residential and non-residential development within Central Lincolnshire.

Paragraph 96 of the NPPF supports development proposals that allow for the creation of healthy and safe places. This is reinforced by paragraph 114 of the NPPF which requires that development proposals provide safe and suitable access to all users. Paragraph 115 of the NPPF in turn states that development proposals can only be refused on highways grounds where there is an unacceptable impact on highway safety, or the wider cumulative impact would be severe.

No objection has been received from the Local Highway Authority in principle to the proposed access. However, a more detailed assessment will be required at the Reserved Matters stage due to the layout only being indicative at this point and their being multiple accesses proposed. Careful consideration will need to be given to parking, visibility, turning and layout but the principle at this stage is not considered to be harmful to highway safety.

No objection has been raised with regards to the cumulative impact of the proposed development. A number of representations have raised concern about access onto the A15 which has been noted by residents as being unsafe/congested. However, the Local Highway Authority have explicitly stated that the proposal would not have an unacceptable cumulative impact on the A15. The scale of the proposed development is very small compared to the overall size of the village and the development of nine residential dwellings on an unallocated site is consistent with Policy S4 of the CLLP and is therefore considered to be a proportionate addition within this location. Matters relating to public transport and wider strategic connectivity are not considered to be directly related to this application (especially given the rural location) beyond what has been discussed within this report.

In respect of the above, it is considered that the proposed development would accord with Policies S47 CLLP and paragraphs 96, 114 and 115 of the NPPF.

Ecology & Biodiversity

Policies S60 and S61 of the CLLP requires that development proposals do not have an unacceptable impact on ecology or biodiversity and should take opportunities to provide a net gain in biodiversity wherever possible. These requirements are also contained within paragraph 180 of the NPPF. Paragraph 186 states further where there is significant harm to biodiversity, planning permission should be refused.

The main considerations in this section of the report are ensuring that the proposed development does not have an unacceptable impact on biodiversity (including protected species) and ensuring that the proposed development achieves a net gain in biodiversity.

An Ecological Impact Assessment has been submitted alongside the proposed development. The submitted assessment outlines that there are no relevant statutory or non-statutory ecological designations within two kilometres of the site and no ancient woodland within one kilometre of the site. The main non-priority habitats that were observed in the assessment were modified grassland and trees (both individual and groups of trees). No invasive species were recorded. Following informal discussions with the Tree Officer and reviewing the submitted information, the trees that are likely to be removed are at best semi-mature specimens and there is no evidence that any Category A or B trees will be lost as part of the development. Therefore the proposed development would be expected to accord with Policy S66 of the CLLP.

In terms of protected species, recommendations have been made with regard to nesting birds' terrestrial mammals (including hedgehogs and other mammals) during the construction phase. The recommendations of the Ecological Impact Assessment will be conditioned and the recommendations with respect to nesting birds will be subject to an additional explicit condition due to the seasonality of the bird nesting season and high likelihood for unacceptable impacts if site clearance is undertaken without the appropriate clearance from a suitably qualified professional.

The assessment concluded that the site had a generally low potential for roosting bats. However, two of the trees which would be removed as part of the proposed development were observed to contain evidence of roost activity. Therefore, additional pre-construction ecological surveys have been recommended. Planning Practice Guidance generally recommends against conditioning ecological surveys unless there are exceptional circumstances for doing so. The most relevant excerpt is as follows:

In exceptional cases, you may need to attach a planning condition for additional surveys. For instance, to support detailed mitigation proposals or if there will be a delay between granting planning permission and the start of development. In these cases, a planning condition should be used to provide additional or updated ecological surveys to make sure that the mitigation is still appropriate. This is important for outline applications or multi-phased developments.

Due to the specific wording of the recommendation relating to bat roosts, it is considered to be preferable to condition that a pre-construction bat survey is submitted to and agreed in writing with the Local Planning Authority. In the event that planning permission is granted, Section 91(1) of the Town and Country Planning Act 1990 does not require for development to commence for a period of three years after the date of the decision. Therefore, requiring a pre-construction survey prior to determination or even prior to commencement is considered to defeat the principle of this recommendation. An appropriately worded condition will be attached to this decision requiring the submission of a pre-construction of bat survey and inspection of all trees that could be impacted by the development. Requiring both tree inspections and surveys would ensure full regard is given to Policy S60 alongside the provisions of the Wildlife and Countryside Act 1981 and would mitigate against any delay between permission being granted and the start of construction where there would be a high likelihood of any current surveys being out of date is very high.

