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## Appeal Decision

Hearing Held on 28 January 2020

Site visit made on 30 January 2020

**by David Reed BSc DipTP DMS MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 4 March 2020**

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**Appeal Ref: APP/N2535/W/19/3233024**

**Land West of A1133, Newton on Trent, Lincolnshire LN1 2JS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mrs Barbara Mary Arden, Furrowfresh Ltd against the decision of West Lindsey District Council.
  - The application Ref 138491, dated 20 July 2018, was refused by notice dated 10 January 2019.
  - The development proposed is a mixed use sustainable village extension comprising up to 325 private and affordable dwelling units (Use Class C3) community meeting rooms (Use Class D1), with ancillary pub/café use (Use Class A4) and sales area (Use Class A1), together with landscaping, public and private open space (all matters reserved).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was submitted in outline with all matters reserved for later determination. The appeal has been considered on this basis, treating the site masterplan with phasing and other supporting material as illustrative only.
3. A further reason for refusal was that insufficient evidence had been provided to establish whether the proposal would sterilise mineral resources within a minerals safeguarding area. However, further evidence was subsequently provided which satisfied the Council on this point and accordingly this reason for refusal was withdrawn well before the hearing.
4. The proposal is essentially unchanged from a previous application which was dismissed following an inquiry in March 2018 (APP/N2535/W/17/3175670).

### Main Issues

5. The main issues are:
  - whether the proposal would comply with the spatial strategy of the local plan;
  - whether the location of the proposal would minimise the need to travel and maximise walking, cycling and public transport; and
  - whether the proposal would comply with flood protection policies.

## Reasons

6. The proposal is for a mixed use village extension including up to 325 dwellings, village hub providing business/community space, public open space and wildlife areas on an 18 ha site north west of the village of Newton on Trent. The site comprises two fields currently used for free range chicken farming and forms part of the flat landscape to the east of the River Trent. The proposal has been developed following extensive community engagement and is intended to arrest the perceived decline of the village with additional housing, employment and other facilities to meet its needs.

### *Spatial strategy*

7. Newton on Trent, which comprises 167 dwellings at present, is classified as a 'small village' in the settlement hierarchy defined by the Central Lincolnshire Local Plan adopted in April 2017 (the CLLP). This joint plan covering the City of Lincoln, North Kesteven and West Lindsey was prepared by a committee of the three Councils plus Lincolnshire County Council, and as such establishes the planning strategy for a large part of the County until 2036. Policy LP3 aims to deliver 36,960 dwellings over the plan period, around 64% in the Lincoln area, 12% each at the main towns of Gainsborough and Sleaford and the remainder being provided in the rest of the plan area in accordance with the settlement hierarchy and spatial strategy of the plan. The appellant does not argue that the housing policies are out of date and thus the 'tilted balance' should apply, rather that the proposal complies with the CLLP.
8. Policy LP2 defines a total of eight tiers in the settlement hierarchy for the plan area. Following the Lincoln area and the two main towns, these are Market Towns (Caistor and Market Rasen), Large Villages, Medium Villages, Small Villages, Hamlets and the Countryside. The villages are categorised by size, with large villages having over 750 houses, medium villages 250-750 houses and small villages 50-250 houses. Newton on Trent falls within the small village category with the nearest large village offering a good range of services and a railway station being Saxilby, about 5 miles away.
9. In order to meet housing needs the plan makes specific allocations for the top four tiers of the hierarchy (down to large villages) and sets a percentage target increase for the next two tiers (medium and small villages) in Policy LP4. Firm settlement boundaries are not defined by the plan, instead Policies LP2 and LP4 include criteria to determine appropriate sites for development in relation to each tier. These sites would be in addition to allocations in the upper tier settlements or, in the case of medium and small villages, the means by which they would grow as no allocations are made. The size guidance for individual housing schemes decreases down the hierarchy, with those in market towns limited to 50 dwellings, 25 dwellings in large villages, 9 dwellings in medium villages and 4 dwellings in small villages. Importantly however, there is also scope for larger schemes in certain circumstances, one of which is when there is 'clear local community support' as claimed by the appellant in this case.
10. In the absence of a neighbourhood plan or clear local community support, Policy LP2 normally restricts new housing in a small village such as Newton on Trent to schemes of four dwellings. The proposal is thus about 80 times larger than this policy guideline. In addition, Policy LP4 limits the overall growth in housing in the village to 10% over the plan period as a whole, so, in the case

