



Appeal Decision

Site visit made on 8 October 2019

by **K Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/N2535/W/19/3233948 Land off the Hawthorns, Nettleham, Lincoln

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by J Dixon, J Gauke, J Pickwell and J Pickwell against the decision of West Lindsey District Council.
- The application Ref 138494, dated 17 October 2018, was approved on 5 July 2019 and planning permission was granted subject to conditions.
- The development permitted is outline planning application for erection of up to 63 no. dwellings with garages, access roads, footpaths and open space-access to be considered and not reserved for subsequent applications.
- The condition in dispute is No 12 which states that: The development shall comprise of a maximum of fifty dwellings.
- The reason given for the condition is: To preserve the character of the area and to integrate with the adjoining built residential form and to protect residential amenity to accord with the National Planning Policy Framework, local policies LP2, LP10, LP17, LP26 and LP52 of the Central Lincolnshire Local Plan 2012-2036 and policies H-1 and H-7 of the Nettleham Neighbourhood Plan.

Decision

1. The appeal is allowed and the outline planning permission Ref 138494, for



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erection of up to 63 no. dwellings with garages, access roads, footpaths and open space-access to be considered and not reserved for subsequent applications, at Land off the Hawthorns, Nettleham, Lincoln, granted on 5 July 2019 by West Lindsey District Council, is varied by deleting Condition No 12 and its replacement with the following condition:

- 12) The development shall comprise of a maximum of sixty three dwellings.

Application for costs

2. An application for costs was made by J Dixon, J Gauke, J Pickwell and J Pickwell against West Lindsey District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The appeal site address above is taken from the appeal form, as the address given on the application form was insufficient to identify the site without resorting to grid references.

Background and Main Issue

4. Planning permission was granted by the Council in July 2019 for the residential development of the site, following consideration of the proposal by the Council's Planning Committee. The officer's report recommended approval of the proposal, which sought up to 63 dwellings on the site, with recommended Condition No 12 limiting the number of dwellings to 63. The Planning Committee voted to approve the application with this condition amended to limit the development to 50 dwellings. That condition is now under appeal.
5. The reason given for the imposition of the condition on the Council's decision notice is 'to preserve the character of the area and to integrate with the adjoining built residential form and to protect residential amenity.' The appellants object to the imposition of the condition on the grounds that it unreasonably restricts the development of an allocated site, contrary to the principles of sustainable development and which reduces the benefits that can be delivered.
6. Taking this background into account, I consider that the **main issue** is whether the condition is necessary and reasonable, having regard to relevant development plan policies relating to the delivery and location of housing, the effect on the character and appearance of the area and the effect on living conditions of neighbouring occupants.

Reasons

Policy Context

7. The appeal site is located to the northern side of the settlement of Nettleham, near Lincoln, comprising parts of two agricultural fields accessed from the end of the cul-de-sac of the Hawthorns, a residential street.
8. The relevant development plan documents for the area are the Central Lincolnshire Local Plan 2012-2036 (April 2017) (the CLLP) and the Nettleham Neighbourhood Plan 2014-2031 (2016) (the NNP). The CLLP sets out a spatial strategy for the District. Policy LP1 sets out the desire to deliver sustainable growth that brings benefits for all sectors of the community. Policy LP2 sets out the settlement hierarchy for the district. Policy LP3 sets out a housing target to deliver some 36,960 dwellings between 2012 and 2036, an average annual target of 1,540 dwellings. The supporting text at paragraph 3.3.3 states that the housing target should not be seen as a ceiling, but rather the level of growth which is both needed and anticipated to take place in the plan period.
9. Under Policy LP2, Nettleham is listed under Category 4 – Large Villages, in which most growth will be via sites allocated in the CLLP, or appropriate infill, intensification or renewal within the existing developed footprint. The appeal site is allocated under Policy LP52 under reference CL4662 (2.79 hectares) for an indicative 50 dwellings. In total, allocated sites in Nettleham are identified to deliver an indicative 237 dwellings.
10. The supporting text of the CLLP at Paragraph 10.2.1 states that the indicative numbers of dwellings for each site are used to demonstrate how the overall housing requirement can be met, and it is emphasised that these numbers are only 'indicative' and do not represent a fixed policy target for each individual site. It is well-established that a development plan allocation sets out the principle of the specific land-use, with exact details to be determined through

development management processes. It is no different in this case and it is clear to me that the allocation number is intended to set general parameters for development which would accord with the overall spatial strategy, rather than setting rigid targets.