Biodiversity Net Gain

Policy S61 of the CLLP requires that all qualifying development should provide a 10% net gain in biodiversity with a presumption in favour of net gains that are provided on site with an increasing presumption against off-site net gain, depending on the proximity of the off-site planting to the site.

The proposed development initially proposed a 10% net gain but this was primarily achieved off-site utilising a small field a few hundred metres to the north of the site adjacent to Suffolk Road, Devonshire Road, and Shropshire Road. This was considered to be contrary to the mitigation hierarchy which outlines that there is a presumption in favour of on-site net gains with off-site only being considered in circumstances where net gains on-site are considered by the Local Planning Authority to be not viable.

Since the original submission of information, there have been ongoing discussions between the Local Planning Authority and the applicant to attempt to achieve a higher net gain proportion on-site. The applicant has since revised the indicative layout twice and increased the proposed on-site net gains including enhancing the condition of trees on-site which has yielded an on-site net gain of 11.82%. The metric has indicated that the condition of the trees would require more than the standard 30-year period of management as indicated within the metric. Whilst this will be more difficult to achieve, the trading rules within the metric have been met and the metric has been completed by a suitably qualified professional with the Ecological Impact Assessment (EclA) being updated to reflect this change.

A pre-commencement condition will be imposed requiring the submission of a Biodiversity and Landscape Management Plan to be submitted to and agreed in writing with the Local Planning Authorities so the exact details of the net gains can be secured. The wording of this condition will include a requirement for details beyond the standard 30-year period as the submitted metric has indicated that a longer period of mitigation would be required in order to achieve this targeted condition.

Subject to the imposition of the conditions outlined in this section, it is therefore considered that the proposed development is in accordance with S60, S61 and S66 of the CLLP and paragraph 180 of the NPPF.

Climate Change

Policy S6 sets out the overarching principles that relate to design of energy efficient buildings. In turn, Policy S7 outlines a specific requirement for all new residential development to be accompanied by an Energy Statement. This sets out two criteria which require that new residential development provides at least the same amount of on-site renewable energy as the dwelling consumes. The second criteria states that no single dwelling should exceed a total energy demand of 60 kWh/m²/yr with a site average of 35 kWh/m²/yr.

This application is seeking outline planning permission with all matters reserved with the exception of access. Therefore, no detailed design proposals with the exception of an indicative layout have been submitted at this stage and as such it is not possible to request an Energy Statement at this stage. A standard condition will be attached to this permission requiring that an Energy Statement is submitted alongside any subsequent Reserved Matters application alongside two further conditions to ensure compliance with any approved details.

Flood Risk

Policy S21 of the CLLP requires that development proposals do not have an unacceptable impact on flood risk and implement appropriate mitigation (such as the use of SuDS) wherever possible. Paragraphs 165 and 173 of the NPPF respectively require that development should be diverted away from areas at the highest risk of flooding and that all development proposals should not increase the risk of flooding elsewhere.

The proposed development is located within Flood Zone 1 which is at the lowest risk of flooding. An initial drainage strategy has been provided by the applicant which outlines that the method of surface water drainage will be via infiltration into the ground which is sequentially preferable. The indicative location of soakaways has been provided alongside a proposed mechanism for the disposal of foul sewage. A private system would be created which would connect to a public sewer owned/operated by Anglian Water.

It is considered that this indicative drainage strategy is principally acceptable and the number of dwellings proposed would not be expected to be a risk to the wider strategic drainage network. Furthermore, the agreement of the final connection is outside the statutory remit of the Town and Country Planning Act 1990 and is instead controlled via Section 104 of the Water Industry Act 1991. This would require the applicant to agree a connection with Anglian Water regardless of any conditions that are attached to this permission.

At this stage, the level of detail is considered to be acceptable but does not include information such as percolation tests and the overall site layout remains indicative.

