

## Appeal Decision

Hearing held on 23 and 24 June 2015

Site visit made on 24 June 2015

**by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

**Decision date: 26 April 2016**

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**Appeal Ref: APP/N2535/W/14/3001767**

**Land off Hancock Drive, Manor Farm, Lincolnshire LN3 5SR**

- 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 Chestnut Homes Ltd (Mrs Rebecca Archer) against the decision of West Lindsey District Council.
  - The application Ref: 131498, dated 16 June 2014, was refused by notice dated 24 September 2014.
  - The development proposed is described as a hybrid application for up to 170 dwellings (Phases 3a, 3b, 3c) of which full planning is sought for 44 dwellings (Phase 3a) and outline permission is sought with all matters reserved except for access for up to 126 dwellings (Phases 3b and 3c), together with a secondary temporary access for construction traffic off Horncastle Road, Bardney.
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### Decision

1. The appeal is allowed and planning permission is granted for a hybrid application for up to 170 dwellings (Phases 3a, 3b, 3c) of which full planning permission is sought for 44 dwellings (Phase 3a) and outline permission is sought with all matters reserved except for access for up to 126 dwellings (Phases 3b and 3c), together with a secondary temporary access for construction traffic off Horncastle Road, Bardney at Land off Hancock Drive, Manor Farm, Lincolnshire LN3 5SR in accordance with the terms of the application, Ref: 131498, dated 16 June 2014, subject to the conditions in the attached schedule.

### Application for Costs

2. At the Hearing an application for costs was made by Chestnut Homes Ltd against West Lindsey District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The Council's statement sets out that progress had been made with regard to education and health contributions such that it would negate the need to defend reason for refusal number 3. At the Hearing it was explained that the s.106 legal agreement under which financial contributions would be made would be delayed because the landowner had died and therefore there were legal complications in signing such a document. It was put to me that this matter could be dealt with by condition. However, that document has now been signed. I shall address the s.106 along with the requirements for

contributions in respect of health, education, affordable housing and transport, in my reasoning below.

4. In terms of reason for refusal number 4 which related to the impact of the proposal on highway safety the Council has resolved not to pursue this matter. I shall, nonetheless, consider the concerns of residents in this regard.
5. After the Hearing took place the Council published the Further Draft of the Central Lincolnshire Local Plan (Draft Local Plan) and a 5 Year Land Supply Report. The Council sought that this be taken into consideration. The appellant was given the opportunity to comment on the documentation which was subsequently submitted by the Council. Interested parties who took part in the appeal Hearing were also given the same opportunity. Those matters are referred to below and more specifically towards the end of the reasoning.

### **Main Issues**

6. Having in mind the foregoing preliminary matters, the main issues in this case are:-
  - (a) The effect of the proposed development on the special architectural and historic interest of the Church of St Lawrence, Manor House, Manor House Gateway and Garden Wall and the Barn at Manor House which are all listed buildings, and, in particular, whether the scheme would preserve their settings;
  - (b) The effect of the proposed development on the character and appearance of the surrounding area and having regard to implications of this for views from public rights of way and, thus, tourism; and,
  - (c) The effect of the proposed development on local education and health facilities and whether adequate provision would be made in that regard.

### **Reasons**

#### ***Introductory Matters***

7. At the Hearing it was not disputed between the parties that there was not a five year housing land supply for the District such that applications for housing should be determined in accordance with the National Planning Policy Framework (the Framework). That position has subsequently changed in that the Council now claims that there is a five year housing land supply. This is based upon details set out within the Central Lincolnshire 5 Year Supply Report for the period 2014/15 to 2020/21. This indicates a need for 2,245 dwellings per year (average) to account for necessary supply, backlog and 20% buffer, and indicates that a 5.37 year supply exists.
8. The appellant firmly disputes that position setting out that the housing requirement has increased significantly and that the supply which the Council identifies as available now includes incorporation of over 7,000 houses from 'Emerging new Allocations as identified in the Draft Local Plan' to come forward in the next five years along with a 863 unit windfall allowance. I understand the appellant's rather sceptical view about the reality of such increased amounts of housing land coming forward within the next five years given that the Local Plan is still a draft document.

9. However, it is not necessary to pursue the matter of housing numbers further as both parties agree that the plan position is not up-of-date, the draft plan is simply that and so cannot be afforded significant weight. The allocation sites included in the suggested 5 year supply rely on that document.
10. The Framework sets out that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (paragraph 49). It goes on to explain that where relevant policies are out-of-date planning permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted. It is in this context that I shall consider the adverse impacts which the Council has set out in its reasons for refusal.
11. In addition, the Statement of Common Ground, acknowledges that this site is located in an area recognised as a location to support the spatial objectives of delivering growth within the Lincoln Policy Area and, thus, that the development is sustainable in terms of West Lindsey Local Plan First Review 2006 policies (SUS1 and SUS4) and the Framework, particularly having regard to proposed footpaths and cycleways and subject to provisions within a s.106 which I shall consider in detail below.

### **Listed Buildings**

12. In this case the concern with regard to the listed buildings is the impact upon their setting. The Historic England<sup>1</sup> *Historic Good Practice Advice in Planning Note 3 The Setting of Heritage Assets* explains that the extent of setting is not fixed and may change as the asset and its surroundings evolve. Elements of setting may make a positive or negative contribution to the significance of an asset and may affect the ability to appreciate that significance or may be neutral.

#### *Church of St Lawrence*

13. The Church of St Lawrence is a grade I listed building. It dates from C15<sup>th</sup> with later alterations and is of coursed limestone rubble, with ashlar and red brick. Indeed the brick built chancel, which is an early phase of construction, is of significant interest particularly having regard to the diaper work. The west tower, which is the most prominent part of the church in distant views, is from the late C15<sup>th</sup>. The church is ornately detailed and of high quality, including in respect of internal features such as the 19<sup>th</sup> reredos and collection of architectural fragments from Bardney Abbey. As such, the quality of materials and their use, the architectural details, the history and social role of the church within the settlement are all significant.
14. In terms of the tower, there are bell openings on four sides with cusped lights, vertical tracery and hoodmolds. An angular shaft rises from between the 2 lights of the bell opening to a central pinnacle. These central pinnacles, along with the corner pinnacles, are a feature of the tower which is clearly seen at a distance. The gargoyles are also of interest.

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<sup>1</sup> The Historic Good Practice Advice in Planning Notes have been republished under the name of 'Historic England' since the copies available at the Hearing were taken but the content remains the same.

15. The immediate setting of the church is important as the churchyard directly relates to the function of the church. The access route to the south-west indicates a clear relationship existed at some point with the Manor House. The wider setting relates to the settlement as a whole. The location of the church relative to other development over time can be seen through the cartographic evidence provided. In essence the Manor was located to the south-east, with the settlement developing to the north-east and north-west. The land to the south-west beyond the churchyard still faces an open field. However, this does not appear to be positioned with any significance in terms of the south-west elevation of the church. I also note that the early brick phase of the church is situated at the eastern side of the building and so faces development on each of its three visible elevations. It seems other buildings have been developed which align more generally with the fabric of the church. That said, they are positioned in a rather ad-hoc manner so that a planned approach to protecting this elevation is not apparent.
16. The boundary along this south-west side is planted and this limits views towards the church. Thus, the key element in views towards the church from the south-west is that of the tower. In this regard, the land at this side does not particularly contribute to the setting of the church. However, the distinctive landmark role of the tower is significant when approaching the settlement along the public bridleway which is part of the Water Rail Way and National Cycle Route No 1 Summer Route and the Viking Way. Despite that landmark role the significance of the asset, in terms of its great age and architectural detailing, is not apparent until relatively close too. As such, the appeal site makes a limited contribution to the setting of this heritage asset.
17. The appeal scheme consisting of the detailed elements and the outline scheme would, in effect, result in the church being enclosed by housing albeit a section of field would be retained as public open space. The land slopes away gently from the church. As a result, the upper part of the tower of the church would remain largely visible above and between the proposed dwellings of the fully detailed scheme. I am satisfied from the sketch details that this could similarly be the case for the outline scheme.
18. In addition, the proposed public open space which would form part of the outline proposal would facilitate closer views towards this heritage asset than at present. This is because existing views are either at a distance from the bridleway or are limited views from the footpath at the rear of the houses. That footpath follows a route directly towards the south-west end of the church but it is largely obscured by planting at the field edge.
19. I conclude on the evidence before me, having had regard to what it is that makes the building special, that the contribution of the site to the setting, and thus to the significance of the architectural and historic in interest of the church, is limited. Moreover, the proposed development would not significantly harm those aspects of the setting which have been identified as important. The public open space would be a positive benefit in allowing greater proximity to the church to view the tower and the land would remain open in the event that the outline development, which would provide for the open space, were not pursued. The public open space would not significantly enhance the setting of the listed church when compared to its current context. Nonetheless, I conclude that the proposed development of the full scheme would at most cause marginal harm to the setting of the church, and the illustrative scheme

indicates the large site could be developed with only marginal harm. That harm in each instance being the foreground view of an open field towards the boundary hedge, with the tower seen beyond, when seen from the Viking Way.

