



**Planning Committee**

**5 April 2017**

**Subject: Determination of Planning Appeals**

Report by:

Chief Operating Officer

Contact Officer:

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Purpose / Summary:

The report contains details of planning applications that had been submitted to appeal and for determination by the Planning Inspectorate.

**RECOMMENDATION(S): That the Appeal decisions be noted.**

## IMPLICATIONS

**Legal:** None arising from this report.

**Financial :** None arising from this report.

**Staffing :** None arising from this report.

**Equality and Diversity including Human Rights :** The planning applications have been considered against Human Rights implications especially with regard to Article 8 – right to respect for private and family life and Protocol 1, Article 1 – protection of property and balancing the public interest and well-being of the community within these rights.

**Risk Assessment :** None arising from this report.

**Climate Related Risks and Opportunities :** None arising from this report.

**Title and Location of any Background Papers used in the preparation of this report:**

Are detailed in each individual item

### Call in and Urgency:

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

**Yes**

☐

**No**

**x**

### Key Decision:

A matter which affects two or more wards, or has significant financial implications

**Yes**

☐

**No**

**x**

## **Appendix A - Summary**

- i) Appeal by Mrs M.E. Stuffins against the decision of West Lindsey District Council to refuse planning permission for the erection of thirty-eight dwellings on land off Scothern Road, Nettleham

**Appeal Dismissed** - See copy letter attached as Appendix Bi.

**Officer Decision** – Refuse permission

- ii) Appeal by Mr Dave Allen against the decision of West Lindsey District Council to refuse planning permission for change of use and alterations to existing outbuilding to form new dwelling at Crossing Cottage, West Bank, Saxilby.

**Appeal Dismissed** - See copy letter attached as Appendix Bii.

**Officer Decision** – Refuse permission

- iii) Appeal by Mr J Colley against the decision of West Lindsey District Council to apply condition 6 (a scheme of passing places along Sykes Lane) to change of use of field to woodyard for log cutting and amendment to 3 sided cutting shed to incorporate amendments made on site, including bio mass unit' at Orange Farm, Sykes Lane, Saxilby.

**Appeal Dismissed** - See copy letter attached as Appendix Biii.

**Officer Decision** – Permission granted subject to conditions.

- iv) Appeal by Mr G and Mrs P Kealey against the decision of West Lindsey District Council to refuse Planning permission for the development of 7 sustainable homes at Church Farm, Church Lane, Harpswell, Gainsborough.

**Appeal Dismissed** - See copy letter attached as Appendix Biv.

**Officer Decision** – Refuse permission.

# Appeal Decision

Site visit made on 28 November 2016

**by Mike Hayden BSc DipTP MRTPI**

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

**Decision date: 02 March 2017**

**Appeal Ref: APP/N2535/W/16/3154773**

**Land off Scothern Road, Nettleham, Lincoln, 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 Mrs M.E. Stuffins against the decision of West Lindsey District Council.
- The application Ref 133926, dated 19 January 2016, was refused by notice dated 12 May 2016.
- The development proposed is the erection of thirty-eight dwellings.

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The application was submitted in outline with all matters relating to layout, scale, appearance, access and landscaping reserved for subsequent approval. A proposed site layout plan was submitted with the application. However, the Design and Access Statement confirms this is indicative to support the case for the number of dwellings proposed. I have dealt with the appeal on this basis.

## Development Plan context and Main Issue

3. The development plan relevant to this appeal comprises the 'saved' policies of the adopted West Lindsey Local Plan First Review (2006) (the WLLPR) and the made Nettleham Neighbourhood Plan (2015) (the NNP). There is also an emerging Central Lincolnshire Local Plan (CLLP), covering the City of Lincoln, West Lindsey and North Kesteven districts, which was submitted for examination in June 2016. Although the CLLP and the examination have reached an advanced stage, with main modifications published for consultation following the examination hearings, the spatial strategy, policies and site allocations of the CLLP remain subject to the outcome of this consultation and the Inspector's report. Therefore, the weight to be afforded the CLLP in this appeal is limited accordingly.
4. The Council maintains that a 5 year supply of deliverable housing land can be demonstrated against the current objectively assessed housing requirement for the Central Lincolnshire Housing Market Area (HMA). However, this relies on allocated sites in the emerging CCLP which have not yet been adopted. The Council acknowledges that it does not have sufficient allocations remaining in the adopted WLLPR to meet the 5 year supply. Accordingly, under paragraph 49 of the National Planning Policy Framework (the Framework), I agree that the relevant policies for the supply of housing in the WLLPR cannot be considered up to date.