Therefore, the proposed development is considered to accord with Policy S21 of the CLLP and paragraphs 165 and 173 of the NPPF subject to the imposition of one pre-commencement condition requiring the submission of a scheme of foul sewage and surface water drainage.

Other Matters:

Contamination

The site is known to have a potential for contamination, although the exact risk of contamination is unknown. Although it is not considered necessary to secure mitigation details prior to determination, it is considered necessary to impose standard conditions requiring the submission of a risk assessment, verification report and mitigation/remediation strategy. A condition will also be imposed relating to unidentified contamination. Subject to these conditions, it is considered that the proposed development would accord with Policy S56 of the CLLP and paragraphs 189 and 190 of the NPPF.

Mineral Safeguarding

Policy M11 of the LMWLP requires that development proposals do not result in the unnecessary sterilisation of the potential minerals reserves. Paragraph 217 of the NPPF requires that planning decisions should give great weight to the benefits of mineral extraction, including to the economy. Paragraph 218 states that development should not normally be permitted in Minerals Safeguarding Area if it might constrain future minerals development. Policy M11 of the LMWLP is consistent with the requirements of Section 17 of the NPPF and is therefore afforded full weight.

The proposed development is located in an area of land which is very close to existing development including residential dwellings and it is therefore considered that it is highly unlikely that any mineral present could be realistically worked. The development would also only sterilise a negligible amount of potential mineral resource in any event and no objection has been received from the Mineral Planning Authority at Lincolnshire County Council. It is therefore considered that the proposed development is in accordance with Policy M11 of the LMWLP and Section 17 of the NPPF.

Conclusion:

The proposal has been considered in light of relevant development plan policies namely S1: The Spatial Strategy and Settlement Hierarchy, S2: Level and Distribution of Growth, S4: Housing Development in or Adjacent to Villages, S6: Design Principles for Efficient Buildings, S7: Reducing Energy Consumption – Residential Development, S14: Renewable Energy, NS18: Electric Vehicle Charging, S20: Resilient and Adaptable Design, S21: Flood Risk and Water Resources, S45: Strategic Infrastructure Requirements, S47: Accessibility and Transport, S49: Parking Provision, S53: Design and Amenity, S56: Contamination, S60: Protecting Biodiversity and Geodiversity, S61: Biodiversity Opportunity and Delivering Measurable Net Gains, S66: Trees, Hedgerows and Woodland and Policy S75: RAF Scampton of the Central Lincolnshire Local Plan. Relevant policies and guidance in the Lincolnshire Minerals and Waste Local Plan and the NPPF has also been considered.

In light of the assessment outlined in this report, it is considered that subject to conditions, the proposed development is acceptable on its merits. It is therefore recommended that planning permission is granted subject to conditions.

Conditions

Conditions stating the time by which the development must be commenced:

1. Application for approval of the reserved matters must be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To conform with Section 92 (2) of the Town and Country Planning Act 1990 (as amended).

2. No development must take place until, plans and particulars of appearance, layout, landscaping and scale of the buildings to be erected and the landscaping of the site (hereinafter called “the reserved matters”) have been submitted to and approved in writing by the Local Planning Authority, and the development must be carried out in accordance with those details.

Reason: The decision relates to outline planning permission only and the Local Planning Authority wishes to ensure that these details which have not yet been submitted are appropriate for the locality.

3. The development hereby permitted must be begun before the expiration of two years from the date of final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92 (2) of the Town and Country Planning Act 1990 (as amended).

Conditions which apply or require matters to be agreed before the development commenced:

4. Any application for the approval of Reserved Matters relating to layout, scale and appearance, shall be accompanied by an Energy Statement to accord with the requirements of Policies S6 and S7 of the Central Lincolnshire Local Plan 2023. The development shall thereafter proceed only in accordance with the agreed Energy Statement, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure efficient buildings and reduce energy consumption, in accordance with Policies S6 and S7 of the Central Lincolnshire Local Plan 2023.

5. No development shall take place until details of a scheme for the disposal of foul/surface water (including any necessary soakaway/percolation tests) from the site and a plan identifying connectivity and their position has been submitted to and approved in writing by the Local Planning Authority. No occupation shall occur until the approved scheme has been completed and shall thereafter be maintained.