20. I am in no doubt that this harm is less than substantial in terms of the Framework such that the limited harm needs to be weighed with the public benefits of the proposal. I am mindful that the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CA Act) establishes a duty at s.66 which requires that when considering whether to grant planning permission for development which affects the setting of listed buildings special regard shall be paid to the desirability of preserving that setting. In this case, for the reasons set out above, only marginal harm would arise and the fact it is so limited is material to the planning balance which I have to make.

*The Manor House, Manor House Gateway and Garden Wall, and Barn at the Manor House*

21. The Council accepts that there was an error in the reason for refusal in that it referred to the Manor House as being on Church Road, when in fact it is on Horncastle Road. Although the appellant makes much of this, I consider it is a simple error albeit not helpful.
22. The Manor House is a Grade II listed building. It is not readily visible from the public domain and I was unable to access it at the site visit. This building was derelict at the time of listing but since then it has been rehabilitated to residential use. The Barn, which is also listed grade II, is similarly largely screened from public view by other development. This barn has been converted to residential use. The remaining key exterior feature which can be partly seen is that of its vast roof. From the evidence before me it seems that the special architectural and historic interest of these buildings relates to their vernacular architecture, age and historic use as an agricultural complex.
23. The gateway and garden wall at the Manor House are listed in their own right as grade II listed buildings. The special architectural and historic interest of these listed buildings is derived from their historic brickwork and association with the enclosure of the Manor House and associated farm. However, there is no dispute that it is unclear as to the extent of the walls covered by the listing. The walls on the Horncastle Road frontage have undergone some significant alterations including being breached, and reduced in height from their original construction. However, that part of the wall is not significant for the purposes of this appeal as this area is away from the appeal site and unaffected by the proposed development.
24. It is accepted by all parties that the Manor House complex, including each of the listed elements, has been significantly eroded by development and by subdivision of the buildings. In terms of setting it is possible to identify how the remaining elements of each of the structures relate to each other. Indeed what remains is very much an inward looking group of buildings, largely devoid of public views. The land with which it would have been associated has been separated from it such that the former edge of settlement context is not significant. The remaining relationship which is of significance is that with the church. Here the tall boundary wall can be seen separating the Manor House from the churchyard. This provides a historical association in terms of proximity but creates definition between the two neighbouring listed buildings

of the church and Manor House. However, that relationship is not one which is clearly appreciated from the appeal site.

25. In terms of setting of this group of historic assets, it seems to me, the appeal proposal in both detailed and outline phases would have no impact on their setting and thus no impact on their significance as heritage assets. Indeed at the Hearing it was conceded by the Council that it was difficult to make a case for adverse impact on these listed buildings and that the proposed open space in the outline scheme would enable some glimpses of the relationship between the church and Manor House which cannot currently be seen.

### ***Conclusion on Listed Buildings***

26. In terms of the impact on the setting of listed buildings I conclude that the only adverse impact is that relating to the setting of the Church of St. Lawrence and that this, at worst, is a marginal impact.

### **Character and Appearance**

27. The development of the settlement of Bardney reflects transport routes consisting of the main network of roads, the River Witham and the dismantled railway which runs along side the river. The settlement core is located around the medieval church, near to which there are almshouses, small shops and a war memorial. Between this area and the river where the extensive sugar factory is located, the road is characterised by frontage development although there are some backland developments. This area is mainly residential but has some commercial uses and is characterised by Victorian buildings which are predominantly in brick. The settlement has seen several phases of development including some substantial estates of housing to the north and eastern sides. Unlike the older areas these developments are in estate form of culs-de-sac. Developments including established housing built by the public sector in the mid C20<sup>th</sup>, later C20<sup>th</sup> developments of bungalows and social housing and, more recently, earlier phases of the estate to which this scheme would be linked. The school is situated at the eastern side of the settlement near to the residential housing estates. The recreation space and medical facilities are located on Horncastle Road near to the entrance to the estate through which this site would gain access.
28. The character and appearance of the settlement is therefore established by its mixed phases of development, sizeable housing areas in defined groups, reflecting date of construction and design, accessed from the main road network.
29. The appeal site would represent an extension to an existing distinct modern housing development. The detailed element of the scheme for which full permission is sought relates to 44 houses and would occupy the area of the site which is most remote from the village. This is proposed for practical reasons as it is the nearest part to the vehicular access point. In addition this area provides the water storage area required for the wider application site. The housing proposed in this location reflects the orientation of the housing on the main street and in effect follows the approach taken to the settlement edge in the adjoining recent housing development. However, developing this phase first would result in an open area between the site and village. Should subsequent phases not be brought forward it would have some limitations on pedestrian access, although access to the Viking Way would be provided.

There are benefits in that phasing as, if left open for some time before being developed, the space would retain views to the older areas of the settlement including the area identified in the local plan as to be protected as an open space. As such, the phasing proposed is not a matter that counts against the scheme.

30. The section for which detailed permission is sought, either alone or with the later phases based on the illustrative details, would be clearly identified as a recent scheme and, as pointed out by one objector, likely to reflect similar schemes by this particular developer. However, efforts have been made with the design of the proposed scheme. There would be clear local references in terms of the use of swales rather than complete use of culverts. There would be a fairly limited palette of materials, with those materials reflecting materials found within the village. House types would be varied in design, but generally simple reflecting more traditional properties of the locality. The dwellings would also reflect the traditional design proportions of windows, use simple features such as dentil courses and have chimneys. The design of some buildings would acknowledge the need to create attractive frontages to public spaces, or to create a sense of enclosure. These matters all combine to create a development which would have an interesting and varied appearance rather than being uniform and unresponsive to site context. In this sense the scheme would be legible and pleasant to use, which would also encourage residents to walk or potentially cycle to other village facilities.
31. The road layout for the housing would be based on a single access point (with restricted emergency access). In the full part of the scheme pedestrian access to Viking Way would be provided and further pedestrian access routes are indicated for the illustrative outline scheme, with scope in alternative schemes to enhance that shown. It seems to me such scope should be seriously considered in order to assist assimilation of the site into the wider area and encourage healthier lifestyles. Both the housing of the detailed scheme and that of the illustrative outline scheme would be well situated in terms of village facilities being in good proximity to the medical centre, shops, recreation facilities and a reasonable walk of about 10 minutes from the nearer parts of the site to the primary school. As such, a good relationship would exist between the proposed detailed housing scheme and the facilities of the village.
32. The outline scheme would enable greater connectivity for pedestrians/cyclists because of proximity to other potential joining points, although I note there is concern about land ownership at the corner near to the church where alternative design might be required (although access would be possible utilising the public right of way). These proposed and illustrative routes would help to forge physical and social links with the established areas of the settlement and so would enhance the function and character of the village.
33. Landscaping would reflect and reinforce traditional hedge boundaries with some planting of trees and a considered approach to making public open space and infrastructure visually attractive. However, it seems to me that the boundary treatments at the new settlement edge would be rather limited. Whilst the proposed scheme would therefore appear like that of the earlier phase it would not reflect the more generous boundary planting seen in the nearer parts of the established village. As such, when approaching the settlement along the Viking Way and Horncastle Road the scheme would appear as a large mass of similar

- dwelling. Thus, the extent of the group without significant planting would detract from the character and appearance of this approach to the settlement.
34. Whilst the appearance of the development would clearly reflect a recent housing scheme, that scheme itself has sought to take reference from the features of the historic core of the settlement. In terms of character it is clear that the proposed development uses the site context to develop a scheme that would function in a way which would encourage integration with the existing settlement.
35. The scheme would result in an incursion into open land and that land has frontage to Viking Way. However, the scheme seeks to respect that right of way by providing dwellings with varied orientation alongside its route. This boundary would also benefit from additional landscaping and sympathetic location of the site water storage area near to the public right of way. In terms of the church the key view is towards its tower and views of the tower would be retained above the housing. The illustrative details for later phases of the development indicate dwellings set off the Viking Way boundary, with possible car parking adjacent. It seems there is scope to provide a varied boundary for the Viking Way route although care would need to be taken in later phases of the scheme to retain a village feel at this edge.
36. Scope is also identified to create a vista through towards the church. This is not favoured by the developer as it creates a view in the other direction towards the sugar factory. However, I consider that development to be interesting and very much part of the character of the settlement such that it should not be disregarded without considerable thought. Moreover, further links to that heritage and the historic rail way and water course might usefully be explored. It could help further enhance tourism and rights of way by creating attractive links to the church and village core beyond with its associated features of interest and facilities.
37. On this matter I conclude that the scheme would relate well to the character and appearance of its surroundings and the established village and would not detract from local tourism and rights of way. Rather, the scheme provides potential to enhance those aspects of the village. The landscaping of the site could be improved. However, on balance it is not sufficiently harmful to justify refusal on that ground alone especially given landscaping is a reserved matter for the later phases. As such, I do not find conflict with policy RES1 of the Local Plan which, amongst other things, supports housing development provided that it is satisfactory with regard to the local environment in terms of siting, layout, density, scale, massing, materials, design and detailing and that it respects features such as hedges and trees.

