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## Appeal Decision

Site visit made on 16 January 2019

**by Rachael A Bust BSc (Hons) MA MSc LLM MEnvSci MInstLM MCMI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 February 2019**

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**Appeal Ref: APP/N2535/W/18/3207564**

**Land north of Marton Road, Sturton by Stow, Lincolnshire**

- 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 J.C.M. Glassford Limited; The Gelder Family; and, Gelder Group against the decision of West Lindsey District Council.
  - The application Ref 134978, dated 12 September 2016, was refused by notice dated 26 January 2018.
  - The development proposed was originally described as "Hybrid planning application comprising the following elements: Full application for the erection of a building to provide a new doctors surgery and dental practice (Use Class D1). Outline planning application with means of access to be considered for erection of up to 50 dwellings; erection of a two storey building (up to 800 sq m) to provide retirement living or use falling with Use Class C2. Change of use of land to provide a new area of open space including provision of new footpaths and sustainable drainage infrastructure."
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### Decision

1. The appeal is dismissed.

### Preliminary and Procedural Matters

2. During the course of the planning application the proposal, including the description of development, was revised from the original description as shown in the heading above. The appellants' revised description of development became "*hybrid planning application comprising of outline planning application with means of access to be considered for erection of 25 dwellings and two storey building to provide retirement living C2. Change of use of land to provide open space including provision of footpaths and sustainable drainage infrastructure. Full planning application for the erection of a dental practice, childcare setting D1 and gym D2.*"
3. I note that the Council's decision notice altered the appellants' revised description to make specific reference to the Use Classes Order<sup>1</sup>, they did omit reference to the gym (D2 use - assembly and leisure). However, the gym is illustrated on the submitted plans<sup>2</sup> which formed part of the revised proposal. The Council has confirmed that it undertook re-consultation on the revised proposal before it made its decision. As such I am satisfied that notwithstanding the omission in the Council's description the revised plans

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<sup>1</sup> Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>2</sup> Drawing references A1/001 Rev C; A1/002 Rev C and A1/003 Rev C

clearly indicate the various elements of the proposal including the gym. I have therefore determined this appeal on the basis of the revised plans.

4. In respect of those elements for which permission is sought in outline, the proposal includes details of access. All other details relating to appearance, layout, scale and landscaping are reserved. In so far as the submitted plans and documents contain details of these reserved matters, I have treated them as illustrative only.
5. Since the appeal was submitted a revised version of the National Planning Policy Framework (the Framework) has been published. The parties have had the opportunity to provide comments and I have taken any views into account as part of my determination.

### **Main Issue**

6. The main issue is whether the proposed location would be appropriate, having regard to the Council's spatial strategy for growth and the character and appearance of the site and surrounding area.

### **Reasons**

7. The appeal site is formed by four grazed grassland fields bordered by hedgerows, scattered trees and fencing. The appeal site lies to the north of Marton Road to the west of Sturton by Stow. A single vehicular access is proposed from Marton Road. A public footpath (STUR71/1) runs northwards from Marton Road along the western boundary of the site. A second public footpath (STUR74/1) runs west to east, principally through the area proposed for the change of use for open space and sustainable drainage infrastructure. The proposed building incorporating the dental practice, creche/day-nursery and gym would be sited in the south-western corner adjacent to Marton Road. The remainder of the part of the site subject to the full application consists of the access road, 2 areas of car parking and an open community space.
8. Policy LP2 of the Central Lincolnshire Local Plan (CLLP), adopted April 2017 establishes a settlement hierarchy as the mechanism to distribute sustainable growth throughout the plan period. Sturton by Stow is a Medium Village (tier 5), whereby the plan envisages a limited amount of development in order to support their function or sustainability. In relation to housing development, the policy may support schemes of up to 25 dwellings in exceptional circumstances. Policy LP4 of the CLLP identifies that Sturton by Stow would have an anticipated growth in dwelling numbers of 15% across the plan period up to 2036.
9. From the evidence before me a 15% growth level would equate to 97 new dwellings. According to the Appellant's Final Comments, when taking into account the existing commitments within Sturton by Stow, there is a residual of 12 new dwellings before the 15% growth level would be met. I am mindful that there are still 17 years of the plan period to run.
10. I note that the appellants identify that 55 of the approved dwellings are yet to be built and that a site incorporating 6 dwellings also now has an extant consent for the erection of a new single storey retail unit. Be that as it may, Sturton by Stow has a significant level of existing housing commitments and given the length of the plan period remaining, I see no reason as to why the overall 15% growth level would not be achieved.