Reason: To ensure adequate drainage facilities are provided to serve each dwelling, to reduce the risk of flooding and to prevent the pollution of the water environment to accord with the National Planning Policy Framework and Policy S21 of the Central Lincolnshire Local Plan.

6. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted

to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

- a) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
- b) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
- c) The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action; and
- e) The details should be completed by a suitably qualified professional.

Reason: To ensure that the development hereby permitted does not have an unacceptable detrimental impact on human health to accord with Policy S56 of the Central Lincolnshire Local Plan and the National Planning Policy Framework.

7. Prior to the commencement of the development, a Biodiversity and Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include the following details:

- Details of the size, species, planting arrangement and position of all trees, hedgerows and other vegetation to be planted in accordance with the details in the submitted Preliminary Ecology Appraisal and Biodiversity Net Gain Assessment and Biodiversity Metric 4.0 Calculation dated August 2023; and
- Full details of ongoing management for a 30-year period following the implementation of this plan and beyond where indicated within the submitted metric.

The development shall be carried out in accordance with the approved scheme.

Reason: To ensure that the development hereby permitted accords with the submitted Biodiversity Metric 4.0 calculations, Policy S61 of the Central Lincolnshire Local Plan and the National Planning Policy Framework.

8. Prior to any construction works, site clearance or removal of any trees on site, a pre-construction bat survey (including details of the inspection of all trees) shall be submitted to and agreed in writing with Local Planning Authority. The survey shall also include details of any necessary mitigation details. The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority on the advice of a suitably qualified professional.

Reason: To ensure that the proposed development does not have an unacceptable impact on protected species to accord with Policy S60 of the Central Lincolnshire Local Plan, Section 15 of the National Planning Policy Framework and the Wildlife and Countryside Act 1981.

Conditions which apply or are to be observed during the course of the development:

9. With the exception of the detailed matters referred to by the conditions of this consent, the development hereby approved shall be carried out in accordance with the following plans:

- PL-001 dated August 2023 – Location Plan
- PL-002B dated November 2023 – Site Plan (Vehicle Accesses Only)

The development shall be carried out in strict accordance with the details shown on the approved plans and in any other approved documents forming part of the application.

Reason: To ensure the development proceeds in accordance with the approved plans and to accord with the National Planning Policy Framework and Policy S53 of the Central Lincolnshire Local Plan.

10. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development hereby permitted does not have an unacceptable detrimental impact on human health to accord with Policy S56 of the Central Lincolnshire Local Plan and the National Planning Policy Framework.

11. Unless stated otherwise within a condition attached to this permission, the development hereby permitted shall be carried out in strict accordance with the mitigation and recommendations in Section 5, 6 and 7 of the submitted Amended Ecological Impact Assessment received 1st May 2024.

Reason: To ensure that the development hereby permitted does not have an unacceptable on biodiversity and protected species to accord with Policies

S60, S61 and S66 of the Central Lincolnshire Local Plan, the National Planning Policy Framework and the Wildlife and Countryside Act 1981.

Conditions which apply or relate to matters which are to be observed following completion of the development:

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no domestic oil tanks or domestic gas tanks shall be placed within the curtilage of the dwellings hereby approved.

Reason: In the interests of energy efficiency to accord with Policies S6 and S7 of the Central Lincolnshire Local Plan 2023.

Human Rights Implications:

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for their private and family life, their home, and their correspondence.

Legal Implications:

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report.

Representors to be notified -
(highlight requirements):

Standard Letter **Special Letter** **Draft Enclosed**

Decision Level (tick as appropriate)

- Committee



Planning Committee

Wednesday, 12 June 2024

Subject: Determination of Planning Appeals

Report by:

Director - Planning, Regeneration & Communities

Contact Officer:

Maisie McInnes
Democratic and Civic Officer
maisie.mcinnnes@west-lindsey.gov.uk

Purpose / Summary:

The report contains details of planning applications that had been submitted to appeal and for determination by the Planning Inspectorate.