## **Education and Health Provisions and other matters for the s.106 Agreement**

### ***S.106 General Matters***

38. As set out above, the s.106 Legal Agreement was delayed. However, it is now before me and so can form part of the appeal considerations.
39. The s.106 legal agreement is intended to deal with matters relating to affordable housing, education, health and public transport. The Community Infrastructure Levy Regulations 2010 (the CIL Regulations) establishes tests



which should be met if a planning obligation is to constitute a reason for granting planning permission. Those tests require the obligation to be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. Additional limitations are imposed by CIL Regulation paragraph 123 preventing use for infrastructure projects where five or more obligations already exist which provide for the funding of that project of type of infrastructure.

### *Affordable Housing*

40. The parties have provided a CIL compliance statement for the scheme. In this statement it is recorded that in November 2014 5968 households were registered for affordable housing with Lincs Homefinder with 1685 having connections with West Lindsey. Within the Bardney area 25 households are recorded as requiring affordable housing although 3 wanted to move out of the area. I am satisfied that this indicates that there is a need for affordable housing to be secured on the appeal site. Although 25% affordable housing was sought by the Council initially, in line with Local Plan Policy R6, as part of the consideration of other contribution requirements for the site the Council agreed to reduce this to 20%. The affordable housing provision of the whole site would exceed that needed for the Bardney Area, but I accept that affordable housing need is greater in other areas across West Lindsey and Central Lincolnshire. That said, it appears appropriate on this basis to reduce the affordable housing proposed so as to provide for other elements of need generated by the development.

### *Education*

41. The situation in respect of Education was clearly explained at the Hearing on behalf of the County Council. In Bardney the Church of England and Methodist Primary School is the closest school to the appeal site, yet it has no additional capacity to accommodate children arriving with families moving into the proposed development. Moreover, the school is at capacity with children coming from its own catchment area. The proposal would therefore have direct impact on demand for school places and mitigation is required. The Lincolnshire Research Observatory (LRO) is used to calculate a 'pupil product ratio' and this is multiplied by the number of homes proposed to calculate pupil generation from housing schemes. In the case of this site 34 primary places are required and 32 secondary places. However, there is capacity at the secondary school so a contribution is only sought for primary education. The contribution requested is based on a current costs multiplier for pupil places based on the National Cost Survey and a local multiplier is then used, reducing the sum sought, because Lincolnshire has lower than average build costs. As a consequence a contribution of £383,398 is sought towards education. The payment would be made on a phased basis. I am satisfied that this is clearly related to the needs of the development proposed and is fairly and reasonably related to the scheme.

### *Healthcare*

42. Turning to health care facilities, the health care facility at Bardney is a branch of the Woodhall Spa New Surgery. The doctors of the surgery have written in relation to the proposal explaining that currently the surgery is at capacity, so that serving new residents would have an impact on existing service levels. The

NHS – Leicestershire and Lincolnshire Area Team have assessed the need and usage of the surgery. Based on LRO census data for West Lindsey it is calculated that the scheme would result in an increased patient population of 391. Based on Department of Health calculations it is indicated that this would generate 10.3 hours of GP consultation time and 2.7 hours of practice nurse time per week and support staff would be required related to those appointments as well as space for consultations and storage of records and dispensary items. The surgery is close to the appeal site with significant travel distances to other surgeries so those from the appeal site would attend the, at capacity, surgery.

43. A financial calculation has been made based on needs of the Primary Health Care Team, associated support and furnishings. This amounts to £185 per person and so for this site a contribution of £72,000 is sought. This would be paid on a phased basis. This appears reasonable and fairly related to needs generated by the development.

#### *Transport*

44. In terms of public transport the parties differ in what they consider should be provided. The parties agree that Bardney is a sustainable settlement but that higher grade services, such as hospitals, secondary/further/higher education and places of work, located within other settlements need to be accessed by private motor vehicles.
45. The County Council considers that the bus service between Lincoln and Horncastle via Bardney provides an adequate level of service. This service runs 6 days a week. It could be used by those working in Lincoln as the first bus leaves in time to get someone there for 08:30 and to return leaving Lincoln at 17:27 with other services in between<sup>2</sup>. It is the only service for Bardney. Given this service provides for more distant commuting and access to both Lincoln and Horncastle where many larger facilities are based I agree that it is a significant service in terms of wider sustainability, this it is important to the village and to the future occupiers of the proposed dwellings.
46. The Council has to subsidise this service to a maximum of £65,550 per year and it is reasonable that the proposed development contributes to it. In reviewing spending the Council is likely to reduce financial support for bus services such as this one. As the service is not commercially viable without support it might well be lost and this would be detrimental to sustainability. The Council is seeking £131,000 phased over four years to support the service. This equates to half the likely subsidy requirements for each of those four years. The Council explains that the subsidy requirement is split between the Bardney area and the Washingborough/Heighington area because these are the two areas with greatest ridership.
47. The appellant considers that £30,000 should be provided to cover the four year period. This is on the basis that the subsidy should relate to the number of people from the development that would be utilising the service as a proportion of the total catchment of households that could be using it with reduced weighting for other bus services. Using this calculation, the site would be required to pay 11.5% of the revenue support required.

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<sup>2</sup> times valid to 15 July 2015

48. It is not for me to provide a method of calculation. However, in this case it seems that the service is a significant one for Bardney residents because they have no other service option. Thus, use of the service by others who have other public service options to access larger settlements and their facilities is likely to help in keeping the Bardney service operational. As such, I consider that the calculation would be fair and reasonable if it were based on the share of the revenue support required for the appeal proposal households as a proportion of all households within Bardney (that figure is set out at 844 households in 2011 to which the 170 proposed would be added). This would be a considerably greater sum than proposed by the appellant but significantly lower than the sought by the Council.
49. The appellant whilst seeking the lower sum has provided a s.106 which would make provision for a higher sum sought by the Council. The s.106 also makes provision for 'a different amount which the competent authority sees as justified the Owner covenants with the County Council to that amount in such a manner as shall be agreed in writing'. On that basis funding of the level I consider necessary would be made available. Either a calculation could be made on the basis I suggest or the higher sum paid in which case I have to disregard anything over and above the amount I consider justified as that would not be reasonably needed for the scheme.
50. The Travel Plan Contribution, which amounts to £24,350, relates directly to encouragement of more sustainable choices of transport for those occupiers of the proposed development. The contribution would be used to promote public transport including providing timetable and general information, cycling and car share schemes. I am satisfied that this is fair and reasonable.

### ***Conclusion on the s.106***

51. I conclude that the contributions sought are, in principle, needed to make this proposed development acceptable. Without contributions being secured there would be inadequate provisions for the future occupiers of the proposed dwellings in terms of not providing education, health and public transport facilities. Affordable housing is required as part of the scheme in order to satisfy the needs of the wider community and comply with Local Plan Policy. A Travel Plan contribution is required to encourage sustainable transport choices by future residents.

