



Appeal Decision

Hearing Held on 25 February 2020

Site visit made on 25 February 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal Ref: APP/N2535/W/19/3240860

Former Tanya Knitwear site, Ferry Road, Fiskerton, Lincoln LN3 4HU

- 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 Mr Richard Hughes of Fiskerton Developments Ltd against the decision of West Lindsey District Council.
 - The application Ref 139023, dated 8 February 2019, was refused by notice dated 10 May 2019.
 - The development proposed is the demolition of part of ancillary office building to create new access and retain 384sqm of office space-B1, the conversion of a residential dwelling to provide 134sqm crèche/children's nursery-D1, 26no. open market dwellings, 2no. affordable dwellings, public open space, associated parking and bus stop.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal development is a revised re-submission of a previous application¹. I have taken the date of the appeal development application from the submitted appeal form, which accords with the Council's decision notice. I have also made minor changes to the description of the development given on the appeal form so as to remove superfluous wording.
3. There is a difference between the postcode on the application form and the postcode on the Council's decision notice. I raised this matter with the main parties and there was agreement that the postcode contained on the Council's decision notice was appropriate.
4. The appeal development is an outline planning application with all matters reserved. However, a number of specific elements are detailed, including in terms of the overall quantum of development, and in the case of the office space and the creche, its spatial distribution within the site. Various plans and associated information were submitted showing options for how the proposed development could be delivered. However, these plans are indicative only and do not seek to address any of the reserved matters of the proposed development.
5. The appellant sought to amend the description of development from that contained on their application form so that it became 'mixed use development

¹ LPA Ref. 136873

with all matters reserved', removing reference to the provision of 2no. affordable dwellings, amongst other things. The appellant's expectation was that this matter would be covered during the discussions at the Hearing and a final description of the proposed development would be arrived at subsequently.

6. Government guidance is clear that *the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought*².
7. Following a brief discussion, I advised the appellant that I was not satisfied that interested parties would not be disadvantaged by such a change³. Consequently, I have determined this appeal on the basis of the development considered by the Council in refusing planning permission.
8. A draft section 106 Planning Agreement⁴ between the Council and the appellant was submitted prior to the commencement of the Hearing. Both main parties indicated that progress continued to be made regarding the Agreement, but that a short extension of time would be needed to complete this task.
9. Following a short discussion with the parties regarding the outstanding issues, with reference to Government guidance⁵, and exceptionally, I gave the main parties until the close of business on Wednesday 4 March to submit any and all planning obligations in relation to this appeal.

Main Issues

10. The main issues are:

- Whether the proposed development would be located at a sustainable location in the countryside
- The effect of the proposed development on surface water drainage and associated flood risk management
- The effect of the proposed development on affordable housing provision
- The effect of the proposed development on local health facilities.

Reasons

11. The appeal site contains a largely demolished Class B2 factory building, a vacant office building associated with the former factory use, a dwellinghouse and various incidental buildings. Much of the site is covered by hardstanding, and slopes gently upwards away from Ferry Road, before levelling-off.

Location of proposed development

12. The village of Fiskerton is located within the Lincoln Strategy Area (LSA), referred to in Policy LP3 (level and distribution of growth) of the Central Lincolnshire Local Plan 2017 (CLLP). Within the LSA, development will be focused firstly on urban regeneration, followed by sustainable urban extensions

² Paragraph M.2.1, Procedural Guide Planning Appeals – England, February 2020

³ Including with reference to the Wheatcroft Principles - (Bernard Wheatcroft Ltd v SSE [JPL 1982 P37])