RECOMMENDATION(S): That the Appeal decision be noted.

IMPLICATIONS

Legal: None arising from this report.

Financial: None arising from this report.

Staffing: None arising from this report.

Equality and Diversity including Human Rights: The planning applications have been considered against Human Rights implications especially with regard to Article 8 – right to respect for private and family life and Protocol 1, Article 1 – protection of property and balancing the public interest and well-being of the community within these rights.

Risk Assessment: None arising from this report.

Climate Related Risks and Opportunities: None arising from this report.

Title and Location of any Background Papers used in the preparation of this report:
Are detailed in each individual item

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

Appendix A - Summary

- i) Appeal by Mr Richard Heavens against the decision of West Lindsey District Council to refuse planning permission for a lawful development certificate for change of use of a Sui Generis class public house to a C3 class dwelling house.

Appeal Allowed – See copy letters attached at Appendix Bi and Appendix Bii.

Officer Decision – Refused



Appeal Decision

Site visit made on 16 April 2024

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/N2535/X/23/3334694

Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Heavens against the decision of West Lindsey District Council.
 - The application ref 147308, dated 12 September 2023, was refused by notice dated 3 November 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the change of use of a sui generis class public house to a C3 class dwelling house.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Richard Heavens against West Lindsey District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC was well-founded. This turns on whether the appellant can show that the use of the building for residential purposes was lawful on the date of the application. The onus of proof is on the appellant to show, on the balance of probability, that the use of the building for residential purposes began on or before 12 September 2019, which is the material date. The use also has to be shown to have continued without significant interruption for 4 years thereafter, so as to be immune from enforcement action.

Reasons

The Site

4. The Crown Inn is located along a main road in the village of Osgodby, a linear settlement set in rural surroundings. The two-storey building stands in a generous plot with a gravelled car parking area to the front and a generous garden area to the rear.
5. The probability is that the public house closed and ceased trading at some point during 2016 following the surrender of its premises licence. Prior to its

closure, the ground floor accommodation included a bar area along with seating and various other fixtures and fittings associated with a public house. On the first floor was living accommodation that included bedrooms along with kitchen and bathroom facilities.

6. On my site visit it was clear that the internal layout of the ground floor had significantly changed, with the bar and other fittings associated with a public house being removed. The ground floor was now in residential use and included a living room, kitchen, and toilet. The first floor comprised of living accommodation and formed part of a single planning unit. Both internally and externally the building had the appearance of a residential dwelling, and at the time of my visit it was unequivocally being used as a single dwelling house.

The Evidence

7. The judgement in *Gabbitas v SSE & Newham LBC [1985] JPL 630* makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant a LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. The appellant has provided numerous documents to demonstrate the use of the property as a dwellinghouse. The documentary evidence includes Council Tax bills, electricity bills, garden waste collection subscriptions, and liquid petroleum gas bills. These date from as far back as October 2018 through to May 2023. The claim is that this evidence shows residential use of the building. A statement witnessed by a solicitor, but not fulfilling the requirements of a statutory declaration under the Statutory Declarations Act 1835, has also been provided by Mrs Julie Smith. In this statement Mrs Smith states that she has visited the property on several occasions in the last four years and saw that the ground floor of the property had been fully converted to a residential lounge and kitchen. Mrs Smith also states that she is aware that Mr & Mrs Heavens have used the entire property as a dwelling since they moved into the property in 2018.
9. An array of dated photographs from between October 2018 and November 2022 have also been provided by the appellant which show a residential occupation of the building. Of particular relevance are the photographs dated 2 April 2019 showing the removal of the public bar from the ground floor, 3 September 2019 showing the removal of the kitchen at first floor with subsequent photos showing a new kitchen at ground floor, and photographs showing residential use of the ground floor including those dated 23 December 2018, 2 February 2019, 5 September 2020, and 2 January 2022.
10. The appellant also refers to a previous appeal decision¹ following the Council's refusal to grant planning permission for the change of use of the property from a public house to a residential dwelling house. The appointed Inspector visited the property on the 30 July 2019 and at paragraph 11 stated "*Internally, the building lacks many of the fixtures and fittings required to use it as a public house. It was clear from my site visit that comprehensive improvements and refurbishment would be required*". This further corroborates the photographic evidence that shows there being little remaining evidence of a public house use by mid-2019.