11. In addition, Paragraph 10.2.2 states that developers are encouraged to produce the most appropriate design-led solution, taking all national policies and other CLLP policies into account, in arriving at a total dwelling figure for their site, and they need not be constrained by the figure that appears in the column headed 'indicative dwelling figure' in the relevant table of, in this case, Policy LP52. The minutes of the Planning Committee meeting on 9 January 2019 where the application was considered make it clear that this explanatory text was referred to by both the appellant's representative and the planning officers present.
12. Policy LP2, under Large Villages, also sets out that in exceptional circumstances (which are a matter for the decision maker), additional growth on non-allocated sites in appropriate locations outside of, but immediately adjacent to, the developed footprint of these large villages might be considered favourably, provided they are at a scale of less than 25 dwellings per hectare. Whilst this part of the policy relates to non-allocated sites, it indicates that additional growth in a village beyond that indicated for allocated sites would potentially accord with the overall spatial strategy.
13. Policy H-1 of the NNP states, in reference to the four allocated sites in the plan area, that they will each be restricted to a yield of 50 homes unless it can be demonstrated that their proposed numbers can be satisfactorily incorporated into the community and also that their proposed design, layout and dwelling numbers can be satisfactorily incorporated into their topography and landscape settings. Policy H-7 of the NNP is specific to the appeal site (Site C in the NNP). It states an allocation of 'approximately 50 dwellings' subject to achieving satisfactory vehicular access, a design and layout which safeguards residential amenities of existing properties, and provision of a footpath across the site. I note that the site is identified in the NNP as being approximately 3.5 hectares rather than 2.79 hectares in the CLLP, but with the same indicative number of dwellings. The appellant states that the actual area is 3.09 hectares.
14. On my reading of these policies and the supporting text, it is evident that the housing figures outlined for each of the allocated sites are not rigid maximums, and the policies of the NNP in particular clearly set out circumstances where more than the indicative number may be acceptable. Moreover, there is flexibility in the policies of both the CLLP and NNP, and notwithstanding the differences in site area, they are largely consistent in their approach. These policies are recently adopted, have been formulated in light of the guidance of the Framework and found to be sound. They are consistent with the Framework in planning positively for a significant boost in housing.
15. The Council argues that developing the site for 50 dwellings would result in 273 additional dwellings in Nettleham when permissions already granted and other allocations in the CLLP are taken into account, which exceeds the 237 set out in the CLLP allocations. This would also be more than the circa 250 dwellings which would equate to the anticipated 12-15% growth for Nettleham outlined by the CLLP and NNP. However, the number of dwellings already granted demonstrates that the Council is prepared to countenance delivery of housing

beyond the numbers expressed in the CLLP and NNP, in line with the flexibility of the relevant policies. This is borne out by the fact that permissions have been granted on allocated sites A and B¹ in NNP which are similarly indicated to deliver approximately 50 dwellings, but which were granted for schemes of 86 and 68 units respectively.

16. Whilst I do not have full particulars of the permissions on sites A and B, both have been approved with more than the 26% uplift on the indicative figure which the Council now argues is a 'substantial over supply' of housing on the appeal site. The Council does not explain why its stance has differed between the applications for Sites A and B and the appeal site, but these other permissions demonstrate that the indicative dwelling numbers have been treated flexibly as allowed for by the aforementioned policies and a higher quantum of development on a site can be permitted without undermining the overall spatial strategy.
17. In this case, layout is a reserved matter and the details presented with the application are indicative; however, they show that 63 dwellings could be delivered on the site at a density of 20 dwellings per hectare (dph), which would accord with the maximum permissible density set out in the NNP, and the size of the site given in the CLLP. Moreover, the Officer's report set out that 20 dph would be comparable with surrounding development, whereas 50 dwellings would either deliver some 16.2 dph based on the appellant's measurement or as low as 14.28 dph based on the site area in Policy H-7. Regardless, the development proposed in this case would be compliant with the Council's own density parameters, and I am not persuaded that there is any justification for limiting the development to 50 dwellings on the basis of density.
18. I have considered the wider concerns raised by the Council in respect of the total number of dwellings being granted in Nettleham. However, the figures provided by the Council suggest the CLLP allocation number of 237 would be surpassed by the 50 dwelling scheme in any event. Moreover, there is little cogent evidence submitted to demonstrate that the impact of 63 dwellings at the appeal site would be harmful in comparison to that of 50 dwellings. Even accounting for the additional dwellings approved on sites A and B, the total delivery of housing in Nettleham would not be significantly out of step with the village's anticipated growth of the spatial strategy, and an additional 13 dwellings would be limited in the context of the overall delivery of housing in Nettleham. The appellants refer to the annual target of 1,540 dwellings representing a significant increase on the average of 934 dwellings completed between 2012 and 2016 and even the average of 1199 completed between 2008 and 2012. As such, the additional dwellings would assist in achieving the ambitious overall housing targets in place.
19. The Council also cites a potential precedent for increased development across Central Lincolnshire which may lack the necessary infrastructure to support it. I have little evidence before me that such concerns are warranted. Any future applications in other locations will fall to be considered on their own merits against the development plan policies in place at the time. As such, I give limited weight to the Council's concerns in this respect.