⁴ Section 106 of the Town and Country Planning Act 1990

⁵ Section E.9

- to Lincoln, and finally in settlements, such as Fiskerton, which serve or are serviced by Lincoln.
13. Policy LP2 (spatial strategy and settlement hierarchy) of the CLLP sets out a hierarchy for the sustainable growth of Central Lincolnshire and identifies Fiskerton as a Medium Village (Tier 5 of the hierarchy). The supporting text to Policy LP2 states that the CLLP 'does not include defined 'settlement boundaries' around any settlements in Central Lincolnshire, and instead relies on the policy below to determine appropriate locations for development⁶.'
 14. The '***' footnote to Policy LP2, on page 11 of the CLLP, defines the *developed footprint* of a settlement as 'the continuous built form of the settlement'. The *developed footprint* term should be used throughout Policies LP2 and LP4 (growth in villages). Whilst not expressly referenced in relation to Tier 5 Medium Villages in Policy LP2, it is referenced in relation to them in Policy LP4, in the sequential test for development priorities within Tier 5 and 6 settlements. Consequently, I am satisfied that the *developed footprint* term applies to Fiskerton.
 15. The appeal site is separated from the continuous built form of Fiskerton by a distance of some 200 metres across a field and Hall Lane, on the northern side of Ferry Road. The appeal site is not isolated, the buildings it contains form part of a grouping of buildings and development on both sides of Ferry Road. Groups of buildings 'which are clearly detached from the continuous built up area of the settlement' are specifically excluded from the *developed footprint* definition in the CLLP⁷. In my view, the buildings on the appeal site are covered by this exclusion.
 16. I note the appellant's comments about the appeal site being within the functional area of the settlement, including with reference to the lit footpath along Ferry Road. However, it is located well outside the *developed footprint* of Fiskerton and is therefore in the countryside, according to the development plan. Furthermore, the separation distance between the site and the developed footprint of Fiskerton means that it is not on the edge of the settlement either. Consequently, Policies LP2 – 5. *Medium Villages* and LP4 are not directly relevant to the proposed development.
 17. The proposal would not meet any of the criteria for new housing contained in Policies LP2 – 8. *Countryside* and LP55 (development in the countryside). I note the comments made regarding the substantial weight that the National Planning Policy Framework 2019 (the Framework) attaches to the use of suitable brownfield land within settlements for homes and other identified needs⁸. However, as set out above, the appeal site is in the countryside, not within a settlement, and so this specific wording does not apply.
 18. Whilst the Framework recognises that greater flexibility may be needed in terms of the location of employment and community facilities in rural areas, no evidence has been provided to demonstrate that the creche is necessary to meet local community or business needs⁹, and I note from the discussions at the Hearing that the office development would be speculative and in any event would not require planning permission.

⁶ Paragraph 3.2.5

⁷ Part a) of the '***' footnote to Policy LP2 of the CLLP.

⁸ Paragraph 118c)

⁹ Paragraph 84 of the Framework.

19. The village contains a number of key facilities, including a primary school, a village hall, a church and a public house, and is therefore one of a number of Tier 5 settlements that are planned to grow by 15% up to 2036¹⁰.
20. There are no allocated development sites within Fiskerton. Whilst some development would be expected to come forward on infill sites, it is likely that a significant part of the residual housing requirement¹¹ would need to be provided on greenfield sites at the edge of the settlement.
21. The spatial distribution of future housing development for Fiskerton is not known. However, edge of settlement sites are likely to have better accessibility and less reliance on private cars than the appeal site, due to their generally closer proximity to the village and its facilities. Similarly, the proposed creche use at the appeal site, in the countryside and separate from the settlement, would not be accessibly located for the residents of much of Fiskerton, particularly the central and western parts.
22. The scale of the proposed development is also significant, particularly the 27 (net) new dwellings that would be provided. There is no Neighbourhood Plan for Fiskerton promoting such a scale of development. Whilst the appeal proposal is supported by the Parish Council and some others, it has not been demonstrated to my satisfaction that it has *clear local community support*¹².
23. For the previous development proposal at the appeal site¹³ the appellant undertook a number of pre-application consultation measures. These are detailed in the evidence and drew support from those that formally responded. However, this concerned a significantly different scheme to the appeal before me, and a different approach to engagement was also taken by the appellant for the appeal scheme.
24. Therefore, the scale of development would significantly exceed the number of units typically allowed on a site *within* a Tier 5 settlement, such as Fiskerton, and would also exceed the number of dwellings that in *exceptional circumstances* could be permitted on such a site¹⁴.
25. There is a bus stop close to the appeal site, serving a route to Lincoln and nearby villages. The appellant proposes to provide an improved bus turning area within the site, although no firm details of this are provided. Whilst the appeal site would have the same level of bus service as Fiskerton, no details of its frequency are in the evidence before me. A limited service would be likely to mean a reliance on private cars for future occupiers.
26. Given the location of the appeal site in the countryside, rather than in or on the edge of a settlement, this scale of development would be likely to have a detrimental impact upon the spatial strategy for Central Lincolnshire contained in the development plan, by providing a significant number of new houses in an unsustainable location.
27. The proposed mixed-use development would be on a brownfield site, would remediate contaminated land and would be unlikely to adversely affect the character and appearance of the countryside or neighbouring uses or occupiers.

¹⁰ Policy LP4 of the CLLP.

¹¹ Some 73 dwellings.

¹² '*****' footnote to Policy LP2 of the CLLP.

¹³ LPA Ref. 136873.

¹⁴ Policy LP2 – 5 of the CLLP.

28. However, on balance, I am not satisfied that the limited benefits of this major development¹⁵ would be sufficient to outweigh the harm that would be caused by its location away from the village of Fiskerton. For these reasons the proposed development would be in an unsustainable location in the countryside. It would therefore conflict with Policies LP2, LP3, LP4 and LP55 of the CLLP.