¹ APP/N2535/W/19/3229612

11. The Council claim that it is unclear whether the various bills and documents submitted by the appellant relate to the occupation of the first floor or ground floor of the property. In particular, the Council refer to there being no change to the Council tax band despite the claim that the entire property is now a dwelling. There is no evidence though to suggest that the Council Tax team visited the property or were aware of any concerns regarding its use. The Council however do accept that the photographic evidence provided shows "*the downstairs area in some state of residential use over the last 4 years*".
12. The Council's planning enforcement team are said to have visited the property on the 22 October 2019 and 6 November 2019, after which a letter dated 3 December 2019 was sent to the appellant "*regarding the use of the pub as residential*". A copy of this letter or notes from the Council's visits have not been provided, and therefore the Council's view regarding the use of the property at that particular time is unclear. Nevertheless, given that the visits were some six months after the removal of the bar from the ground floor of the property, it must have been readily apparent that the only activity taking place at the property was residential.
13. The third-party representations submitted do not allege that the appellant has not resided in the property during the relevant period, but instead focus almost entirely on whether deliberate concealment has taken place which is a matter I turn to later in my decision.
14. There is therefore significant evidence that demonstrates that the appellant and his family have resided in the property since they purchased it in 2018. This does not appear to be disputed by the Council who instead focus on the use of the ground floor only. It is necessary though to ascertain the correct planning unit, and the present and previous primary (as opposed to ancillary) uses of that unit. Case law² has established that the planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes.
15. From the evidence available to me, I consider that the relevant planning unit is the Crown Inn in its entirety. There is no sub-division or internal separation between the ground floor and first floor, which is accessed internally via a staircase. It is not disputed that the established use of the premises is as a public house, which included the bar on the ground floor with living accommodation upstairs. There is no evidence to suggest that the living accommodation on the first floor has at any time prior to the date at which the Crown Inn ceased trading, been occupied for any purpose that was not in some way associated with the primary use of the premises as a Public House.
16. It is possible that the primary use of the property changed at some point in 2018 when it was first occupied by the appellant for residential purposes without being associated with the public house on the ground floor. In any event, in my judgement the removal of the bar in April 2019 categorically resulted in the public house use ceasing and resulted in the sole use of the Crown Inn being a residential dwelling. The submitted documentation and photographic evidence detailing the continuing residential use of the planning unit since April 2019, including the ground floor, further demonstrates the residential use of the planning unit since that time.

² Burdle and Williams v SSE & New Forest DC [1972] 1 WLR 1207

17. I therefore consider that the evidence provided by the appellant is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the Crown Inn has been occupied as a single dwellinghouse for a period of at least 4 years, without significant interruption, so as to be immune from enforcement action.

Deliberate Concealment

18. It is argued that there has been deliberate concealment of the change of use, in the manner of *Welwyn Hatfield*³. The principles on deception and public policy derived from *Welwyn Hatfield* are: that positive deception is a matter integral to the planning process; that deception was directly intended to undermine the planning process; it did undermine that process; and, the wrong-doer would profit from the deception if the normal limitation period were to enable him to resist enforcement.
19. The case for deliberate concealment is based on two grounds, the first of which relates to the Council's notes of a telephone call from the appellant on the 3 December 2019. During this phone call Mr Heaven is said to have stated "*He is only living in the accommodation above and the downstairs remains as a pub and untouched*". The appellant disputes that his response was dishonest, and that he thought that the Council sought to establish whether any further removal of fixtures and fittings had taken place since previous visits.
20. Irrespective of the appellant's intentions, the Council had recently been afforded access to the property on the 22 October and 6 November 2019. This followed the previous Inspector's site visit on 30 July 2019. As already established, the bar along with the majority of other fixtures and fittings associated with the public house had already been removed by the time these visits took place. Consequently, the Council would have been aware that it could not reasonably be said that the ground floor "*remains as a pub and untouched*". The Council will have also been aware of the appellants desire to change the use of the property to residential, following the submission of the planning application⁴ and subsequent appeal.
21. Secondly it is alleged that curtains in the road fronting windows at ground floor level were permanently kept drawn so to avoid the use of the ground floor for residential purposes being detected. Although I note that the curtains are drawn in some of the photographs provided by the appellant, there is limited evidence to demonstrate that this was a permanent event. Indeed, the statement by Mrs Smith disputes this version of events.
22. The Council were aware from at least mid-2019 that the bar and other fixtures and fittings associated with the public house had been removed. Consequently, the Council will have known that the building was no longer able to function as a public house and the only activity taking place at the premises was that of a residential dwelling. Council Officers were also afforded access to the property twice in 2019 during the material period, and there is no evidence to suggest that the Council were prevented from undertaking further visits if so desired.
23. Overall, on the basis of the evidence before me, I do not find that there has been deliberate concealment.

