
Appeal Decisions

Hearing held on 10 May 2016

Site visit made on 10 May 2016

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 14 June 2016

Appeal A Ref: APP/N2535/W/16/3145353

Land Adjacent to Dunholme Close, Welton, 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 133064, dated 25 May 2015, was refused by notice dated 27 August 2015.
 - The development proposed is erection of 12 dwellings with access from Dunholme Close.
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Appeal B Ref: APP/N2535/W/16/3145351

Land South of Dunholme Close, Dunholme/Welton, Lincolnshire

- 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 Charles Pickering against the decision of West Lindsey District Council.
 - The application Ref 132426, dated 6 February 2015, was refused by notice dated 27 August 2015.
 - The development proposed is change of use from agriculture to public open space.
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Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for change of use from agriculture to public open space at Land South of Dunholme Close, Dunholme/Welton, Lincolnshire in accordance with the terms of the application, Ref 132426, dated 6 February 2015, subject to the conditions set out in the Annex to this decision.

Preliminary Matters

3. The application subject to Appeal A was made in outline with all matters other than access reserved for later determination. I have considered the appeal on this basis.
4. It was confirmed at the Hearing that the emerging Central Lincolnshire Local Plan (CLLP) is out for a final round of consultation until the end of May, after which time it will be submitted for examination. The Council confirmed that an

examination will not take place until much later in the year, with the CLLP not likely to be adopted 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.

5. The Welton-by-Lincoln Neighbourhood Plan (WNP) has undergone examination, with the examiner's report expected imminently. It was not disputed at the Hearings that no significant objections to it were raised at the examination. This being so, in line with paragraph of 216 of the Framework, I give the WNP significant weight.

Main Issue

6. The main issue is the effect of the proposed developments on the undeveloped settlement break between Welton and Dunholme.

Reasons

7. Together the appeal sites comprise a field to the immediate south of Welton, in a wider area of undeveloped land between the villages of Welton and Dunholme. As such the sites lie outside the defined settlement boundaries to these villages and form part of the formal 'settlement break' between them, as defined by the Proposals Map to the West Lindsey Local Plan First Review (the Local Plan). Thus, the sites are protected from all but specified forms of development (which excludes residential schemes of the type proposed) under Local Plan policies STRAT 12, which seeks to conserve the open countryside, and STRAT 13, which seeks to maintain defined open breaks between settlements.
8. Policy EN4 of the WNP is clear that development proposals that would result in the total or partial loss of the Green Wedge (i.e. the settlement break) between Welton and Dunholme will not be supported. Conversely, those which seek to conserve, protect and otherwise enhance this land for the benefit of communities will be strongly supported.
9. Ryland Road, which is the main highway link between the two villages, forms the field's eastern boundary, with a public footpath running along its northern (footpath 169) and western (footpath 785) boundaries. Its southern boundary is clearly defined by a mature, deciduous hedge. There is a further field behind this hedge, running up to the northern edge of Dunholme. Together, the appeal field and that to its south form a discrete part of the settlement break at this point.
10. The appeal site could not be said to be of a high landscape quality. Indeed, the Welton-by-Lincoln Village Character Assessment, produced to inform the WNP states that, *'much of the land along Ryland Road which forms part of the green gap is of a nondescript character, with no obvious function or value, other than that of ensuring separation between the two settlements'*¹.
11. Nonetheless, it also notes that the, *'undeveloped gap plays an important role in preventing the coalescence of the two settlements. It protects the setting and separate identity of each settlement, and therefore its retention as a predominantly open and undeveloped landscape is critical to ensuring the*

¹ P25 para 3.30

effective separation of Welton and Dunholme and the safeguarding of the individual character of each village.²