Surface water drainage and associated flood risk management

29. When I visited the site, I noted that a significant part of it was hard-surfaced, with a shallow gradient down towards Ferry Road. The appellant's drainage consultant stated that from their investigations, a significant part of the site drained into a *de facto* combined sewer, which also drained the development to the east of the appeal site.

30. The soil in this area is clay, meaning infiltration drainage would not be an appropriate solution for surface water. Furthermore, given the relatively impermeable soil and the sloping gradient of the site, surface water flows could be generated at the appeal site during intense storms.

31. The appeal proposal is in outline, with all matters reserved, including layout and landscaping. The appeal site is in land classed as Flood Zone 1 and so is at a low risk of fluvial flooding. Nevertheless, given the size of the appeal site a Flood Risk Assessment (FRA) has been produced by the appellant and has been subject to consultation, with particular regard to surface water drainage.

32. The FRA concludes that surface water would continue to be removed from the site by way of drains into the existing sewer, but with the drainage rate limited to 5 l/s to address a 1/100 year flood plus 40% allowance for climate change. This rate was considered to be acceptable by both Anglian Water and the Lead Local Flood Authority (LLFA).

33. However, both organisations objected to the submitted drainage strategy for the site and requested that a revised strategy be produced addressing their various concerns. The LLFA was particularly concerned regarding the proposed use of cellular attenuation beneath adopted highways. No such revised drainage strategy has been submitted.

34. The appellant has raised concerns with the Council's approach to engagement during the planning application process, including with regard to the Working Practice Statement listed on the decision notice, and in relation to drainage and flood risk. This, together with some problems with the appellant's business, are said to be the reasons why a revised drainage strategy, addressing the concerns of Anglian Water and the LLFA, was not prepared.

35. For whatever reason, there is no substantive evidence before me to demonstrate that an appropriate surface water drainage strategy for the proposed development could be produced, or that the appeal development would provide betterment in terms of surface water discharge rates.

36. For these reasons it has not been demonstrated that the proposed development would be acceptable, in terms of surface water drainage and associated flood risk management. It would therefore conflict with Policy LP14

¹⁵ Article 2 of the Town and Country Planning (Development Management Procedure)(England) Order 2015

(managing water resources and flood risk) of the CLLP and with the Framework, in this regard.

Affordable housing provision

37. Central Lincolnshire has an identified need to provide some 17,400 affordable homes between 2012 and 2036, although it is recognised that this need cannot be fully met through the planning system alone.
38. However, Policy LP11 (affordable housing) of the recently adopted CLLP seeks to maximise what the planning system can deliver, including for sites such as this one. The scale and location of the proposed development within the LSA means that seven of the proposed dwellings, (25%) should be affordable. The Council's Strategic Housing Officer has stated that five of these should be affordable-rented and two should be shared-ownership.
39. The proposed development would provide only two affordable-rented homes in an area where there is a significant demand. Policy LP11 allows for some flexibility in terms of affordable housing provision through negotiation, should an accurate viability assessment demonstrate that these cannot be met in full.
40. The appellant again raised concerns regarding the Council's approach to determining the application. I note that the *initial* comments of the Council's Projects and Growth Team, which reviewed the appellant's Valuation Report of 20 March 2019, were sent in the late morning on 9 May 2019, the day before planning permission was refused.
41. This does not demonstrate to me that the Council has made any meaningful attempt to engage with the appellant regarding the viability of the scheme and consequently affordable housing provision.
42. The appellant has attempted to discuss viability with the Council during the appeal process, including with regard to updates to the viability section of the Government's Planning Practice Guidance (PPG). However, there has been no direct response to the concerns raised by the Council, or to the changes to PPG. From the submitted evidence and the discussions at the Hearing, I have concerns about the robustness of the appellant's Valuation Report.
43. The Framework¹⁶ and PPG set out the Government's position with regard to viability, including standardised inputs and with regard to the development plan. The appellant has provided viability assessments for two scenarios – one of which would be for a development with seven affordable homes and one of which reflects the proposed development. The proposed development is said to be viable and the proposal containing seven affordable homes not.
44. Within the appraisals, assumptions have been made regarding the tenure split for the affordable housing, and the size and type of dwellings which would be affordable. In the absence of meaningful engagement with the Council such assumptions are not unreasonable, although the tenure mix is not fully consistent with the mix requested by the Council.
45. I note that the Valuation Report does not allow for any planning obligation costs, despite the comments of NHS England that are dealt with in more detail below. No specific allowance is made for surface water drainage and flood risk