11. At this point in time, allowing the appeal proposal would result in a level of growth which would exceed the overall anticipated level of growth within Policy LP4 of the CLLP at an early stage in the plan period. Consequently, there is no present need for the appeal proposal to be delivered in order to meet the planned growth levels formulated through the recently adopted development plan.
12. The scale of housing has been reduced from 50 to 25 dwellings. However, this revised quantum of housing would still exceed the anticipated typical development size of up to 9 dwellings set out in Policy LP2 of the CLLP. In order to meet the provisions of Policy LP2 of the CLLP, a larger scale proposal of up to 25 dwellings can only be supported if exceptional circumstances can be demonstrated; it has clear community support; and it is an appropriate location as defined in the policy which broadly relates to issues of character and appearance.
13. The appellants contend that their own local consultation has demonstrated clear community support. Whilst I note that the appellants undertook pre-application consultation events in June 2016, I am mindful that this related to a scheme which is materially different to the current appeal proposal. A total of 65 comments<sup>3</sup> are recorded as having been made. Following the revisions to the overall proposal a further community consultation event was held in September 2017, where 57 comments<sup>4</sup> were recorded. Neither of the main parties has confirmed the current population of Sturton by Stow. However, an interested party has indicated that the population is in excess of 1300. This figure has not been disputed and given that the number of existing dwellings before recent completions is 649, I have no reason to doubt the accuracy of this population figure.
14. The appellants refer to guidance produced by North Kesteven District Council relating to community consultation and as such its relevance to a proposal in West Lindsey is unclear. Although the CLLP is a joint development plan, I note that this guidance is 'draft' and has been produced by North Kesteven District Council. Consequently, this significantly limits the weight that can be given to this guidance in the determination of this appeal. In any event, I am not persuaded that a measurement of a simple majority of individuals responding to consultation meets the development plan requirement.
15. The CLLP does not indicate any threshold or measure of how clear community support can be demonstrated. Therefore, it is a matter for the decision maker to judge. In order to make an informed decision, in my judgement it would be necessary to provide detailed evidence of the consultation material provided to local residents; the questions posed; the display material provided; and the full comments made. In addition, it would be appropriate to understand how the proposal has taken into account the community feedback received. Policy LP2 of CLLP requires a thorough, but proportionate, pre-application consultation exercise.
16. I recognise the difficulties the appellants have faced in then meeting this requirement when they amended the application. However, the revisions to the proposal were in my view significant, such that comments made at the pre-application stage must be viewed in the context of them being on a materially

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<sup>3</sup> Paragraph 3.5 of the Appellants Statement of Case

<sup>4</sup> Table 2 of the Appellants Final Comments.

different scheme. Although I recognise that the appellants undertook a further element of consultation, in strict terms, this does not meet the pre-application requirements of Policy LP2 of CLLP. I note that the Council advised the appellants to withdraw the proposal to undertake new pre-application consultation and then resubmit the revised proposal. However, the appellants chose to proceed as they did.