12. This is rather the point. The settlement break here is narrow, being only around 300m across. Although the appeal field may be unremarkable in landscape terms, it nonetheless comprises a significant proportion of the settlement break here and is, arguably, situated at the point between the two villages where the sense of their distinct separation is most readily apparent to those passing between them. This sense is further enhanced by the more enclosed and intimate form of the landscape of the settlement break at this point.
13. Far from being an indistinct gap, the openness of the appeal field, combined with that of the field to the east of Ryland Road, north of the ribbon development heading out from Dunholme, allows one to appreciate a critical distinction between the two villages when moving along Ryland Road. This is particularly apparent when heading north from Dunholme, when one can readily perceive a clearly defined southern edge to Welton formed by development on, and a firm landscaped boundary to, Dunholme Close and Roselea Avenue. In addition, even with the fencing to the field's eastern boundary in place, the undeveloped nature of the appeal sites is clearly visible from vehicles and on foot, with views easily achieved across them to the field's western hedgerow boundary and the open countryside beyond.
14. The sense of separation is also clearly perceptible from footpaths 169 and 785, which are obviously well used by local residents. Although views looking south from footpath 169 are now constrained by fencing erected by the appellant, I agree with the judgments reached by the Inspector in relation to a previous appeal on the sites³. Namely, that the role of the appeal field, and the field to its south, as a buffer to the northern limit of Dunholme can be readily appreciated from the footpaths, adding depth to views from footpath 785 and contributing to the definition of the extent of the clear gap between the two settlements.
15. Should the proposed residential development proceed, it would extend the built form of Welton around 100m further south into the settlement break. Given the already narrow width of the break at this point, advancement of Welton's built form to this degree, well beyond its well-established settlement edge, would result in a very significant reduction in the depth of the break.
16. I accept that a simple measure of the extension of development into a settlement break is a rather simplistic means of assessing impact. There is, however, rather more than mathematics at play here and the appeal proposal would not be, as the appellant suggests, a modest extension to the settlement edge of Welton. New dwellings would be clearly visible from footpath 169, even if set back from it, and from footpath 785, resulting in perceptible advancement of the built form of Welton into the narrow belt of the settlement break, ever closer to coalescence with Dunholme .
17. Some sense of separation would remain when passing along Ryland Road, as the development would be set well into the site. In addition there would be a, very narrow, view retained across the southern end of the site to the

² P25 para 3.28

³ 2207053

countryside beyond when heading towards Dunholme. Nonetheless, development would still be clearly visible from the road and would remain so, albeit eventually in marginally more filtered views, even if the proposed additional planting were put in place. This judgment is borne out by the 10 years post development viewpoints provided by the appellant.

18. This change from open land to a partially developed area of housing would also serve to reduce significantly the extent of the gap between the villages and increase the very real perception of advancing coalescence, notably when viewed in tandem with the ribbon development on the eastern side of Ryland Road.
19. Turning to the proposed change of use to public open space, the Council's concerns in this regard centre on the potential impacts of the paraphernalia (e.g. bins, benches, signage, play equipment) usually associated with public open space, which, it argues, would contribute to the sense of diminution of an undeveloped break between the villages. As discussed at the Hearing, however, this could be addressed by a condition removing relevant permitted development rights. As such, the principle of a change of use would be acceptable, subject to an appropriate landscaping and management plan for the site, and would not result in any appreciable change to the undeveloped break.
20. 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.
21. The appellant also noted that the Council had allowed new residential development in the settlement break north of Honeyholes Lane in Dunholme. This may be so, but it was agreed that there was no contextual similarity between this site and the appeal sites. As such, I do not consider that the Council has acted inconsistently in its approach nor do I consider that the Honeyholes Lane decision sets any kind of precedent for the appeals before me.
22. I conclude, therefore, that the proposed residential development would have an adverse impact upon the undeveloped settlement break between Welton and Dunholme. It would conflict with Local Plan policies STRAT 12 and STRAT 13, and with emerging WNP policy EN4, the aims of which are set out above. I further conclude that the proposed change of use to public open space would not have an adverse impact upon the settlement break and, thus, would not conflict with these same policies, receiving active support from WNP policy EN4.

Other Matters

23. There is dispute between the parties as to whether the Council is able to demonstrate a five-year supply of deliverable housing sites. On the basis of the limited evidence presented to me by both parties, I do not consider that it would be possible for me to reach a conclusion on this matter. That said, there was agreement between the parties at the Hearing that the matter was not

critical to the determination of the appeals and did not need to be considered further.