¹⁶ Paragraph 57

- management at the site either. Whilst these would increase the overall development cost, they are directly relevant to the viability assessment.
46. An allowance of £100,000 is made for land contamination costs, but the basis for this remains unclear; it is not based upon the Geoenvironmental report of August 2014 which identifies the presence of asbestos. £100,000 is a significant allowance, and I note that the Council has queried this. Given the lack of evidence to support it within the Valuation Report, I am not satisfied that this figure is reasonable.
 47. The derivation of the Existing Use Value (EUV), which at around £400,000 is the same as the purchase price in 2008, is unclear. I note the references to the costs incurred by the appellant since the acquisition, which are not fully detailed, and that an alternative use, for storage or haulage is also considered. From the evidence and discussions, and with reference to PPG, it has not been demonstrated that the EUV is a realistic value.
 48. I am not familiar with the development sites and properties referenced at paragraph 4.4 of the Valuation Report. Whilst I have no reason to dispute the accuracy of this information, and a range of sizes and values are provided, it is not clear that any are sufficiently similar to the appeal site / scheme for a meaningful comparison to be made.
 49. The profit levels for the two appraised developments are very similar and fall within the 10-20% band that was considered to be reasonable by both parties. I note that in terms of the stated EUV the proposal to deliver seven affordable dwellings would provide only a very modest uplift, whereas the proposal for two units would be significantly more.
 50. I have already mentioned my concerns with the stated EUV and some of the cost allowances of the scheme. From the evidence and discussions, I am also not assured that the proposal is fully compliant with the current Viability section of PPG, which was updated in September 2019. Whilst I note the difficulties the appellant has had in engaging with the Council, this matter is not adequately addressed in the evidence.
 51. However, even if I were to accept the two appraisals provided by the appellant were adequate, and that two affordable homes would be viable and seven would not, it is not clear to me that two affordable dwellings would be the most that the proposed scheme could deliver, as required by the CLLP.
 52. The appellant has provided a draft Section 106 Planning Obligation, which includes the provision of two affordable homes as part of the development. This document is incomplete and so carries no weight in my decision; this means there is no mechanism through which any affordable housing could be delivered.
 53. Even if a signed and certified copy of this planning obligation were in the evidence before me, the provision of two affordable homes, rather than the seven required by Policy LP11 of the CLLP, would mean that the proposal would have only a limited benefit and would not be sufficient to outweigh the harm I have identified.
 54. For these reasons I am not content that the proposed development would be acceptable in terms of affordable housing provision. It would, therefore, conflict with Policy LP11 of the CLLP and with the Framework, in this regard.

Local health facilities

55. The proposed development would result in an increase in the local patient population of 64 people and would therefore put additional demands on existing GP services in the area. NHS England states that upgrading consulting rooms at a nearby GP practice in Cherry Willingham would address these demands, and that Section 106 contributions from the appeal scheme could be used to this end.
56. This is not a matter of dispute between the parties. With regard to paragraph 56 of the Framework, a Section 106 planning obligation to provide funds to improve local health facilities would be necessary in order to make the proposed development acceptable in planning terms, would be directly related to the development and fairly and reasonably related to it in scale and kind.
57. However, a suitably signed and certified Section 106 Planning Obligation controlling this matter has not been provided within the timescale specified at the Hearing. Consequently, the proposed development would have an adverse impact upon local health facilities and would conflict with Policy LP9 (health and wellbeing) of the CLLP.

Other Matters

58. Policy LP9 of the CLLP requires a Health Impact Assessment (HIA) to be provided for a development of this scale. However, given that this is an outline application with all matters reserved, in this case the provision of an HIA prior to the submission of reserved matters applications would have been acceptable. However, I am dismissing the appeal for other reasons and this matter has no bearing on my decision.
59. I note the various appeal decisions referenced by both parties in relation to their cases. I am not fully familiar with these cases and in any event, each appeal should be determined on its individual merits, with appropriate regard to the development plan and material considerations. These decisions do not cause me to reach a different conclusion with regard to this appeal.

Conclusion

60. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Andrew Parkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Steve Catney	J H Walter
Laura Bartle	J H Walter
James Lambert	J H Walter
John Elliott	J H Walter
Tony Donaldson	TD Infrastructure Ltd
Alistair Anderson	J H Walter
R Hughes	
K. Pritchard	

FOR THE LOCAL PLANNING AUTHORITY:

Martin Evans	West Lindsey District Council
Russell Clarkson	West Lindsey District Council
Rachel Woollass	West Lindsey District Council
Clare Bailey	West Lindsey District Council

DOCUMENTS SUBMITTED AFTER THE HEARING

The appellant's written acceptance of the pre-commencement conditions discussed at the Hearing.

Unsigned agreed draft versions of a Section 106 Planning Agreement and a Section 106 Unilateral Undertaking.