- of Newton on Trent, this is a limit of 17 additional dwellings<sup>1</sup>. Five have been permitted so far, leaving capacity for a further 12 dwellings. The proposal is thus about 19 times larger than the overall policy guideline for the village, or 27 times the remaining capacity. These multiples give a clear indication of the size of the scheme compared to the size which would normally be permitted under the spatial strategy. Indeed, the scheme is about six times larger than would normally be permitted in one of the market towns and would roughly treble the number of dwellings in the village.
11. The appellant does not dispute this but argues there is clear local community support in this case. If such support is demonstrated, neither the scheme limit in Policy LP2 nor the village limit in Policy LP4 apply and there is no upper size limit. This point was confirmed by the Council in response to questions from the appellant's advocate at the local plan examination<sup>2</sup>.
  12. Paragraphs 18 and 19 of the 2018 appeal decision outline the detailed research undertaken to formulate the aims and content of the scheme. This involved extensive consultation between November 2014 and August 2015 including a community visioning day, household survey, meetings with stakeholders and a final design workshop. However, as explained in paragraphs 20-22, whilst this exercise satisfies BREEAM accreditation, there was no further consultation on the specific planning application proposals *before* submission to demonstrate community support as required by Policies LP2 and LP4.
  13. In order to rectify this problem following dismissal of the previous appeal, the appellant undertook a public consultation exercise during May 2018 prior to submitting the latest planning application. This involved sending a letter and leaflet to each household in the village, an exhibition in the church, posters, website and facebook page, all encouraging households and other stakeholders to register support or opposition to the proposal as suggested by paragraph 21 of the 2018 appeal decision. 167 local households were identified to vote via the website, exhibition or local shop, together with 52 other stakeholders such as local businesses and organisations. The Council were consulted in advance about this methodology and had no criticism of it at the hearing, Policy LP2 only requiring 'a thorough, but proportionate' exercise. Short of using an independent survey organisation or a 'Parish Poll' of individual electors, it is hard to see what else the appellant could have done.
  14. Overall, 42% of the village households responded, 43 registering support and 27 opposition, a split of 61%-39%. The response of other stakeholders was similar. The response rate was reasonable, and 61% is certainly a respectable level of support, contrasting with the more common experience of residents objecting to housing proposals. However, there is no precise definition of 'clear local community support' in either Policy LP2 or any published guidance from the Central Lincolnshire Joint Committee or West Lindsey DC, leaving the term open to interpretation<sup>3</sup>. I agree with a previous Inspector that a simple majority does not necessarily meet the development plan requirement and it is a matter for the decision maker to judge in each case<sup>4</sup>. In my view the greater the scale of development proposed in relation to a settlement the greater the level of community support required.

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<sup>1</sup> 10% of 167, although subject to flood risk concerns being overcome, dealt with in the third main issue.

<sup>2</sup> Email from John Barrett 9 December 2016 re CLLP examination hearing.

<sup>3</sup> Fenland DC have a similar policy and use a simple majority but that cannot be assumed to apply in West Lindsey.