24. There is, clearly, some support for the appeal schemes. My reading of the supportive representations before me, however, is that they see the appeal schemes as a means of removing what is, justifiably, regarded as unsympathetic fencing to two of the site boundaries and of achieving the tidying of the sit, thus making a more attractive edge to Welton. There are, however, other means of securing the tidying up of land other than permitting new residential development upon it and, as suggested by the appellant at the Hearing, it is possible to secure a site, or make it less attractive to anti-social uses, by means other than the fencing currently in place. Either way, I do not consider that the current state of the site is, of itself, sufficient justification to warrant such a significant incursion of built development into the settlement break.
25. It was suggested that the proposed dwellings would be attractive to local residents seeking new houses as they would be available to self-builders and/or prospective purchasers would have greater control over their design and fitting out than they would with a volume house builder's products. There is not, however, any evidence before me to support these views.
26. Concerns were expressed that the dismissal of the appeal would result in agricultural buildings being erected on the field or mineral extraction taking place. There is no evidence before me of any such proposals and, in any case, both would be subject to appropriate prior approval and/or planning controls. Given these facts, and the nature and location of the field, there can be no certainty that either proposal could or would be successfully implemented.

Conditions

27. With regard to Appeal B, I have imposed a condition detailing the approved location plan as this provides certainty given the unusual shaping of the open spaces and their juxtaposition with the proposed residential development. Given the unauthorised uses of the site in recent times, including the dumping of waste material, a contaminated land assessment and remediation condition is necessary. Although this condition was discussed in the context of the residential scheme, the issue of contamination is equally applicable to the open space. I have imposed the standard shorter condition in favour of that proposed by the Council. The removal of permitted development rights and the requirement for a landscaping scheme and management plan are necessary in the interests of maintaining the undeveloped character and appearance of the settlement break and achieving the biodiversity benefits suggested by the appellant.

Planning Obligations

28. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations) requires that if planning obligations contained in S106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
29. A unilateral undertaking was submitted in respect of both appeal schemes. Those obligations associated with Appeal A would not overcome my concerns in

relation to the appeal scheme and I do not consider them further here, although the matter of affordable housing is weighed in the planning balance below.

30. Those concerning the laying out and transfer of the public open space and the payment of a maintenance contribution for it are necessary to secure its appropriate landscaping and ongoing maintenance. I am satisfied that they meet the tests set out in the Regulations.

Conclusion

31. I have concluded that the proposed open space does not conflict with relevant planning policy. The residential scheme would, however, conflict with the development plan and the emerging WNP, in relation to its situation in an undeveloped settlement break outwith the settlement boundaries of Welton and Dunholme. It is common ground between the parties, however, that the age of the Local Plan is such that certain policies in relation to where residential development may be located, namely STRAT 12 and STRAT 13, are out-of-date. My concerns as to whether the latter position can be an automatic corollary of the former were noted at the Hearing.
32. Nonetheless, given the common ground between the parties on this matter I have, for the purposes of these decisions, adopted the approach set out in paragraph 14 of the Framework, in relation to the residential scheme, which is that used by the Council in its determination of the original applications. This explains that where relevant policies are out-of-date then 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.
33. However, a policy being 'out-to-date' is not the same thing as it being disregarded. The statutory requirements, both to have regard to the Development Plan and to make decisions in accordance with it unless material considerations indicate otherwise, remain. Thus, the weight to be given to 'out-of-date' policies is a matter for the decision maker.
34. It is clear that the settlement break between Welton and Dunholme was formally established in planning policy, namely Local Plan policy STRAT13, some 10 years ago. Its enduring relevance is clear from the inclusion of a Green Wedge policy in the WNP and the proposal to retain the gap in policy in the emerging CLLP (albeit that this document, in my judgment, attracts little weight at present).
35. It is also evident from the appeal field's planning history that numerous planning applications for residential development upon it have been refused over the last 54 years, with decisions being upheld on appeal on a number of occasions. The adverse impact upon the role and value of the space between Welton and Dunholme has been the determinative factor each time, even without a formal 'gap' policy in place, and it was not disputed at the Hearing that there is a very strong desire among local residents to maintain a physical and perceptual distinction between the two villages.
36. In this context, I consider that there can be no doubt that the settlement break performs an important environmental and social function. Thus, although the weight to be attributed to STRAT 13, and by association EN4, may arguably be

