
Appeal Decision

Hearing held on 22 March 2016

Site visit made on 14 & 22 March 2016

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 18 April 2016

Appeal Ref: APP/N2535/W/15/3139041

Land north of old Gallamore Lane, Middle Rasen, Lincolnshire

- 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 Charles Pickering against the decision of West Lindsey District Council.
 - The application Ref 133129, dated 5 June 2016, was refused by notice dated 23 October 2015.
 - The development proposed is erection of up to 53 dwellings together with public open space and associated site access arrangements.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters other than access reserved for later determination. I have considered the appeal on this basis.
 3. Prior to the Hearing, the Environment Agency having lifted its objection to the scheme, the Council determined not to defend its second reason for refusal in relation to flood risk.
 4. A completed unilateral undertaking was submitted at the Hearing. The Council confirmed that this addressed its concerns, albeit not included as reasons for refusal, in relation to local infrastructure and affordable housing.
 5. As well as walking around the site itself, my visits included walking the public right of way across the site and those in the wider area around the village. I visited all of the viewpoints set out in the appellant's Landscape and Visual Impact Assessment (LVIA). I also undertook an accompanied visit to 6 Mayfield Crescent and observed the arrival of the school bus in the village at around 1630.
 6. The emerging Central Lincolnshire Local Plan (CLLP) has recently gone out for consultation, prior to its submission for examination. The Council confirmed that an examination will not take place until much later in the year, with the CLLP not being adopted by the Council until the end of the year or early 2017. This being so, having regard to paragraph 216 of the National Planning Policy Framework (the Framework), I consider that little weight can be attached to it. I have, therefore, determined the appeal in line with the adopted development plan.
-

Main Issues

7. The main issues are:

- the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with regard to privacy, outlook, noise and light; and
- the effect of the proposed development on the character and appearance of the area, with particular regard to the undeveloped break between Middle Rasen and Market Rasen.

Reasons

Living Conditions

8. A number of dwellings on the site's western boundary have open or very sparse, low boundaries with the appeal site. The rear gardens to these dwellings are, in some cases very, short. The rear extension of No 6 Mayfield Crescent, in particular, is around two to three metres from the boundary. Nos 4 and 5 Meadowfield lie even closer. With the possible exception of 9 Mayfield Crescent, there are clear views into the rear gardens of all of the dwellings on Mayfield Crescent and Meadowfield, which back onto the site. It is also possible to see directly through the windows of habitable rooms, at very close quarters in the case of 6 Mayfield Crescent and 4 and 5 Meadowfield.
9. The dwellings backing onto the site from Old Gallamore Lane have long rear gardens, such that the dwellings themselves are set well back from the appeal site. Nonetheless, the boundaries between these gardens and the site are largely open, with views into them easily achievable.
10. There is also a clear view, through the gappy hedge boundary, into the rear garden of The Old Vicarage. In addition, the rear garden of Nintirri, to the northwest of the site, is completely exposed to the site, through the post and rail fence boundary, with windows to the dwelling itself around two or three metres away from this boundary.
11. In all of these cases, I consider that the occupiers of these dwellings could not fail to experience, in some cases very significant, adverse impacts upon privacy from development on the appeal site. This could be addressed in some cases by new or enhanced boundary treatments. In my judgment, however, this would only be acceptable in relation to those properties where the houses are set well back into the plot behind lengthy rear gardens, namely The Old Vicarage, Bel Mar and The Cherries. This is because the outlook from the dwellings would be largely unaffected, given their distance from the boundary. In addition, the extent of the gardens is such that their existing sense of openness would not be significantly compromised.
12. With regard to the other dwellings referred to, any raised boundary treatments designed to prevent overlooking would result in significant adverse impacts upon the currently open outlook from both gardens and dwellings across the appeal site. While a *change* in outlook does not always equate to *harm* to outlook, I am not persuaded that this would be the case here. The, in some cases very, close proximity of the extant dwellings to the site boundary, combined with the limited depth of their rear gardens, would mean that screening to prevent loss of privacy would appear overbearing and oppressive