¹ Council Ref 135567 – Land off Deepdale Lane, Nettleham Lincoln LN2 2LT – Granted 8 November 2017
Council Ref 131975 – Land rear of 72 Scothern Road, Nettleham, Lincolnshire LN2 2TX – Granted 14 March 2017

20. Taking these considerations together, therefore, it is my judgement that the stated allocations within Policies LP52, H-1 and H-7 are not to be treated as absolute maximums and that there is flexibility built into the relevant policies, including those of the NNP, that set out circumstances where delivery of more dwellings than indicated would nevertheless accord with the overall spatial strategy, provided relevant criteria are met, in particular those of Policies H-1 and H-7. It is to these that I now turn.

Character and appearance

21. As set out above, the 63 dwellings could be laid out at a density of 20 per hectare and would incorporate public open space. Based on the indicative plans, the layout and density of the development would be similar to that of adjacent residential development and I see no reason why it could not integrate with it. Although the northern boundary is presently undefined and would have to be created by dividing the existing fields, the site would be largely contained in the landscape by residential development to two sides and an existing field boundary to a third. The dwellings would not be seen from the south or west due to the intervening built form, except from the properties immediately adjoining the site, whilst from the north and east, the site would be seen against a backdrop of existing residential development.
22. Given these physical characteristics, it would not be readily discernible whether there were 50 or 63 dwellings on the site and the higher quantum of development could be satisfactorily incorporated into the surrounding topography and landscape, in accordance with Policy H-1, and would not harm the character and appearance of the area. There would be not conflict with Policies LP17 and LP26 of the CLLP, which seek high quality sustainable design that contributes positively to local character, landscape and townscape

Living conditions

23. Policy H-7 includes further requirements relating to vehicular access, design and layout which safeguards residential amenities of existing properties, and provision of a footpath across the site. In terms of residential amenities of existing properties, the layout of the dwellings is a reserved matter. However, based on the indicative site plan, it would be possible to provide sufficient separation distances and screening between the proposed dwellings and those adjoining the site, such that there would not be harmful effects on existing occupants in terms of overlooking, outlook, enclosure or noise.

Other considerations

24. The indicative plans show a footpath could be provided as required by Policy H-7. Access was considered under the application and has been approved, to be taken from the end of the cul-de-sac of The Hawthorns. I have had regard to the evidence relating to access and other highway safety matters, including concerns raised by members of the Planning Committee and the representations of interested parties.
25. I note the Local Highway Authority did not raise objection to the proposal on the basis of a 63 dwelling scheme. There is nothing I have seen in evidence to suggest the Council limited the number of dwellings due to specific concern over the capacity of the proposed access or levels of proposed traffic. Though I recognise the local concerns regarding these matters, the Framework indicates

that permission should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The evidence before me does not demonstrate that a development of 63 dwellings would be harmful in comparison to the approved development of 50 dwellings and based on all I have seen and read, I find that there would not be an unacceptable effect on highway safety.

Conclusions on Main Issue

26. Having regard to the above, and taking into account my observations on site, there is no persuasive evidence before me to demonstrate why 63 dwellings would be harmful when 50 dwellings were found to be acceptable. For the reasons set out, I am satisfied that the proposal would represent an acceptable quantum of development which would accord with the overall spatial strategy set out in the CLLP and the site-specific policies of the NNP. Consequently, I find no conflict with Policies LP2 and LP52 of the CLLP or Policies H-1 and H-7 of the NNP.
27. As such, I find that the disputed condition limiting development to 50 dwellings is both unreasonable and unnecessary and so does not meet the tests of conditions set out at Paragraph 55 of the Framework. It should therefore be removed. However, a 63 dwelling scheme would represent the maximum density of development set out in the NNP, and represents the quantum of development which the Council considered. In order to ensure the development is undertaken as proposed and additional dwellings are not sought which may have unanticipated impacts, it is necessary to replace the disputed condition with one defining the maximum development permitted as being 63 dwellings. There is no evidence before me of any need to amend or delete any other conditions of the permission.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed and the planning permission should be varied as set out in the formal decision.

K. Savage

INSPECTOR