<sup>4</sup> APP/N2535/W/18/3207564

15. The appellant argues that under Policies LP2 and LP4 the demonstration of clear community support offers an equivalent route to permission for a larger scale scheme as a neighbourhood plan and therefore a simple majority as in a referendum should suffice. However, the two routes are completely different, with a neighbourhood plan being prepared by a representative body rather than a landowner/developer and undergoing an independent examination to ensure it meets certain basic conditions, including general conformity with the strategic policies of the CLLP. These include Policies LP2 and LP4, and whilst 'general conformity' allows some flexibility, strategic policies such as these should not be undermined<sup>5</sup>. Whilst neighbourhood plans involve a long statutory process with a series of checks and balances prior to their inclusion in the development plan, the demonstration of 'clear local community support' offers a potentially easier route which should thus be treated cautiously.
16. The village concerned is small, with only 70 households responding to the consultation. Just eight households responding differently would have changed the result. The need for caution when applying Policies LP2 and LP4 is also justified given the comments of the local plan Inspectors<sup>6</sup> who observed that the policies were 'a largely un-tried and fairly complex approach... there are some risks in terms of potentially foreseeable complications and unintended consequences... nor can it be known how local communities will respond to the responsibilities placed on them by this policy...'. As explained in paragraph 10, the size of the proposal far exceeds that which would be permitted for a small village without community support. The scheme could undermine the spatial strategy of the CLLP. Significantly, whilst there were many comments in support of village growth in principle, most of those opposed to the scheme felt it was simply too large. Notwithstanding the support of the Parish Council, in these circumstances a 43-27 vote shows there are mixed views rather than the clear community support needed to satisfy Policies LP2 and LP4.
17. In any event, in addition to the need for clear community support for the size of development proposed, Policy LP4 sets a sequential test to ensure sites are in appropriate locations in relation to the settlement. As paragraphs 27 and 28 of the 2018 appeal decision explain, the test applies whether or not community support has been demonstrated for the scheme.
18. The Council does not argue that there are any suitable brownfield or infill sites within or on the edge of Newton on Trent which might accommodate housing development, so greenfield land such as the appeal site would be required for the village to expand. The test is therefore whether the site is at the edge of the settlement and in an appropriate location, defined in Policy LP2 as retaining the core shape and form of the settlement together with its character and appearance, that of the surrounding countryside and its rural setting.
19. The appeal site comprises two large fields to the north west of the village, but is only contiguous with the existing built up area for a short distance at the north end of the High Street. There would be an undeveloped gap in the High Street between the site and the property Dunham Knoll, and several fields and paddocks would remain between the southern boundary of the development and the properties fronting Dunham Road and Trent Lane. The site thus has only a tenuous connection with the edge of the settlement and would be better described as being in the countryside. As a result the proposal would greatly

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<sup>5</sup> National Planning Policy Framework paragraph 29.

<sup>6</sup> Report to the Central Lincolnshire Joint Strategic Planning Committee paragraph 123.

extend the built up area of the village to the north and even further to the west as far as the track to the water treatment works, although any village extension of the scale proposed would cover a large area.

20. The proposal would comprise an extension of the existing High Street into the site and this would provide the only means of vehicular access. Pedestrian and cycle links would also be provided to the High Street, north to Laughterton and via the emergency access to the A57 but otherwise connections to the existing village would be poor due to the intervening land. The scheme, essentially a large cul-de-sac at one end of the settlement, would be physically detached from the host village, thus fundamentally altering the shape and form of the village from its current focus around the High Street and Dunham Road. The character and appearance of the settlement would also be adversely affected by the addition of a large new housing estate built over a relatively short period alongside the incremental, piecemeal growth of the existing village. Whilst the A57/A1133 bypasses in the 1980s had some effect on the village, facilitating new culs-de-sac such as The Brambles and The Paddocks, the appeal scheme would have a much greater impact.
21. For these reasons the proposal would not be truly contiguous with the edge of the village nor in an appropriate location as it would fail to retain both its core shape and form and its overall character. Secondly, local views of the scheme are mixed rather than constituting clear community support. It follows from these findings that the scheme conflicts with the spatial strategy of the CLLP as set out in Policies LP2 and LP4.