- upon the outlook from both gardens and dwellings. This would be particularly severe with regard to 6 Mayfield Crescent and 5 Meadowfield, which have windows to habitable rooms overlooking the site from very close quarters and gardens which are largely enclosed by built development, other than for the outlook over the appeal site.
13. Nintirri would look out onto an area indicated as open space. Indeed, it is difficult, if not impossible, to see how a dwelling could be juxtaposed with Nintirri given its proximity to the site and its open boundary. It was suggested that privacy to this dwelling is already compromised by the presence of the footpath across the appeal site. However, the footpath is some distance from Nintirri. There would also be a very substantial difference in impact between occasional walkers passing along a path removed from the dwelling and the presence of users of a substantial area of public open space, which runs right up to it.
 14. It was further suggested that shrub planting in the westernmost area of the open space could distance users and activity from Nintirri. There is, however, no reason to consider that users of the public open space would not make use of its full extent.
 15. With regards to light, I share the concerns of some existing residents on the western edge of the site that boundary treatments to prevent overlooking would be likely to cut out some daylight and sunlight to rear gardens and in the case of 6 Mayfield Crescent, to the rear extension. There would also be severe adverse impacts in relation to loss of light to 5 Meadowfield and Nintirri, which have windows looking onto the site at very close quarters.
 16. Turning to matters of noise, the sounds of people going about their normal daily activities might be marginally more prevalent than at present. I see no reason, however, why noise levels from the finished and occupied development would be any higher or more intrusive than one might reasonably expect from a rural residential scheme. I do not consider that they would give rise to significant adverse impacts upon the occupiers of existing dwellings.
 17. The appellant was happy to accept a condition that would limit dwellings on the western and southern boundaries to a single storey in height. Given that the dwellings on Mayfield Crescent and Meadowfield are bungalows, and close to the site boundaries, this is a sensible approach. Nonetheless, this would not address my fundamental concerns above. Nor am I persuaded that the relatively low density of the scheme or the indicative orientation of the dwellings would have any significant mitigating affect.
 18. I conclude, therefore, that the appeal proposal would have an adverse effect upon the living conditions of the occupiers of neighbouring dwellings, with regard to privacy, outlook and light. It would conflict, therefore, with policy RES 1 of the Local Plan, submitted to me, which seeks to ensure that new residential developments are satisfactory with regard to their impact upon the amenities of nearby residential properties. It would also conflict with paragraph 17 of the Framework, which seeks, among other things, to ensure that planning always seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Character and Appearance

19. The appeal site lies outside the defined settlement boundary to the village and also forms part of the formal 'settlement break' between Middle Rasen and Market Rasen, as defined by the Proposals Map to the West Lindsey Local Plan First Review (the Local Plan). Thus, the site is protected from all but specified forms of development (which excludes residential schemes of the type proposed) under policies STRAT 12 and STRAT 13 of that plan.
20. The site is made up of open fields, largely grazed by horses, immediately to the east of the built-up edge of Middle Rasen. A small garden centre/nursery is situated on part of it. The site is not unattractive, being part of the open countryside setting to Middle Rasen. It is, however, unremarkable in, and indistinct from, both its local and wider rural landscape context.
21. The rear gardens of dwellings on Low Church Road, Mayfield Crescent, Meadowfield and Old Gallamore Lane back onto the site to the west and south. A large number of these gardens, notably to the western side, have open or sparse boundaries such that extant dwellings are clearly visible from the public right of way that crosses the appeal site, from southeast to northwest between Old Gallamore Lane and the private road to The Water Mill.
22. The rest of the southern boundary is the substantial hedge running along Old Gallamore Lane, while to the east the site is largely open, running out into the wider countryside. The River Rasen, with a tree belt beyond it, is a prominent feature to the north of the site and forms part of its northern and eastern boundary. The site's western and southern sides are influenced by the extant development that wraps around it here, while the water mill complex, and the tree belt beyond, contributes to a sense of enclosure to the north.
23. The landscape around this part of Middle Rasen, to the north of Gainsborough Road and Gallamore Lane, is typically characterised by arable and pastoral fields of varying sizes, contained by an extensive network of mature hedges, many of which contain sizeable trees. This means that the site, and, indeed, the extant village edge, is not apparent from the public rights of way that cross the wider landscape when viewed from a distance. The repetitive lines of intervening hedges and trees serve to contain it effectively, with visibility being limited to a small number of viewpoints on and immediately adjacent to it.
24. In addition, the appeal scheme would be at a relatively low density, with bungalows indicated against the extant bungalow development, such that it would not appear as an incongruous high density estate 'bolted on' to the village edge. Although indicative, the outline masterplan shows a substantial amount of the site being given over to areas of open space. These would include a deep buffer, with appropriate levels of planting for a river edge setting, between the river to the north and east and the proposed built development. This would further set the development back from Gallamore Lane, from where the site can be glimpsed, at present, through the already relatively robust, hedge/tree boundary beside it.
25. Denser planting in the south east corner of the site would almost completely constrain any fleeting views of the site from Gallamore Lane, when heading west, and the field between Gallamore Land and Old Gallamore Lane would continue to act as a deep green buffer to the site, such that there would not be