17. Given the level of comments received at the appellants' consultation events supporting the proposal as a proportion of the overall population of Sturton by Stow, I am not satisfied that this constitutes clear demonstrable evidence of local community support for the proposal as required by Policy LP2 of the CLLP. In my judgement the wording of the policy in referring to demonstrable community support being identified either through a neighbourhood plan or through community consultation is seeking a higher bar of community consensus. In a case such as this where the appeal proposal would also result in the overall level of growth being exceeded so early in the plan period a stronger demonstration of substantive community support is in my view necessary. I note that the Parish Council do not support the proposal.
18. At the planning application stage, I also note that the number of representations in support and objection to the scheme are the same according to the Council's Officer Report. My interpretation of the need to demonstrate community support in Policy LP2 is consistent with the Inspector who dealt with a proposal in Newton on Trent<sup>5</sup>. In that appeal the Inspector was of the view that it is necessary to pose a very specific question to the community on the precise development being proposed during the pre-application stage. In this case from the evidence presented to me at no time was the community clearly asked to respond to the question "do you support a proposal for a development of XXX on the identified site?", where the 'XXX' was the specific description of all the elements of the scheme proposed at that time.
19. The portion of the appeal site indicated for the residential elements of the proposal would be substantial in size. Notwithstanding that the illustrative layout indicates the proposed dwellings and the C2 residential institution use building being sited on the southern half of the residential portion; in principle the application is seeking residential use to be acceptable across the entire portion identified. I recognise that this is an issue that has partially arisen because of the revision made to the dwelling numbers. However, irrespective of the illustrative plan submitted I must consider in principle the acceptability or otherwise of residential development being located across the whole portion identified.
20. Sturton by Stow is a predominantly linear settlement on the north-south axis around the B1241 and set within the rural landscape of various field sizes. The appeal site lies within the Till Vale Landscape Character Area<sup>6</sup>. It demonstrates many of the features of the character area, with smaller fields near the settlements with a variety of existing trees and hedgerows set within the wider agricultural landscape of larger flat and open fields. As such it makes a positive contribution to the landscape character and setting of Sturton by Stow.
21. The appeal proposal would introduce a change to the existing rural character. It would extend development westwards along Marton Road and also extend

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<sup>5</sup> Appeal decision APP/N2535/W/17/3175670, dated 20 March 2018

<sup>6</sup> West Lindsey Landscape Character Assessment

northwards giving a potential significant depth of development away from Marton Road itself. Given the undeveloped nature of the land to the east, some of which appears to be associated with properties fronting onto High Street, the appeal site feels somewhat detached. As such the appeal proposal would be physically and visually separated from the existing built development along High Street. Consequently, rather than appearing to be an integral part of the settlement I find that it would have the resultant character of a detached area of built development extending into the open countryside. The appeal site would not therefore retain the core shape and form of the settlement. Consequently, it would harm the overall character and appearance of Sturton by Stow and the surrounding countryside.

22. Policy LP2 of the CLLP also refers to 'exceptional circumstances' giving an example that this may include the provision of community facilities. The revised plans for the full application includes the provision of a dental practice, creche-day nursery and gym. In addition to these the appellants also refer to the new area of public open space, provision of footpaths, sustainable drainage infrastructure and flood alleviation as being offered as exceptional circumstances.
23. I recognise that the proposed area of open space would be larger than would be expected in a development of this size and could be secured through the use of an appropriate planning condition. Although the appellant refers to the provision of new footpaths, from the submitted plan, the alignment of the footpath illustrated within the proposed open space is broadly that of the defined Public Right of Way (STUR74/1). As such this would not be an additional benefit arising from the appeal proposal. I note the concerns raised regarding the potential impact on Public Right of Way (STUR71/1). Insufficient evidence is before me to demonstrate how the appeal proposal has taken the definitive route of this footpath into account. I am not satisfied therefore that the appeal proposal makes adequate provision to protect and enhance public rights of way as required by Paragraph 98 of the Framework.
24. The provision of sustainable drainage measures would be expected in a development of this quantum. The submitted flood risk assessment identifies that it is proposed to limit surface water discharge to half of the existing greenfield run-off rate in order to alleviate surface water flooding at the Fleets Road/High Street junction. I do not have substantive evidence before me to understand whether the existing site run-off contributes to existing surface water flooding. Whilst I recognise this could be a potential benefit, and drainage and flooding concerns have been raised in several representations that are before me, I note that none of the statutory bodies responsible for drainage matters have offered any detailed comments on the necessity and/or benefit of this element. Consequently, this limits the weight that can be attached to this suggested benefit.
25. The appellants have submitted a completed Planning Obligation, in the form of a Unilateral Undertaking (UU) as part of this appeal. Accordingly, I have had regard to the UU in reaching my decision. The UU would secure the provision and retention of affordable housing. As the proposal is in excess of 11 dwellings affordable housing is required under the CLLP. The provision of 5 affordable dwellings would equate to 20%<sup>7</sup> of the number of dwellings