*Minimising travel and maximising sustainable modes*

22. Newton on Trent is a small village with few services and facilities reflecting its low position in the settlement hierarchy. There is some employment, a post office and small shop, outdoor recreation area, primary school and a parish church, the latter also used by the school and for social activities. In recent years the village has lost its public house, methodist church and regular bus services, now only having a pre-booked service. Residents inevitably therefore look to the large village of Saxilby, about five miles away, for a wider range of shops and doctor's surgery, and further afield to Gainsborough and Lincoln, both about 10 miles away, for the full range of facilities. Secondary schooling is at Tuxford about six miles away or in Lincoln.
23. The 2011 census indicates that about 19% of those in employment work at or from home with just 14% working within 10 km, 38% between 10-20 km in places such as Lincoln and Gainsborough and the remainder further afield. This reflects the relatively low number of job opportunities locally and demonstrates that many residents need to travel long distances to work.
24. The village is thus a poor location for major residential development as both for employment and services/facilities there would be a significant need to travel, more than would be the case for development in larger settlements. The scope for using sustainable modes is also limited with no footways or cycleways to nearby villages and no regular bus and train services nearer than Saxilby. The proposals seek to improve the position, with a community and business hub providing some facilities and jobs, expansion of the primary school, financial support for improved local bus services (perhaps a mini-bus shuttle service to Saxilby), a footway/cycleway to Laughterton, broadband and a travel plan to encourage the use of sustainable modes. However, even taken together, these



initiatives are unlikely to substantially change the overall reliance on use of the private car.

25. Indeed, the appellant's transport assessment estimates that about 73% of the trips generated by the scheme during peak hours would involve car journeys, either drivers (55%) or passengers (18%) with 23% being pedestrian trips and only about 2% each by cycle or public transport. If expansion of the primary school is not feasible, more car journeys would be needed to the alternative at Saxilby. The aim of the travel plan is to reduce the car driver percentage by 5%, but even if this is achieved the overall increase in car travel would be substantial compared to an equivalent scheme in a more promising location. The potential for cycling and public transport from the site is particularly poor given the distance to many facilities and dearth of local bus services.
26. For these reasons the location of the proposal would not minimise the need to travel or maximise walking, cycling and public transport and would thus conflict with Policy LP13 criterion (a). Whilst the proposal seeks to minimise additional travel demand as required by criterion (b) these efforts would be of limited effect and undermined by the circumstances of the site and its location in a small village. The proposal therefore conflicts with Policy LP13 overall which is a standalone policy and applies even if there is community support<sup>7</sup>.

#### *Flood protection*

27. In Newton on Trent the risk of flooding due to the proximity of the River Trent is a strategic constraint to development and Policy LP4 states that the planned 10% growth in households is subject to the constraint 'being overcome'. This presumably means compliance with Policy LP14 and national policy on the subject<sup>8</sup>. These policies seek to direct development away from areas at highest risk of flooding (the sequential test) and, if any is necessary in such areas, to ensure it is safe and does not increase risk elsewhere (the exception test).
28. In this case the site lies within flood zone 2 (medium risk) and flood zone 3 (high risk) and so the sequential test needs to be applied. The essence of the appeal scheme is a community supported expansion of Newton on Trent and so the appellant argues that the area to apply the sequential test should therefore be confined to the village. However, whilst Policies LP2 and LP4 provide for such community supported schemes if the necessary criteria are met, there is no indication in either policy that 'clear local community support' can override local or national flood protection policies. Policy LP14 includes no provision to this effect, nor national policy, and it would be surprising for community support to be determinative in a matter that requires technical evidence.
29. There is no dispute that within Central Lincolnshire, or indeed more locally, there would be many other sites within flood zone 1 (low risk) which could accommodate the amount of housing proposed, albeit not for the benefit of Newton on Trent. The sequential test is therefore not met.
30. Although the exception test does not therefore arise, the site-specific flood risk assessment demonstrates that the proposal would be safe for its lifetime without increasing risk elsewhere<sup>9</sup>. This would be achieved by raising the level of the residential land by 1m or so, graded back to ground level on each side,

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<sup>7</sup> Paragraph 36 of the 2018 appeal decision was in error in this respect.