### **Other Matters**

52. Concern has been expressed about using a single point of entry, particularly given this point is close to the medical practice where on-street parking can cause disruption. However, it seems to me that this existing concern is largely a matter of traffic management which could be resolved by other means. Other concerns relate to traffic speeds within the estate roads. The roads in this scheme have been designed with variety, configured so as to reduce speeds and so that they appear clearly residential. It is regrettable if people fail to adhere to sensible driving but I am satisfied that this scheme would not create unacceptable highway safety concerns. I note that the local highway authority has not objected on highway safety grounds.
53. Some local residents express concern that their views would be harmed as a result of the scheme. However, there is no right to a view and in this case, given the degree of separation between existing dwellings and the proposed

- development, the outlook would not be so seriously harmed that the dwellings would become oppressive or unacceptable places to live. Thus, this matter does not count against the scheme.
54. The appeal site is currently used as agricultural land and concern is raised that its loss would contribute to a reduction in the means to secure food supply for the country in the future. However, this is a modest site area and there is no evidence that alone or cumulatively it would have an unacceptable impact on the retention of best quality agricultural land.
55. The appeal site is in Flood Zone 1 where residential use is deemed to be acceptable and there is no need for a sequential test. However, residents explain that the site has been known to flood. Nonetheless, the Environment Agency and the Internal Drainage Board do not object to the scheme which includes measures for the movement and storage of water in the form of a Sustainable Drainage scheme, including swales and retention pond. On the evidence before me, and having had regard to the consultees advice I am satisfied that the scheme would be adequately drained and would not result in an unacceptable flood risk.
56. Public open space maintenance would be the responsibility of the developer and this is normally dealt with through a management agreement. In this case such a mechanism is established in the s.106 Agreement in the Owners Covenants at Schedule 3.
57. There was some concern raised regarding the siting of the pedestrian access at the northern corner of the site in relation to it providing access onto a short section of private land outside the appellant's control. However, given this is part of the outline scheme and that access could be achieved to the public footpath at other points I am satisfied this matter could be resolved in the detailed design.
58. Noise and disturbance are an inevitable consequence of development and therefore are seldom a reason to withhold planning permission. However, planning conditions can be imposed to reduce the impact of construction works for example limiting working hours to prevent working at times when residents would expect a good degree of peace and quiet. I note that one resident expresses particular concern that the construction access would prove difficult to him as he undertakes shift work. However, the construction access proposed is not likely to be heavily trafficked and the speed of vehicular movement is likely to be low and thus limit the level and characteristics of noise. Moreover a bund is proposed to mitigate noise impacts and this could be required by condition.
59. The recent position statement from the Council indicates that there is only one housing allocation proposed for Bardney, of some 73 dwellings, given that the outcome of this appeal is awaited (a matter the Council explains is set out in draft policy LP52 for which there is an accompanying map) and may have material implications for further allocations. However, this has had no bearing on my assessment of this appeal which I have determined on its own merits.

### **Planning and Heritage Balances**

60. The Framework at paragraph 134 sets out that harm to designated heritage assets should be weighed against the public benefits of the proposal. In this

case whilst great weight should be attached to harm to designated heritage assets, the extent of harm is one I have identified as being marginal harm to the setting of the Church of St Lawrence. Against that harm the scheme would provide for housing including much needed affordable housing, in a sustainable location. Moreover, there would be enhanced public footpath and open space provision including securing a public open space to the front of the church at the tower end. It seems to me that those benefits outweigh the marginal harm to the setting of the church.

61. In terms of the West Lindsey Local Plan First Review 2006 the proposal broadly accords with policies SUS1, SUS4, R6 relating to sustainable locations and affordable housing. It would also broadly accord with policies RES1, RES5 and STRAT 1 with which there was alleged conflict at the Council's determination stage. Thus, I find that, on the basis of the policies put before me, the scheme would not conflict with the local plan.
62. Paragraph 14 states that at the heart of the Framework there is a presumption in favour of sustainable development, which is the golden thread running through both plan making and decision taking. It makes it clear that for decision taking, where the plan is out of date, as is the case here, sustainable development should be approved unless the impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. There are three dimensions to sustainable development, economic, social and environmental. In terms of the social role I find the scheme would provide for accessible local services that reflect the community's needs and support its health and social well-being. In terms of the economic role there would be a coordinated approach to development requirements, including the provision of infrastructure. Turning to the environmental role, suitable local service provision would be made and so would help to minimise pollution and assist in moving to a low carbon economy. Whilst there would be a marginal harm to the setting of the Church of St Lawrence I am satisfied that this would be outweighed by the benefits of the scheme. Thus, the scheme would comply with the thrust of paragraphs 7 and 17 of the Framework.

### **Conditions**

63. It is necessary to consider the conditions which should be imposed on this scheme. I have done so having regard to the National Planning Practice Guidance.
64. As this is a hybrid application it is necessary to have conditions identifying the reserved matters required and their timing and commencement conditions related to the differing phases (conditions 1-3). The initial commencement date is a shortened timeframe to reflect the immediate need for housing. The timing for the submission of reserved matters and commencement for the two outline phases reflects a practical approach to maximise progress. Given the phasing in this scheme, the need for public open space for the development and the need to provide space close to the listed church, it is necessary and reasonable to set out in a condition the area to be reserved solely for public open space (condition 4). It is necessary to require surface water drainage details are provided for the latter two phases in order that the site is drained properly as a whole. I have amended the proposed condition to be more readily enforceable so that rather than requiring the drainage scheme to be

- implemented before the development is completed, that it should be implemented before that last dwelling in that phase is occupied (conditions 5 and 6).
65. The construction access runs alongside established housing and will be used for the duration of the construction period. As such it is necessary to create an earth bund for sound attenuation purposes. To be effective I agree with the Council that a 2.5 metre bund is necessary and should remain in situ for the duration of the construction period. It is necessary that the access should be completed in accordance with the approved details, that all traffic associated with the construction of the site should use the access, and that, because of its visual impact, it should be removed at the end of the construction period. The parties agree that a period of seven years is reasonable for the temporary construction access. Whilst that may seem achievable and is desirable, it seems unreasonable not to allow for some flexibility in this matter as it would be irrational to remove it if it is still required for a little longer. I have therefore added some flexibility into that deadline by provide scope to agree an extension to the date with the Council. Because of the close proximity to the existing dwellings it is reasonable and necessary to restrict clearance and construction working hours (conditions 7-11).
66. In the interests of visual amenity the development should be completed in accordance with the Brick and Roof Tile Schedule (condition 12).
67. It is necessary that foul and surface water drainage should be provided for each phase and that each dwelling should be properly drained in terms of foul and surface water, including from the highway, before being occupied. However, surface water drainage of public open space should be provided for through condition 6 for the later phase of development so I shall amend the condition accordingly (condition 13 and 14).
68. It is reasonable that people should be able to access their properties on a good standard road so I consider it necessary that a plan is submitted and approved to detail highway phasing and to require works to be completed to an adoptable standard to provide access to a dwelling before it is occupied. It is also necessary that parking, turning and manoeuvring facilities are provided at the same time (conditions 15 and 16).
69. While landscaping is a reserved matter for the latter two phases, in the interests of visual amenity it is necessary to require a landscaping scheme for the first phase along with details for its maintenance. It is also necessary to require implementation and maintenance of landscaping required for the later phases. In addition it is necessary to remove and replace the hedge alongside the Chestnut Drain to enable access for the Internal Drainage Board and provide for visual amenity. Furthermore, given the relatively open aspect of the site and the need to differentiate between different areas within the site, it is necessary in the interests of visual amenity to require boundary treatment details and their implementation for the detailed (full permission) part of the development (conditions 17-20).
70. In order to improve sustainability and access it is necessary to improve, by resurfacing, the pedestrian links known as 'the Viking Way' and 'Doctors' Lane' to the site. However, I do not consider it necessary to upgrade the whole of the Doctors' Lane footpath as that is a low key rural footpath running alongside the site. The key areas are those which would link the site to Station Road and

Church Lane and so improve connectivity with the settlement and its facilities. I appreciate that there may be issues relating to land ownership that may affect where resurfacing should take place so I consider that details as well as specifications need to be submitted and approved in writing by the local planning authority (conditions 21 and 22).

71. Given the sensitivity of the relationship of the dwellings to the church, it is necessary to require details of finished floor levels for the dwellings on each phase, along with surrounding levels (condition 23).
72. As this site is in close proximity to existing residential properties it is reasonable and necessary to require a construction management plan to deal with matters such as on site construction storage and dust suppression (condition 24).

