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## Appeal Decision

Site visit made on 3 June 2019

**by K Ford MSc MRTPI**

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

**Decision date: 3 July 2019**

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### **Appeal Ref: APP/N2535/W/19/3223625**

### **5 Fleets Road, Sturton by Stow, Lincoln LN1 2BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Sean Mann against the decision of West Lindsey District Council.
  - The application Ref 138731, dated 7 December 2018, was refused by notice dated 15 February 2019.
  - The application sought planning permission to erect 2 single storey dwellings, all matters reserved without complying with a condition attached to planning permission Ref 132701, dated 22 December 2015.
  - The condition in dispute is No 4 which states that: no development shall take place until the Lead Local Flood Authority, Lincolnshire County Council, have completed flood mitigation works at the site.
  - The reason given for the condition is: to mitigate the risk of flooding of the site in accordance with the National Planning Policy Framework and saved Policies STRAT1 and RES 1 of the West Lindsey Local Plan First Review 2006.
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### **Decision**

1. The appeal is allowed and planning permission is granted to erect 2 single storey dwellings, all matters reserved at 5 Fleets Road, Sturton by Stow, Lincoln LN1 2BU in accordance with the application Ref 138731, dated 7 December 2018, without compliance with condition No. 4 previously imposed on planning permission Ref 132701, dated 22 December 2015 but subject to the conditions contained in the Schedule to this Decision.

### **Background and Main Issue**

2. The appeal site, which is formed from garden land associated with the property known as Catherine, was originally granted outline planning permission with all matters reserved for 2 single dwellings on 22 December 2015.
3. Whilst the site is located within flood zone one, the area has surface water flooding. Consequently, condition 4 of the permission prevented any development taking place on the site until the Lead Local Flood Authority (Lincolnshire County Council) had completed flood mitigation works at the site. The 'notes to the applicant' at the end of the Decision notice references details of the drawing identifying the works<sup>1</sup> which seek to reduce the risk of internal

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<sup>1</sup> Drawing No HPEA0029/01

- flooding for 6 properties. The works would be located on the appeal site, along with that of Dunramblin, an adjacent dwelling and Highway Authority land.
4. Reserved matters approval for all outstanding matters was granted in April 2018<sup>2</sup> and the Council has identified that all the other pre-commencement conditions except the condition subject to the appeal have been discharged.
  5. Paragraph 55 of the National Planning Policy Framework (NPPF) advises that conditions should only be imposed that are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
  6. The appellant seeks amendment to the condition, proposing 2 alternative options instead.
  7. The main issue is whether the condition is reasonable and necessary to protect the occupants from the risk of flooding.

### **Reasons**

8. The wording of the Council's condition simply refers to flood mitigation works. Whilst the notes to applicant does refer to the drawing number of the flood mitigation scheme proposed by the Lead Local Flood Authority, the Planning Practice Guidance (PPG) is clear that informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes. The condition as worded is not therefore precise.
9. The Council say that the Lead Local Flood Authority has specific intention to implement the scheme. Nevertheless, there is no reference in the condition to timescales for either the commencement or completion of the works and I have not been provided with any material indicating that there are prospects of the works being implemented during the lifetime of the planning permission. The time constraints for the planning permission the Council refer to, which are contained in condition 3 of the 2015 permission, provide little comfort. This is particularly given the appellant has referenced a Council report which acknowledges that because of access issues and funding cuts the works may never be implemented. In this context, the requirements of the condition are unreasonable and the PPG advises against the use of Grampian conditions in such circumstances.
10. The appellant has proposed 2 alternative forms of wording for a condition that would require alternative measures as part of a surface water strategy to mitigate the impact of the risk of flooding as a consequence of the development. However, although the proposal referred to by the appellant in their suggested conditions would manage the surface run-off generated by the development, it would not provide the additional attenuation needed to reduce the overall potential flood risk on the site and the neighbouring residential properties. It does not therefore provide a suitable alternative scheme to mitigate the flood risk. Neither of the appellant's proposed conditions would therefore be fit for purpose.

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<sup>2</sup> Planning application reference 137417

11. It is acknowledged by both parties that a condition to mitigate the risk of flooding is necessary. However, the Council's condition as worded ties delivery of the development to a flooding scheme that may never be implemented and the alternative conditions proposed by the appellant are not fit for purpose. I have therefore imposed a revised condition requiring flood mitigation works, the scope of which can be a matter of negotiation between the main parties during the submission and approval process. The approved scheme does not have to be that previously proposed by the Lead Local Flood Authority for the reasons identified. Nor should the scheme be expected to deal with off site works that are not associated with the development.

### **Other Conditions**

12. Turning to the other conditions, the PPG explains that Decision Notices for the grant of planning permission under section 73 should also repeat relevant conditions from the original planning permission, unless they have already been discharged.
13. The Council has identified that conditions 5-9 of the 2015 planning permission relating to boundary treatment, landscaping, drainage and access have been discharged. They therefore do not need to be repeated. As the reserved matters application has been submitted, condition 2 is also no longer necessary.
14. An application for reserved matters has already been submitted, and so a time restriction relating to this is unnecessary. However, I have retained a time limitation for commencement. The Council has indicated that as no further reserved matters can be submitted, commencement of the development must be before 2 years of the date of the last approved reserved matter, which is 18 April 2020. However, I have imposed a standard 3 year time constraint to enable adequate time for negotiation and agreement between the parties on the proposed flooding scheme.
15. A condition specifying the relevant drawings has been retained as this provides certainty. A condition restricting the height of the development is necessary to protect the character and appearance of the area and the living conditions of neighbouring properties.
16. Condition 13 of the 2015 planning permission takes away permitted development rights. The PPG advises that conditions restricting the use of permitted development rights will rarely pass the test of necessity and should be used in exceptional circumstances. In this case exceptional circumstances have not been demonstrated. A condition on the implementation of the landscaping scheme, as identified in condition 14 of the 2015 planning permission is not necessary or relevant as it is a reserved matter.

### **Conclusion**

17. For the above reasons I conclude that the appeal should be allowed and a new planning permission should be granted.

*K Ford*

INSPECTOR

### SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this Decision.
2. 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 drawings: Proposed Site plan dated 12/204. The works shall be carried out in accordance with the details shown on the approved plans and in any the approved documents forming part of the application.
3. No development shall take place until flood mitigation works at the site have been carried out in accordance with a scheme that shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.
4. The dwellings hereby approved shall be single storey only with no rooms in the roof.