<sup>8</sup> National Planning Policy Framework paragraphs 155-165

<sup>9</sup> To the agreed standard of a 1 in 100 year flood event inc climate change combined with a 1 in 5 year tidal event.

plus slightly higher finished floor levels for the dwellings, measures which may be noticeable. In addition, off-site flood defences would be improved by raising the height of a 20m section of bund to the north west and constructing a new bund about 75m long to the south of the A57. These measures would reduce flood risk for the existing village but are not dependent on the village extension and could be implemented in any event.

31. For these reasons the proposal would lie in an area with a relatively high risk of flooding and thus conflicts with both local and national flood protection policies, in particular Policy LP14, by failing the sequential test.

*Other matter*

32. The demand for affordable housing in Newton on Trent is relatively low and there is no evidence that a registered provider would be interested in providing such housing on the site, still less the 20% proportion normally required under Policy LP11. The ability of the site to deliver the full range of housing sought by village residents is thus in some doubt.

**Planning Balance and Conclusion**

33. The proposal would not be truly contiguous with the edge of Newton on Trent nor in an appropriate location as it would fail to retain the core shape and form of the village and its overall character, also local views of the scheme are mixed rather than constituting clear community support. The scheme therefore conflicts with the spatial strategy of the CLLP as set out in Policies LP2 and LP4. In addition, the proposal would not minimise the need to travel or maximise walking, cycling and public transport contrary to Policy LP13 and would conflict with flood protection policies in conflict with Policy LP14. Whilst some elements of the scheme are supported by local plan policies, for example Policies LP15 and LP24 which support new community and recreational facilities, it follows from these findings that the overall scheme conflicts with the development plan when considered as a whole.
34. The proposal would provide up to 325 dwellings, improved footpath/cycle/bus links, a village hub including business/community space, public open space and wildlife areas. These would have important economic and social benefits for the village and make a useful contribution to housing provision in West Lindsey where delivery is relatively poor. The scheme would be built to a high BREEAM standard, there would be improvements in biodiversity and a reduction in flood risk for the existing village. These benefits taken together should be given significant weight, and it is appreciated there is a good measure of support for some more housing and other facilities in the village. However, these material considerations are not sufficient to outweigh the conflict with the development plan and the harm that has been identified under the three main issues.
35. Having regard to the above the appeal should be dismissed.

*David Reed*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

David Manley QC	of Queens Counsel
Neil Boughey BA DipTP LLB MRTPI	Acorn Planning
Kate Hiseman MSc MCIEEM MCIEMA	Sustainable Land Trust
Christopher Groves LLB	Gunnercooke
Joanna Posnett BA MCIHT	BSP Consulting

### FOR THE LOCAL PLANNING AUTHORITY:

Stephanie Hall	of Counsel
Jonathan Cadd BA MTP MRTPI	Principal Planning Officer, West Lindsey DC
Martha Rees	Legal Services Lincolnshire
George Backovic	West Lindsey DC

### INTERESTED PARTIES:

Roger Pilgrim	Clerk, Newton on Trent Parish Council
Andrew Arden	Local farmer
Simon Challis	Lincolnshire County Council Education

## **DOCUMENTS SUBMITTED AT THE HEARING**

Email from John Barrett 9 December 2016 re CLLP Examination Hearing

Draft Planning Agreement and Draft Unilateral Undertaking

Central Lincolnshire Strategic Housing & Economic Land Availability Assessment July 2015 (extract)

Representation from Roger Pilgrim, Clerk to Newton on Trent Parish Council

Copy of Community Consultation leaflet circulated within village, May 2018

Site plan for Village Community Centre planning permission in 2002

Attendance List