### **Final Conclusion**

73. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Zoë H R Hill*

Inspector

### **Condition Schedule**

- 1) The development of Phase 3a (as shown on plan Phase 3a Site Layout Plan LK/648-MFB/3/004 Rev A) hereby permitted shall begin not later than two years from the date of this decision. The development of Phase 3b (as shown on Indicative Site Layout Plan Rev A00) shall begin not later than two years of the last reserved matter referred to in condition 2 and development of phase 3c (as shown on approved plan Indicative Site Layout rev A00) shall commence not later than one year of the last reserved matter referred to in condition 2.
- 2) Application for approval of the reserved matters (as identified in condition 3) for phase 3b of the development shall be made to the local planning authority not later than three years from the date of this permission. Applications for approval of reserved matters (as identified in condition 3) for phase 3c of the development shall be made to the local planning authority within four years from the date of this permission.
- 3) No development of the area marked 'outline site area 4.08ha' on the approved plan LK/648-MFB/3 001 Rev A00 shall take place until plans and particulars of the appearance, landscaping, layout, and scale of this phase of the development (hereinafter called "the reserved matters") have been submitted to and approved in writing by the local planning authority and the development shall be carried out as approved. The landscaping and layout reserved matters shall adhere to the principles of the parameters shown on the scale 1:1000 Indicative Site Layout Plan Rev A00 and shall include boundary treatment details and the retention of the boundary trees and hedges, public open spaces and wildlife corridors.

- 4) The area edged red on approved plan MFB3/20 entitled public open space shall be reserved solely for public open space and once landscaped as such shall thereafter be retained.
- 5) No development in the area marked 'detailed site area 1.73 ha' on the approved plan LK/648-MFB/3 001 Rev A00 shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The details shall demonstrate that the surface water run-off generated up to and including a 100 year event plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall be implemented in accordance with the approved details before the development last dwelling in this phase is occupied. The scheme shall include: Details of how the scheme will be maintained and managed after completion; detailed calculations of the proposed surface water network including the Sustainable Drainage Scheme element; confirmation of how the different phases have been incorporated into the final design; confirmation of who will adopt the various elements of the surface water scheme; confirmation that the final discharge rate is in accordance with Greenfield run-off rate.
- 6) No development for any further phase in the outline site area marked 'outline site area 4.08ha' on the approved plan LK/648-MFB/3 001 Rev A00 shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The details shall demonstrate that the surface water run-off generated up to and including a 100 year event plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall be implemented in accordance with the approved details before the last dwelling in this phase is occupied. The scheme shall include: Details of how the scheme will be maintained and managed after completion; detailed calculations of the proposed surface water network including the Sustainable Drainage Scheme element; confirmation of how the different phase accords with the overall drainage strategy for the site; confirmation of who will adopt the various elements of the surface water scheme; confirmation that the final discharge rate is in accordance with Greenfield run-off rate.
- 7) Notwithstanding the details shown on drawing MFB3/06 Rev C, no development shall be commenced until details of a revised earth bund of not less than 2.5m in height measured from its base, to be aligned between the approved temporary construction access and the existing dwellings has been submitted to and approved in writing by the local planning authority. The approved bund shall be provided prior to construction commencing and shall remain for the period of construction.
- 8) Unless otherwise required by the conditions and obligations of this approval, the development shall be in complete accordance with the documents in the 'Schedule of Plans and Documents' dated 24 June 2015 and the following plans:



Outline Drawings: Site Location Plan LK/648 – MFB 001 Rev A00; Indicative Site Layout Plan; Indicative Conveyance Plan MFB/35; Proposed Construction Traffic Road MFB3/06 Rev C.

Detailed Site Drawings: Phase 3A Site Layout Plan LK/648 – MFB/3 004 Rev A; Phase 3A Proposed Block Plan LK/648 – MFB/3 003 Rev A00; Phase 3A Existing Site Layout LK/648 – MFB 002 Rev A00; Proposed Site Sections 1 of 4 LK/648 – MFB/3 006 Rev A00; Proposed Site Sections 2 of 4 LK/648 – MFB/3 007 Rev A00; Proposed Site Sections 3 of 4 LK/648 – MFB/3 008 Rev A00; Proposed Site Sections 4 of 4 LK/648 – MFB/3 009 Rev A00; Wall & Fencing Details Detail 6 Rev H; HW9 Wall with Piers Detail 83 Rev A; Electricity Substation MFB3/10; Pumping Station Planning Layout MFB3/11.

Detailed House Type Drawings: Type 1 (2010) 01 Rev A; Type 3D (2010) 01; Type 15 (2010) 01 Rev A; Type 15 (2010) 02 Rev A (Handed); Type 46 (2010) 01 Rev A; Type 68C (2010)/01 Rev A; Type G2Ac (2010) 01 Rev A; Type MaC (2010) 01 Rev A; Type Pc (2010) 01; Type S1LdgC (2010) 01; Type Sc (2010) 01; Type T1c(S) (2010) 01 Rev A; Type T2B (2010) 01 Rev A; Type Y1Ac (2010) 01 Rev A; Type Y1Ac (2010) 02 Rev A; Type Y1Ac (2010) 03 Rev A (Handed); Type Y1Ac (2010) 04 Rev A (Handed). Detailed Garage Drawings: Garage 7/01; Garage 8/01.

- 9) Site clearance work associated with the development hereby approved shall not take place between 1 March and 1 September in any calendar year unless previously approved in writing by the local planning authority.
- 10) All traffic associated with the construction of the development hereby approved shall use the temporary construction access as shown on drawing MFB3/06 Rev C as amended by the requirement for a minimum 2.5m height bund as required by condition 7. The access shall be completed in accordance with the aforementioned drawings revised with the approved bund required by condition 7 before its first use and shall thereafter not be used outside of the following hours:- Monday to Friday (excluding public holidays): 07:00-18:00, Saturdays: 08:00-13:00. The developer shall notify the local planning authority in writing of the date of the access's first use and its use shall cease within seven calendar years from this date, unless the local planning authority gives written permission for that period to be extended to allow for the completion of the development. At the end of the seven year period, or the agreed written extended date, the land shall be returned to its former state and use as agricultural farmland.
- 11) No site clearance or construction work associated with the development hereby approved shall take place outside of the following times:- Monday to Friday (excluding public holidays): 07:00-18:00, Saturdays 08:00-13:00.
- 12) The dwellings shall be completed using the brick and tiles detailed in the Bricks and Roof Tiles Schedule received by the local planning authority on 17 June 2014.
- 13) No development in any phase shall commence until a foul drainage scheme for that phase has been submitted to and agreed in writing by the local planning authority. None of the dwellings hereby approved shall

- be first occupied until the foul drainage scheme for that dwelling has been completed.
- 14) None of the dwellings hereby approved shall first be occupied until the surface water drainage system serving that dwelling including for the highway serving that dwelling has been completed in accordance with the approved details which include those for the later phases required by condition 5 or 6 . The approved surface water drainage system shall be retained thereafter.
  - 15) None of the dwellings hereby approved shall be first occupied until the highway serving that dwelling has first been completed to an adoptable standard in accordance with a specification and highway phasing plan that shall have been previously submitted to and approved in writing by the local planning authority. The highway shall thereafter be retained.
  - 16) None of the dwellings hereby approved shall be first occupied until the private parking, manoeuvring and vehicular and pedestrian access to that dwelling have been completed in accordance with the layout detailed on the approved site layout drawing LK/648 MFB/3 004 Rev A dated 22.08.2014 and in accordance with the subsequent layouts approved in accordance with the reserved matters applications under condition 3. Details of the relevant surfacing shall have been previously submitted to and approved in writing by the local planning authority. The private parking, manoeuvring and vehicular and pedestrian access shall thereafter be retained.
  - 17) Prior to the first occupation of any of the dwellings hereby approved and shown on layout drawing LK/648 MFB/3 004 Rev A dated 22.08.2014 a landscaping scheme shall be submitted to and approved in writing by the local planning authority.
  - 18) The approved landscaping scheme for each phase of the development, including that referred to by condition 17, shall be completed prior to the first occupation of any of the dwellings in that phase and thereafter be maintained in accordance with a maintenance scheme to have previously been submitted to and agreed in writing by the local planning authority for that phase which shall include replanting of failed landscaping for a period of not less than five years from the completion of the final dwelling in that phase.
  - 19) Prior to occupation of the first dwelling approved within Plan reference LK/648 - MFB/3 004 Rev A the existing hedgerow along the southern boundary of the Chestnut Drain shall be removed and a replacement hedge included in the landscape scheme to be approved under condition 17 shall be planted and thereafter retained.
  - 20) No dwelling within the approved plan LK/648 – MFB/3 004 Rev A received by the local planning authority dated 22.08.2014 shall be first occupied until a plan has been submitted and approved by the local planning authority indicating the boundary treatments serving those dwellings. Prior to the occupation of any dwelling the approved details shall be implemented and thereafter retained.
  - 21) No dwelling hereby approved shall be occupied until the public right of way (the Viking Way) has been resurfaced between the footpath known as Doctors' Lane at the western corner of the site and Station Road to a

specification which has previously been submitted to and approved in writing by the local planning authority.