- diminished by virtue of their being 'out-of-date', I nonetheless consider that both remain key material considerations. Therefore, the residential scheme's conflict with them and its adverse impact upon the gap are matters that attract very significant weight in the planning balance.
37. In social terms, the residential scheme would provide additional housing, including a contribution towards off-site affordable housing (secured by unilateral undertaking), which would assist with the Framework's⁴ aim of boosting significantly the supply of housing. These are factors to which I afford substantial weight.
38. 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 these benefits.
39. 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 Welton or Dunholme has been established, I do not consider that it attracts weight as a benefit in the planning balance.
40. It is suggested that the scheme would support and sustain shops, services and facilities in the two villages. There is not, however, any evidence that such shops, services and facilities are or will be in particular need of support and I give this matter little weight.
41. In environmental terms, the residential scheme would result in the removal of the fencing along the site's boundary with footpath 169, which is oppressive and unattractive. As noted above, however, it was agreed that there are other, less intrusive, means of securing the site and I give this matter little weight.
42. The appellant suggested that there was little likelihood of the open space scheme coming forward without the residential scheme. The unilateral undertaking includes a mechanism for restricting the occupation of the latter until completion of the former. This being so, I have for completeness sake considered the suggested benefits of the open space in relation to the residential scheme, even though they are standalone applications and fall to be determined as such.
43. If managed properly, the open space could provide a learning resource for the local primary school and result in biodiversity enhancements both as a standalone scheme and as part of a wider network. In the absence of any detailed proposals, however, these must remain aspirational and I give them moderate weight. The scheme would also provide a recreational space for local residents. However, there is no firm evidence before me that such space is lacking in the area and, again, details about the future nature and function of the space are sparse. Indeed, although I am mindful of the difficulties sometimes involved in securing discussion between parties, the ultimate ambition is to transfer the area to Dunholme Parish Council, which was unable

⁴ Paragraph 47

to provide any substantive comment at the Hearing on how it might be used or managed.

44. As with the residential scheme, the proposal would result in the removal of the unsightly fencing to the site's boundary and my considerations on this matter are as above.
45. It was suggested that the proposal would strengthen the character and function of the gap and provide a 'gateway' feature into Welton. Given my findings of harm above, I cannot agree with this view. The site is currently open and undeveloped. Although the appearance of the Ryland Road side of the site might change for the better, there are other means of improving the appearance of the site and the proposal would not mitigate the impact of the incursion of residential development into the gap. I give this very little weight.
46. Placing these factors and all other relevant material considerations in the balance, I find that the adverse impacts of the proposed residential development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that this 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 Appeal A should be dismissed and Appeal B allowed.

Richard Schofield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Thomas Smith MRTPI	
Mr Brian Duckett CMLI	Hankinson Duckett Associates
Mr Charles Pickering	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Russell Clarkson MRTPI	West Lindsey District Council
Cllr Steve England	West Lindsey District Council

INTERESTED PERSONS

Mr Anjum Sawhney (Chair of Dunholme Parish Council)
Mr Alan Greenway (Welton-by-Lincoln Parish Council, Chair of Planning & Neighbourhood Planning)
Mrs Rachel Jones (local resident)
Mrs Kate Urquhart (local resident)
Mr Tony Pache (local resident)
Mrs Claire Lea (Governor of Dunholme Primary School)
Mrs Angela Hopson (Foundation Governor of Dunholme Primary School)

DOCUMENTS SUBMITTED AT THE HEARING

1. Further draft unilateral undertaking
2. Letter from the Headteacher of Dunholme Primary School to West Lindsey DC, 4 May 2016
3. Off Site Contributions for Affordable Housing Supplementary Planning Guidance
4. Welton-by-Lincoln Village Character Assessment

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

5. Email from Lincolnshire County Council education department to WLDC, re Dunholme Primary School, 10 May 2016
6. Minutes of Dunholme Parish Council meeting, 15 July 2015
7. Final unilateral undertaking

ANNEX – CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan 714.2/09B February 2015
- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within two days of the report being completed and shall be approved in writing by the local planning authority.
- 4) No development shall commence until a landscape design and management scheme and a biodiversity enhancement scheme have been submitted to and approved in writing by the local planning authority. Development and ongoing management shall thereafter be implemented as approved.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no structures or equipment shall be erected on the site under or in accordance with Class A of Part 12 to that Order.