³ *Welwyn Hatfield v SSCLG v Beesley* [2011] UKSC 15

⁴ Council Ref: 138946

Other Matters

24. A third-party representation has been received which raises concerns that the change of use of the public house to a dwelling would result in the loss of an asset to the local community. However, the planning merits of the matters applied for do not fall to be considered, with the decision based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Conclusion

25. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the *change of use of a sui generis class public house to a C3 class dwelling house*, was not well-founded and that the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 September 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the available evidence demonstrates that the use of the building as a dwelling house has been continuous for a period of more than four years prior to the date of the application, so that the time for taking enforcement action in s171B (2) of the Act has expired.

Signed

David Jones

Inspector

Date: 21 May 2024

Reference: APP/N2535/X/23/3334694

First Schedule

Change of use of a sui generis class public house to a C3 class dwelling house

Second Schedule

Land at Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 May 2024

by **David Jones BSc (Hons) MPlan MRTPI**

Land at: Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

Reference: APP/N2535/X/23/3334694

Scale: Not to Scale





Costs Decision

Site visit made on 16 April 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Costs application in relation to Appeal Ref: APP/N2535/X/23/3334694 Crown Inn, Main Street, Osgodby, Market Rasen, Lincolnshire LN8 3TA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Richard Heavens for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the change of use of a sui generis class public house to a C3 class dwelling house.
-

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 PPG provides examples of unreasonable behaviour by local planning authorities. These include the failure to produce evidence to substantiate reasons for refusal and making vague, generalised or inaccurate assertions unsupported by objective analysis as well as preventing or delaying development that should have been permitted.
4. The applicant considers that the Council acted unreasonably as it failed to produce any evidence to substantiate its reason for refusal, failed to accept an offer to visit the property in October 2023 which would have revealed that the ground floor of the property was in residential use, and instead relied on and placed undue weight on third party allegations of deliberate concealment.
5. The Council's single reason for refusal was that from the information provided along with records held by the Council, "*it is reasonable to conclude on the balance of probabilities that the ground floor area of the building has not been used as a C3 dwelling for a period of 4 years*". It is clear from the Officer's report that the Council assessed the evidence provided by the appellant and concluded that, in their view, it did not demonstrate on the balance of probabilities that the ground floor of the property had been used for residential purposes for the necessary period. The Council also placed significant weight on their record of a phone call on 3 December 2019 when the applicant is said to have stated that he was living in the accommodation on the first floor and that the "*downstairs area remains as a pub and is untouched*".
6. Whilst I have not agreed with the Council in terms of any assessment made of the planning unit, or on their assessment of whether the evidence met the

standard of the balance of probabilities, they had reasonable questions about the evidence provided. The fact that the parties disagree does not in itself demonstrate unreasonable behaviour.

7. Had the Council visited the property in October 2023 it would have afforded Officers a more a more up-to-date picture of the properties use. However, given the Council's reliance on the telephone call notes from December 2019 and its sole focus on the use of the ground floor of the property, it is highly unlikely that the Council will have formed the view that the four-year period had been met and granted the LDC. The Council also did not refer to deliberate concealment, which was a matter primarily raised by third parties, in its reasons for refusal and it did not form a critical part of the Council's case. Consequently, I find it highly unlikely that an appeal would have been avoided.
8. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

David Jones

INSPECTOR