- 22) No dwelling within the area marked 'outline site area 4.08ha' on the approved drawing LK/648-MFB/3 001 Rev A00 shall first be occupied until plans and specifications for the resurfacing of part of the public right of way known as Doctors' Lane to create an improved access route between the site and Church Lane have been submitted to and approved in writing by the local planning authority and the works have been implemented in accordance with the approved plans.
- 23) Before development commences on any phase details of the finished floor levels of the dwellings for that phase, together with the levels/floor levels of the surrounding land and dwellings shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 24) No development shall take place until a Construction Management Plan has been submitted to and approved by the local planning authority. The approved plan shall be adhered to throughout the construction period for all phases hereby approved and shall include: details for the parking of construction vehicles and site operatives' vehicles; loading/unloading of plant and machinery; storage of plant and materials; wheel washing facilities; measures to control the emission of dust and dirt during construction.

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**APPEARANCES**

## FOR THE APPELLANT:

James Hobson	Signet Planning
Neil Kempster	Chestnut Homes
Simon Johnson	Mayfield CA Ltd

## FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Cadd	Principal Development Management Officer West Lindsey District Council
Joe Mitson	GHM Planning Ltd
Ian Fleetwood	Vice Chairman of West Lindsey District Council Planning Committee and Lincolnshire County Councillor and Chairman of County Planning

## INTERESTED PERSONS:

Mr Mason	Lincolnshire County Council - Education
Mrs Jane Page	Local Resident
Mr Newlove	Local Resident
Mrs Woodcock	Local Resident

**DOCUMENTS**

Doc 1	West Lindsey Local Plan Review June 2006 - extracts
Doc 2	Chestnut homes Plan Schedule
Doc 3	Letter from Lincolnshire County Council dated 7 July 2014
Doc 4 a-i in a folder	Folder Containing:- (a) Email from Neil Kempster dated 28 May 2015 regarding the s.106 and use of a condition; (b) English Heritage Historic Environment Good Practice Advice in Planning Note 2 – Managing Significance in Decision-Taking in the Historic Environment and Note 3 –The Setting of Heritage Assets; (c) List of Core Documents for the application including house types list; (d) Planning Committee 4 March (withdrawing reasons 3 & 4); (e) Minutes of the Meeting of 04.03.15; (f) West Lindsey Local Plan Inspector’s Report dated 19 December 2005; (g) R.(on the application of K.Miller) v North Yorkshire County Council [2009] EWHC 2172 (Admin); (h) Building for Life Assessment [2012] by the Building for Life Partnership (CABE at the Design Council, Design for Homes and the HBF); (i) English Heritage History in the View: A Method for Assessing Heritage Significance within Views.
Doc 5	S106 Draft Document
Doc 6	Suggested Conditions
Doc 7	Schedule of Plans
Doc 8	Chestnut Homes Statement Regarding Transport
Doc 9	Joint CIL Compliance Statement

**PLANS**

Plan A      Plan missing from appeal documentation Drawing No Type MaC (2010)  
01 Rev A

## Costs Decision

Hearing held on 23 and 24 June 2015

Site visit made on 24 June 2015

**by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

**Decision date: 26 April 2016**

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### **Costs application in relation to Appeal Ref: APP/N2535/W/14/3001767 Land off Hancock Drive, Manor Farm, Bardney, Lincolnshire LN3 5SR**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Chestnut Homes Ltd for a full award of costs against West Lindsey District Council.
  - The Hearing was in connection with an appeal against the refusal of planning permission for a hybrid application for up to 170 dwellings (Phases 3a, 3b, 3c) of which full planning is sought for 44 dwellings (Phase 3a) and outline permission is sought with all matters reserved except for access for up to 126 dwellings (Phases 3b and 3c), together with a secondary temporary access for construction traffic off Horncastle Road, Bardney.
- 

### **Decision**

1. The application for an award of costs is allowed in part in the terms set out below.

### **Initial Cost Documentation**

2. The application seeking the award of costs and the Council's rebuttal have been made in writing and I shall therefore not repeat them here.

### **The response to the Council's rebuttal made for Chestnut Homes Ltd**

3. Five grounds for costs were advanced. The first relates to the two reasons from which the Council withdrew (reasons for refusal nos. 3 and 4). Although the Council may have acted swiftly to withdraw from those reasons, this was done after the work for the appeal had been undertaken.
4. The scheme accords with the National Planning Policy Framework (the Framework).
5. There were undeniable faults with the precision of reason for refusal no. 3 'the Manor, Church Lane'. It was also imprecise in respect of the walled garden and in that the house is screened.
6. There has been no demonstration as to how there would be a loss of significance of the heritage assets as a result of the scheme.

7. Members did not take professional advice. Whilst they may do this the reasons still need to be clear. If necessary further information should have been sought rather than relying on general assertions.

### **Reasons**

8. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
9. On the first matter of the work involved in reasons no. 3 and no. 4 of the decision notice the issues are distinct. In terms of the matter relating to highway safety (reason no. 4) it seems nothing changed after the reason for refusal which resulted in the Council withdrawing from that reason. I therefore agree with the appellant that it was unreasonable to pursue a reason for refusal from which the Council then stepped aside. Given work to refute that reason for refusal had to be undertaken in submitting the appeal there was unnecessary expense as a consequence of that unreasonable behaviour. However, costs associated with that reason should only amount to any costs from the date of the Council's Decision to refuse planning permission to the Council's decision to withdraw from that reason on 4 March 2015.
10. Turning to reason no. 3 in respect of the demands on health and education, the Council also withdrew from that reason for refusal on 4 March 2015. Whilst the appellant has clearly provided evidence for the appeal in that regard, I do not consider it resulted in unnecessary or wasted expense. It was essential that clear details could be provided to explain how local infrastructure could be provided for. Indeed, I had to seek further information to clarify the position in respect of Community Infrastructure Levy compliance. Moreover, funding agreed as being necessary has still not been secured. I therefore find that, whilst it amounted to unreasonable behaviour, there was no wasted expense in addressing this matter.
11. In terms of the application of the advice in the Framework, it seems to me that the Council refused the proposal on the basis of the effect on character and appearance, determining that this outweighed the benefits of additional housing. This is a matter of subjective judgement. The Council has consistently sought to defend its view in this regard. Whilst I have not agreed on this matter, I am satisfied that the behaviour of the Council was not unreasonable. Thus, I do not consider that this has led to wasted expense in undertaking the appeal.
12. The Council was unreasonable in failing to correctly identify the listed building correctly in the reason for refusal. However, the listed manor to which reason for refusal no. 2 refers was not in doubt. It was apparent that the listed building was Manor House on Horncastle Road, and it seems that this error, whilst irksome and unreasonable, and being an imprecise reason for refusal, did not result in unnecessary or wasted expense. The effect upon that building still required consideration and it is a matter to which I would have had to have regard by virtue of statute.
13. Although the appellant puts the view that the Council failed to deal correctly with the approach to the impact on the setting of listed buildings, I am satisfied that the Council sought to defend its reasoning in regard of the effect on the

setting of the listed buildings and how this would impact upon significance. There was a matter where the extent of harm became difficult to defend for the Council's specialist. However, that followed from extensive debate and related to one point only. As such, considering the extent of the whole debate and the partly subjective nature of discussing harm to the setting of listed buildings and the consequent impacts on significance, I do not consider that the appellant was put to wasted expense in expressing their case.

14. Members are not duty bound to accept the advice of their officers. Given the subjective nature of some of the matters for debate it was not unreasonable to take a different approach from the Council's officers in respect of reasons for refusal no. 1 (character and appearance) and no. 2 (listed buildings).
15. In conclusion, I have identified some unreasonable behaviour. However, in my view, this has only resulted in wasted expense in respect of reason for refusal no. 4 of the Council's Decision Ref: 131498 (relating to highways matters) and that any expense is limited to the period between the Council making its determination on 24 September 2014 and the Council withdrawing from that reason for refusal on 16 March 2015.

#### **Formal Decision and Cost Order – Partial Award**

16. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that West Lindsey District Council shall pay to Chestnut Homes Ltd the costs of the appeal proceedings such costs to be assessed in the Senior Court Costs Office if not agreed. The costs shall be limited to wasted expense in respect of reason for refusal no. 4 of the Council's Decision Ref: 131498 (relating to highways matters), but limited to the period between the Council making its determination on 24 September 2014 and the Council withdrawing from that reason for refusal on 16 March 2015. The proceedings concerned an appeal more particularly described in the heading of this decision.
17. The applicant is now invited to submit to West Lindsey District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Zoë Hill*

Inspector



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## Costs Decision

Hearing held on 23 and 24 June 2015

Site visit made on 24 June 2015

**by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

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### **Decision**

1. The application for an award of costs is allowed in part in the terms set out below.

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4. The scheme accords with the National Planning Policy Framework (the Framework).
5. There were undeniable faults with the precision of reason for refusal no. 3 'the Manor, Church Lane'. It was also imprecise in respect of the walled garden and in that the house is screened.
6. There has been no demonstration as to how there would be a loss of significance of the heritage assets as a result of the scheme.