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<sup>7</sup> Policy LP11 b. iv.

proposed and as such would comply with requirement set out in Policy LP11 of the CLLP. In addition, a financial contribution of £15,743.50 specifically for the dispensary at Willingham Surgery, referred to as the 'NHS Contribution' has been offered. Policy LP12 of the CLLP requires developer contributions towards relevant infrastructure. Although I have not been provided with the further guidance that supports this policy, I note that the Council is satisfied with both the affordable housing and the level of NHS contribution that is being offered. I see no reason to reach a different conclusion on these two elements of the UU.

26. The UU also provides the mechanism to ensure the delivery and occupation of the dental surgery. I note the 'letter of intent' from an individual with an interest in setting up the dental practice. It would appear that the proposed dental surgery would be a private practice. As such it would not be accessible to as many people as would be the case with the provision of an NHS dental surgery. Although the letter of intent makes reference to the potential in the future to gain an NHS contract, this cannot be guaranteed.
27. The provision of the C2-residential institution, dental practice, creche-day nursery and gym, in principle, could make a positive contribution to the community. Although it is noted that no cogent evidence to demonstrate any form of need for these facilities within Sturton by Stow has been offered. I recognise that the proposed building which would accommodate the dental practice also indicates internal space for both the creche-day nursery and gym. However, there are no measures suggested which would secure the delivery of the creche-day nursery, gym, and C2-residential institution building. As such, the absence of a mechanism to secure these elements therefore limits the weight that I can attach to them.
28. The proposed vehicular access would utilise an existing field access which lies within the current 30 mph speed limit. The depth of the existing verge and the alignment of Marton Road would enable satisfactory visibility of on-coming traffic. At the time of my early morning site visit, which I appreciate is only a snapshot in time, there was a modest level of traffic flow, with the majority slowing to observe the speed limit when entering the village from the west. I note concerns raised by interested parties on this issue, however I am mindful that the Highway Authority has raised no concerns in principle regarding the proposed access and indicated the use of planning conditions to achieve the technical standard required. As such, in respect of the proposed access, I find that this element of the proposal would be satisfactory.
29. Taking all matters into account, I find that the appeal proposal does not have the required demonstrable clear community support. The harm to the character and appearance of the settlement and surrounding area significantly and demonstrably outweighs the modest benefits that would arise such that the exceptional circumstances as set out in Policy LP2 of the CLLP are not met. Consequently, the proposed location would not be appropriate, having regard to the Council's spatial strategy for growth and the character and appearance of the site and surrounding area. It would conflict with Policies LP2, LP3 and LP4 of the CLLP. These policies seek, amongst other things, to manage growth within rural settlements across the plan period. The appeal proposal would also fail to comply with Policies LP17 and LP55 of the CLLP, which seek to protect the rural character of the countryside and the setting of Sturton by Stow.



*Other matters*

30. I note the concerns by interested parties made at both the planning application and appeal stages. In addition to those matters covered under the main issues above, other concerns relate to the ridge and furrow within the appeal site; living conditions of the occupiers of nearby dwellings and the reference to a neighbourhood/parish plan.
31. The County Historic Environment Officer confirmed the presence of ridge and furrow within the appeal site. The application was not accompanied by a Heritage Impact Assessment. Given that I have found the appeal proposal to be unacceptable for other reasons it is not necessary to explore this issue in further detail. The protection of the living conditions of neighbouring occupiers could have been a matter which, had I allowed this appeal, been satisfactorily resolved through the reserved matters stage for those parts of the appeal scheme closest to existing occupiers. I note that Sturton by Stow has been designated as a Neighbourhood Area, but to date no formal Neighbourhood Plan has been produced.

**Conclusion**

32. For the reasons given above, taking all matters into consideration, the appeal is dismissed.

*Rachael A Bust*

INSPECTOR