- any real awareness, by passing road users, of the village extending out towards Market Rasen.
26. At closer quarters, development would be visible from Old Gallamore Lane. Houses are, however, visible along the lane already, and there is a sizeable hedge between the site and the lane. The outline masterplan indicates that dwellings would not be positioned right up to the hedge. Thus, although the character of the lane would change, it would not be a stark difference.
27. This could not be said of the effect upon users of the footpath. Change here, particularly in what is quite an intimate landscape, would be significant. Nonetheless, the footpath is short, being a link between two lanes, and does not traverse anything approaching the full width of the settlement break, such that users would experience any sense of a diminution of it. Nor would the development foreshorten the sense of open rurality and separation experienced when moving between the two settlements by road or the public rights of way between the settlements. The proposed routing of a footpath through the green buffer along the river bank would still afford a pleasant route across the site, with views to the Lincolnshire Wolds Area of Outstanding Natural Beauty in the distance still being readily achievable.
28. The appeal scheme would be situated in the settlement break between Middle Rasen and Market Rasen, beyond the defined settlement boundary of Middle Rasen. It could not fail, therefore, to reduce physically the gap between the two settlements. In reality, however, for the reasons articulated above, the impact upon the character and appearance of the break would be limited. I am not persuaded that there will be any actual or perceived sense of coalescence between Middle Rasen and Market Rasen.
29. The Council's *Green Wedges Evidence Report* (the Report) was drawn to my attention. This informs emerging policy in relation to settlement breaks in the CLLP. With regard to the Middle Rasen/Market Rasen break, the report concludes that it should be retained in the CLLP and that there is '*limited capacity to accommodate moderate or substantial new development without having a major overall adverse impact on the role and function of the settlement break...*'. I have no reason to disagree with this conclusion. However, the Report does not rule out new development entirely and the appellant's LVIA provides a more focussed assessment of the impact of the proposed development on the settlement break, which was not an exercise carried out in the Report.
30. A number of appeal decisions relating to green gaps/settlement breaks were drawn to my attention, wherein Inspectors had reached different conclusions as to whether development in such areas was harmful. The parties agreed that these decisions were case specific, that any conclusions on the impact of development in a green gap/settlement break was a matter of judgment for the decision maker and that there was no need to scrutinise the decisions further.
31. Concern was also expressed that if the appeal scheme was found to be acceptable in the settlement break, that it would set a precedent for further encroachment. However, any future proposals for development in the settlement break would have to be considered on their individual merits. My conclusions are based solely on the specific circumstances of the appeal site and outline scheme before me. They should in no way be seen as any kind of

judgment that further incursion into this, or indeed any other, settlement break is *de facto* appropriate.

32. Local Plan policy STRAT 13 is somewhat convoluted. On the one hand it appears to allow for development that does not detract from the open rural character of settlement breaks. Where such development is permitted, it must be located and designed so as not to cause harm to the character of the area; not detract from the historic or landscape setting of settlements; and not encroach on open green spaces that preserve links between built-up areas with the countryside. On the other hand, the final paragraph seeks to restrict development in settlement breaks to development essential for agriculture or other essential countryside uses. It is unclear in this context whether its reference to development being 'exceptionally permitted' is to any development or to that essential for agriculture or other essential countryside uses.
33. The Council's approach to the application of the policy appears to be one of fact and degree, with consideration given to the impact of development proposals on the character and function of settlement breaks. Indeed, there was no dispute that it has granted permission for residential development in another settlement break, in the context of policy STRAT 13, having regard to the particular circumstances of that proposal. This being so, I conclude that although there would be conflict with the policy, insofar as there would be residential development in a settlement break, in my judgment this must be tempered by the fact that this would have little impact upon the character and function of that break.
34. The scheme would also conflict with policy STRAT 12, which restricts development beyond settlement boundaries other than where it meets certain criteria, which the appeal scheme does not. The justification for this policy is that uncontrolled development can have the effect of lessening the open and undeveloped character of the countryside. Again, however, this conflict must be tempered by my findings in relation to the minimal adverse impact upon character and appearance from the appeal proposal.
35. Policy NBE 20 seeks to ensure that development does not detract from the rural character of the settlement edge and the countryside beyond. Although the scheme would have an effect on the settlement edge, for the reasons set out above, with particular regard to the scheme's density and the thought that has gone into the indicative landscape features on the eastern edge of the site, I do not consider that this would be adverse. As such, I do not find any conflict with this policy.