7. Members did not take professional advice. Whilst they may do this the reasons still need to be clear. If necessary further information should have been sought rather than relying on general assertions.

### **Reasons**

8. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
9. On the first matter of the work involved in reasons no. 3 and no. 4 of the decision notice the issues are distinct. In terms of the matter relating to highway safety (reason no. 4) it seems nothing changed after the reason for refusal which resulted in the Council withdrawing from that reason. I therefore agree with the appellant that it was unreasonable to pursue a reason for refusal from which the Council then stepped aside. Given work to refute that reason for refusal had to be undertaken in submitting the appeal there was unnecessary expense as a consequence of that unreasonable behaviour. However, costs associated with that reason should only amount to any costs from the date of the Council's Decision to refuse planning permission to the Council's decision to withdraw from that reason on 4 March 2015.
10. Turning to reason no. 3 in respect of the demands on health and education, the Council also withdrew from that reason for refusal on 4 March 2015. Whilst the appellant has clearly provided evidence for the appeal in that regard, I do not consider it resulted in unnecessary or wasted expense. It was essential that clear details could be provided to explain how local infrastructure could be provided for. Indeed, I had to seek further information to clarify the position in respect of Community Infrastructure Levy compliance. Moreover, funding agreed as being necessary has still not been secured. I therefore find that, whilst it amounted to unreasonable behaviour, there was no wasted expense in addressing this matter.
11. In terms of the application of the advice in the Framework, it seems to me that the Council refused the proposal on the basis of the effect on character and appearance, determining that this outweighed the benefits of additional housing. This is a matter of subjective judgement. The Council has consistently sought to defend its view in this regard. Whilst I have not agreed on this matter, I am satisfied that the behaviour of the Council was not unreasonable. Thus, I do not consider that this has led to wasted expense in undertaking the appeal.
12. The Council was unreasonable in failing to correctly identify the listed building correctly in the reason for refusal. However, the listed manor to which reason for refusal no. 2 refers was not in doubt. It was apparent that the listed building was Manor House on Horncastle Road, and it seems that this error, whilst irksome and unreasonable, and being an imprecise reason for refusal, did not result in unnecessary or wasted expense. The effect upon that building still required consideration and it is a matter to which I would have had to have regard by virtue of statute.
13. Although the appellant puts the view that the Council failed to deal correctly with the approach to the impact on the setting of listed buildings, I am satisfied that the Council sought to defend its reasoning in regard of the effect on the

setting of the listed buildings and how this would impact upon significance. There was a matter where the extent of harm became difficult to defend for the Council's specialist. However, that followed from extensive debate and related to one point only. As such, considering the extent of the whole debate and the partly subjective nature of discussing harm to the setting of listed buildings and the consequent impacts on significance, I do not consider that the appellant was put to wasted expense in expressing their case.

14. Members are not duty bound to accept the advice of their officers. Given the subjective nature of some of the matters for debate it was not unreasonable to take a different approach from the Council's officers in respect of reasons for refusal no. 1 (character and appearance) and no. 2 (listed buildings).
15. In conclusion, I have identified some unreasonable behaviour. However, in my view, this has only resulted in wasted expense in respect of reason for refusal no. 4 of the Council's Decision Ref: 131498 (relating to highways matters) and that any expense is limited to the period between the Council making its determination on 24 September 2014 and the Council withdrawing from that reason for refusal on 16 March 2015.

#### **Formal Decision and Cost Order – Partial Award**

16. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that West Lindsey District Council shall pay to Chestnut Homes Ltd the costs of the appeal proceedings such costs to be assessed in the Senior Court Costs Office if not agreed. The costs shall be limited to wasted expense in respect of reason for refusal no. 4 of the Council's Decision Ref: 131498 (relating to highways matters), but limited to the period between the Council making its determination on 24 September 2014 and the Council withdrawing from that reason for refusal on 16 March 2015. The proceedings concerned an appeal more particularly described in the heading of this decision.
17. The applicant is now invited to submit to West Lindsey District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Zoë Hill*

Inspector



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## Appeal Decision

Site visit made on 21 April 2016

**by Peter D. Biggers BSc(Hons) MRTPI**

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

**Decision date: 28 April 2016**

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### **Appeal Ref: APP/N2535/D/16/3143231**

### **Whitecroft, Church Road, Laughton, Gainsborough, Lincs DN21 3PP.**

- 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 Mr and Mrs Gary Talbot against the decision of West Lindsey District Council.
  - The application Ref 133565, dated 15 September 2015, was refused by notice dated 4 December 2015.
  - The development proposed is alterations to existing dormers and erection of new detached double garage and store.
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### **Decision**

1. The appeal is dismissed

### **Main Issues**

2. The main issues are the effect of the proposed development on the character and appearance of the host dwelling and the surroundings on Church Road and whether the development would preserve or enhance the setting of the listed church.

### **Reasons**

3. Church Road wraps around the listed church of All Saints and its churchyard. The appeal property, Whitecroft, sits on the south side of Church Road directly facing the church in a prominent open location. It is a dormer bungalow with a dominant hipped roof and 'eyebrow' front dormer. Although it is built in a modern style, its materials of red brick and tile reflect the older secular properties in the road. Its side and rear dormers are flat-roofed but appear to be contemporary with the house. Whitecroft lies on the south side of the village with no dwellings beyond it to the south. Thus it directly frames the longer inward view of the church in the approach from the south along Blyton Road.
  4. Although it is the intention that the dormer roof extensions would match the materials of the existing dwelling, the design of the side dormers is such that their ridge top would be at the same height as the ridge to the main house. The roof extension to the rear dormer would take the form of a 'catslide' roof from the ridge of the main house. The effect of these changes would result in significant new mass being added at a high level such that the side and rear dormers would no longer appear subordinate and proportionate to the main roof slope. Viewed from the front and rear of the property the proposed changes to the dormers would appear top-heavy and unbalanced in the roofscape creating a detrimental impact on the character and appearance of the dwelling.
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5. It has been put to me that the proposed extension to the rear dormer replacing the current asymmetry in the rear roof slope would improve the appearance of the rear elevation. Whilst I accept that the lengthening of the dormer would not be inappropriate, the treatment of its roof and that of the side dormers, because of the additional scale and mass, would not improve the character and appearance of the dwelling and would appear incongruous with the original design.
6. The house sits in an open, prominent location viewed from north and south on Church Road, from the churchyard and from the school field adjacent to the house to the west. It is not a house which is screened from view in well-landscaped gardens and as such the need to ensure a high standard of design in keeping with its location is all the more important. The effect of the roof alterations would have an adverse impact on the character and appearance of Church Road.
7. I note the Council's views regarding the garage element of the proposal. However, given the positioning, scale, and height of the fully gabled design proposed for the garage, it would be intrusive in this more open section of Church Road particularly in the approach from the south where it would also be viewed directly in the setting of the church. Even if I was to agree with the Council's conclusion that the garage would be acceptable it would not outweigh the harm to character and appearance as a result of the other elements.
8. In coming to a view on this proposal, I have had regard to the *National Planning Policy Framework* (the Framework) which promotes good design and visually attractive developments. I accept that the appellants, in proposing the alterations to the property are seeking to make sustainable and effective use of their existing home, an objective which is encouraged by the Framework. However At Paragraph 64 it states that "*..permission should be refused for development of poor design that fails to take the opportunities available to improve the character and quality of an area.*" The *West Lindsey Local Plan First Review* (WLLP), although not recent, is consistent with this at policy STRAT1 which seeks to protect the plan area's character and at policy RES11 which requires development to be well-designed in relation to the size, shape, and materials of the building to be extended.
9. For the reasons above the proposed extension would harm the character and appearance of the original property and its surroundings. As such it would be in conflict with WLLP policies and the Framework.

#### *Setting of the Listed Church*

10. Whitecroft is currently highly prominent in the setting of the church in inward views from the south and frames that setting in closer views in the approach along Church Road from the south. The introduction of the dormer roof extensions and garage, for the reasons above, would fail to preserve the setting of the listed building, contrary to the clear expectations of section 16 of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, to which the decision maker is required to have special regard. Moreover, it would also be contrary to paragraph 132 of the Framework which anticipates great weight being given to a heritage asset's conservation (including its setting). For the same reasons the proposals would be contrary to WLLP policy STRAT1(vii), which requires development to be satisfactory with respect to its impact on the character, appearance and setting of historic assets.
11. I accept that the harm to the significance of the heritage asset's setting would be less than substantial and, in these cases, Paragraph 134 of the Framework requires that the harm is weighed against any public benefit.

12. The appellant argues that the proposals would improve the appearance of Whitecroft in a sensitive location but, for the reasons above, I am not persuaded that this would be the case and that there would be public benefit to outweigh the importance of preserving the setting of the listed building in accordance with the statutory test.

### **Conclusion**

13. I have carefully considered the matters before me. Whilst the proposals in respect of the conversion of the existing garage and ground floor elevational changes would be in keeping with the character and appearance of the house this is not of itself enough to outweigh the harm that would be caused by the other elements of the scheme. For the reasons given above, I conclude that the appeal should be dismissed.

*P. D. Biggers*

INSPECTOR

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## Appeal Decision

Site visit made on 12 April 2016

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

**Decision date: 10 May 2016**

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**Appeal Ref: APP/N2535/W/16/3142839**

**Croft House, 26 Craypool Lane, Scothern, Lincoln LN2 2UU**

- 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 Glen Harris against the decision of West Lindsey District Council.
  - The application Ref 132983, dated 1 May 2015, was refused by notice dated 21 August 2015.
  - The development proposed is "*outline planning for proposed 4/5 bed house in rear garden of No 26 Craypool Lane. Proposed use of existing drive that at present belongs to No 26A Craypool Lane for access to site.*"
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### Decision

1. The appeal is allowed and outline planning permission is granted for proposed 4/5 bed house in rear garden of No 26 Craypool Lane. Proposed use of existing drive that at present belongs to No 26A Craypool Lane for access to site at Croft House, 26 Craypool Lane, Scothern, Lincoln LN2 2UU in accordance with the terms of the application, Ref 132983, dated 1 May 2015, subject to the attached schedule of conditions.

### Procedural Matter

2. The application is in outline form with approval sought for access and all other matters reserved for future consideration.

### Main Issue

3. The main issue is the effect of the proposed development upon highway and pedestrian safety of Craypool Lane.

### Reasons

4. The appeal site is a rectangular area of land which is currently garden to No 26 Craypool Lane. The site is served by an existing vehicular access between Nos 26 and 28 and currently used by No 26A, a modern dwelling located to the east of the appeal site.
  5. Craypool Lane ('the Lane') is a through road linking Sudbrooke Road to the west with Main Street to the north. It is a winding road, serving a number of residential properties along its length, as well as providing access to modern housing developments along culs-de-sac of Orchard Close and Back Lane. Most dwellings are served by private driveways and there is no on street parking along the Lane.
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6. The appellant's traffic statement demonstrates the varied width of the Lane. Close to the appeal site, parts of the Lane are less than 4m wide which is not sufficient for two vehicles to pass. Therefore, if two cars meet, a reversing manoeuvre is likely to be necessary. In addition, there are no pedestrian footways along its length, and therefore the Lane functions as a shared surface for pedestrians, cyclists and vehicles.
7. However, the road is not heavily trafficked. I saw on my site visit that the road is quiet, and I witnessed only minimal traffic movements and no pedestrian use. The submitted traffic survey also found the current traffic flow on the Lane to be low. In addition, the vehicular movements from the proposed development have been modelled and it is estimated that 4 two-way trips would be generated on weekdays. While further trips may be generated, for example by visitors or deliveries, I consider overall that additional vehicular movements along the Lane as a result of the proposed development would be unlikely to be significant. As a result, I consider that the occasions when two vehicles would meet would be infrequent and any increase in vehicle manoeuvres would therefore be occasional.
8. I also consider that No 26 would retain an adequate amount of off-street parking as part of the proposals and would not create a need for on-street parking.
9. I saw that the condition of the Lane is good; there was no damage to verges to suggest that vehicles use these as passing places. Moreover, the presence of banks to many of the verges would prevent this. I therefore also see no reason to believe that the development would lead to vehicles overrunning the carriageway and causing harm to the verges and carriageway edges, as the Council suggests.
10. The speed limit on the Lane is 30mph. However, due to the winding nature and restricted width of the carriageway near to the appeal site, traffic speeds would be likely to be low, and conflict between vehicles and between vehicles and pedestrians only occasional. I also note that no accidents have occurred on the Lane in a 10 year period up to December 2014.
11. I also agree with the appellant that future residents of the proposed dwelling would be most likely to use the northern end of Craypool Lane to access Main Street as this would be the most direct and convenient route. This would therefore minimise the use of the narrowest sections of the Lane, to the west of the site, and reduce the potential for vehicular and pedestrian conflict.
12. Overall, I conclude that the addition of a single dwelling on Craypool Lane would not result in any material risk to the safety of drivers and pedestrians using the highway. Accordingly, I find that the development would comply with Policies STRAT 1 and RES 1 of the West Lindsey Local Plan Review (2006) which, amongst other things, seek to secure suitable and safe access and prevent the creation or aggravation of highway problems.

### **Other Matters**

13. The site forms the rear garden of No 26. While this may comprise backland or tandem development, there are a number of similar examples within Scothern, including No 26A Craypool Lane adjacent to the appeal site. I therefore find that development in this location would not adversely change the form,



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structure or character of this part of the settlement or compromise the setting of adjoining properties.

14. As the application is in outline form, concerns relating to loss of amenity for neighbouring occupiers, the scale, siting and design of the proposed dwelling and its associated parking/turning area, and the matter of land stability can be dealt with at reserved matters stage.
15. In relation to parking and turning facilities, I am satisfied that further details of this can be conditioned in order to ensure that noise and disturbance to neighbouring dwellings would be minimised.

### **Conditions**

16. I have considered the conditions submitted by the Council and raised elsewhere in the appeal documents. In addition to the standard outline conditions, I shall require the provision of adequate on-site turning and parking facilities, and the implementation of this prior to first occupancy, in the interests of amenity and highway safety.
17. There is some likelihood of historic human occupation on the site so an archaeological scheme is necessary. However I shall simplify and combine the suggested conditions, to avoid repetition and for clarity, having regard to the tests set out at paragraph 206 of the National Planning Policy Framework.
18. Conditions limiting hours of construction and provision for the disposal of foul and surface water are also necessary in the interests of amenity. For the same reason, it is necessary to condition for possible contamination, based on the third party evidence provided regarding the proximity of the site to filled ground.

### **Conclusion**

19. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*C Searson*  
INSPECTOR

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## Schedule of Conditions

- 1) No development shall take place until details of the appearance, layout and scale of the dwelling and the landscaping of the site (hereinafter called "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) No development shall commence until a detailed scheme to dispose of foul and surface water from the site (including the results of any soakaway/percolation tests) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented before the dwelling is first occupied and thereafter managed and maintained in accordance with the approved details.
- 5) No development shall take place until full details of parking and turning arrangements, so that vehicles may enter and leave the site in forward gear have been submitted and approved in writing by the Local Planning Authority. The scheme shall be implemented before the dwelling is first occupied and thereafter retained in accordance with the approved details.
- 6) If during development, contamination not previously identified, is found to be present at the site then no further shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, a Method Statement detailing how the contamination shall be dealt with. Thereafter, the development shall not proceed other than in accordance with the approved Method Statement.
- 7) No development shall take place until a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The WSI shall be in accordance with the Lincolnshire Archaeological Handbook and include an assessment of significance. This scheme shall also include the following:
  - the programme and methodology of site investigation and recording;
  - the provision to be made for analysis of the site investigation and recording;
  - the provision to be made for publication and dissemination of the analysis and records of the site investigation to be submitted to and approved in writing by the Local Planning Authority within 3 months of the WSI being completed;
  - the methodology and provision to be made for archive deposition of the analysis and records of the site investigation and any

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artefactual evidence recovered from the site in an agreed location within 3 months of the WSI being completed;

- the nomination of a competent person or persons/organisation to undertake the works set out within the WSI.

Thereafter, the development shall not proceed other than in accordance with the approved WSI.

- 8) The Local Planning Authority shall be notified in writing of the intention to commence the archaeological investigation in accordance with the approved WSI referred to in condition 7 at least 14 days before the said commencement. No variation shall take place without prior written consent of the Local Planning Authority.
- 9) Construction work shall only be undertaken on the site between the hours of 0900 and 1800 Monday to Friday and 0900 and 1300 on Saturday, and not at all on Sunday or Bank Holidays.