Other Matters

36. Local residents raised a number of other concerns in relation to flood risk, highway safety and human rights. However, as I am dismissing the appeal for other reasons, it is not necessary for me to address these matters further.
37. There was limited discussion at the Hearing about the robustness of the Council's methodology for establishing its five-year supply of deliverable housing sites. My attention was drawn to two recent appeal decisions¹ wherein Inspectors have concluded that the Council is unable to demonstrate such a supply. I am mindful of this, but the detail and amount of evidence available

¹ 3133902 and 3103245

to one Inspector appears to be limited, to say the least, while the issue was not scrutinised in any detail by the other. On the basis of the limited evidence presented to me by both parties, I do not consider that it is possible for me to reach a conclusion on this matter. That said, this matter is not determinative and, indeed, the parties agreed in the Statement of Common Ground on Housing Land Supply that, *'whether or not the Council can demonstrate a five year supply specifically is, in this particular case, a moot point'* and that it should not be an area for significant focus at the Hearing.

38. A S106 agreement has been provided that would secure obligations for the provision of affordable housing, primary school places, improvements to local medical facilities and open space. However, although acknowledging the benefit of the affordable housing, these obligations would not overcome my concerns in relation to the harm arising from the proposal and, thus, they have not had a significant bearing upon my decision.

Conclusion

39. It was common ground between the Council and appellant that the age of the Local Plan is such that certain policies in relation to the location of residential development must be out-of-date. Notwithstanding my concerns, noted at the Hearing, as to whether the latter position can be an automatic corollary of the former, for the purposes of this decision I have adopted the approach set out in paragraph 14 of the Framework. This explains that where relevant policies are out-of-date then (unless material considerations indicate otherwise) permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. The scheme would conflict with the development plan, in relation to character and appearance and living conditions. The conflict in relation to the former is tempered, however, by my findings that the scheme would not have significant adverse impacts with regard to the settlement break or open countryside. Nonetheless, I give very significant weight to the conflicts in relation to policy on living conditions and to the harms arising from that.
41. In terms of social benefits, the scheme would deliver additional housing, both market and affordable (secured by planning obligation), in line with the Framework's² aim, and Government policy, of significantly boosting the supply of such. I give this benefit substantial weight.
42. Turning to the economic dimension of sustainability, the Government has made clear its view that house building plays an important role in promoting economic growth. In economic terms, the appeal scheme would provide construction jobs and some local investment during its build out, as well as longer term expenditure in the local economy and some Council tax receipts. Moderate weight should be afforded to this benefit.
43. The development would also generate New Homes Bonus (NHB) receipts for the Council. As this is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB and Middle Rasen has been established, I do not consider that it attracts weight as a benefit in the planning balance.

² Paragraph 47

44. It is suggested that the scheme would support and sustain shops, services and facilities in Middle Rasen and Market Rasen. There is not, however, any evidence that such shops, services and facilities are in particular need of support and I give this little weight.
45. In environmental terms, the scheme would provide some publicly accessible open space. There is, however, no evidence before me that Middle Rasen lacks for recreational open space and the provision of such is, in any case, largely a policy requirement (albeit a lesser amount than proposed) and a necessity of the proposed flood mitigation, drainage scheme and mitigating landscaping. As such, I give this little weight.
46. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard Schofield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Thomas Smith MRTPI
Mr Brian Duckett

Hankinson Duckett Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Simmonds
Mr Jonathan Cadd
Cllr Thomas Smith

Mark Simmonds Planning Services
West Lindsey District Council
West Lindsey District Council

INTERESTED PERSONS

Mrs Lesley Bailey
Mr John Williamson
Mrs Christine Williamson
Mrs Sharon Law
Mrs C Dickinson
Mr K Helliwell
Mrs Wendy Codd

DOCUMENTS SUBMITTED AT THE HEARING

1. Completed S106 agreement
2. Statement by Mrs C Dickinson
3. Photographs of the appeal site submitted by Mr John Williamson
4. Petition submitted by Mrs Lesley Bailey
5. Photographs of the appeal site submitted by Mrs Wendy Codd
6. Appeal decisions 3133902 and 3103245
7. Honeyholes Lane Committee Report