5. With regard to the NNP, the Written Ministerial Statement (WMS) published on 12 December 2016, established that the relevant policies for the supply of housing in made neighbourhood plans should not be deemed to be out of date under paragraph 49 of the Framework, where specific circumstances can be satisfied. Given the Council's reliance on the policies of the NNP in determining the application the subject of this appeal, I sought the views of the main parties on whether the NNP met the criteria in the WMS. Against the first two, it is evident that the NNP was made less than 2 years ago in December 2015 and allocates sites for housing. However, whether the Council can demonstrate a 3 year supply of deliverable housing sites is disputed.
6. I have considered the evidence submitted on housing land supply. The latest position for the period April 2017 to March 2022 is set out in the Central Lincolnshire Five Year Land Supply Report, published in September 2016. Table 4 of the report confirms that the 5 year requirement for the HMA is 12,092 additional dwellings, at an average of 2,418 dwellings per year. On this basis the 3 year requirement is 7,254 dwellings. Against this Table 5 of the report confirms that the supply for the next 3 years (2017/18 to 2019/20), including sites allocated in the emerging CLLP, is 6,414 dwellings. Therefore, based on this evidence, a 3 year supply of deliverable housing sites cannot be demonstrated within Central Lincolnshire. Accordingly, under the WMS as it applies to paragraph 49 of the Framework, the policies relevant to the supply of housing in the NNP should not be considered up to date.
7. Consequently, it is appropriate to consider this appeal in the light of the fourth bullet point of paragraph 14 of the Framework. In view of this and having regard to all of the evidence before me, the main issue in this appeal is whether or not any harm which may be caused by the proposal would significantly and demonstrably outweigh its benefits, having particular regard to:
  - the effect of the proposed development on the character and appearance of the appeal site and the surrounding countryside and on the setting of Nettleham;
  - the contribution of the proposal to meeting any shortfall in housing land supply and affordable housing needs.

## Reasons

### *Character and Appearance*

8. The appeal site is located on the northern edge of Nettleham to the west of Scothern Road. It occupies the southern half of a large field, which forms part of the countryside surrounding the northern side of Nettleham. The field is flat, laid to crops and bounded by hedgerows. Together with the adjacent fields to the north, east and west it contributes to an attractive, open rural landscape on edge of the village. The landscape affords long distance views to and from Nettleham, which form part of the setting of the village. The open, undeveloped nature of the site also adds to the tranquillity of the environment surrounding Nettleham.
9. One of the core planning principles in paragraph 17 of the Framework is that planning should take account of the character of different areas, recognising the intrinsic character and beauty of the countryside. Saved Policy STRAT 12 of the WLLPR also seeks to protect the open countryside from development.

10. The appeal proposal would extend the built up area of Nettleham into land which is currently part of the open countryside. I acknowledge that the development could create a new northern boundary to the village. However, it would harm the intrinsic beauty and tranquillity of the appeal site and its contribution to the surrounding countryside to the north of the village. It would lead to the loss of open land which defines the rural character of the parish and of the setting to Nettleham, as described in the Nettleham Village Design Statement (2010).
11. I recognise that the proposal would conform with Policy D-5 of the NNP in that it would be adjacent to the existing built form of Nettleham, would not be isolated in the countryside and would not extend the linear format of the village, given the presence of houses on the opposite side of Scothern Road. However, the proposed development would conflict with saved Policy STRAT 12 and paragraph 17 of the Framework.
12. I have considered the respective arguments of the main parties on the weight to be accorded to saved Policy STRAT 12. In so far as it is a relevant policy for the supply of housing by restricting development outside of the settlements listed in saved Policy STRAT 3 of the WLLPR, the Council confirms that Policy STRAT 12 is out of date and should be afforded little weight. However, Policy STRAT 12 also has a role in conserving the countryside for the sake of its beauty, the diversity of its landscape and its undeveloped character, as explained in the justification to the policy in paragraph A96 of the WLLPR.
13. The Court of Appeal in *Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG* [2016] established that paragraphs 14 and 49 of the Framework do not say out of date policies should be ignored. Rather, it confirmed that weight can be attached to such policies by the decision maker and that the particular purpose of the policy could influence the weight to be accorded to it. The judgement found that there will be cases in which restrictive policies are given sufficient weight to justify the refusal of planning permission, despite not being up to date under paragraph 49.
14. Saved Policy STRAT 12 is consistent with paragraph 17 of the Framework in seeking to protect the countryside for the sake of its natural beauty and undeveloped character. Therefore, whilst I accord little weight to the policy in restricting housing land supply, I do attach significant weight to Policy STRAT 12 in conserving the character and appearance of the countryside.
15. On this basis, I conclude that the proposed development would cause unacceptable harm to the character and appearance of the appeal site and the surrounding countryside and to the setting of Nettleham. As such it would conflict with the aim and purpose of saved Policy STRAT 12 of the WLLPR in seeking to conserve the countryside for the sake of its beauty and undeveloped character. Consequently, the proposal would also fail to comply with paragraph 17 of the Framework.

#### *Housing Land Supply and Need*

16. The Council states that there is a supply of 12,712 additional dwellings on deliverable sites, amounting to a total of 5.26 years of housing land supply within the HMA. However, this is dependent on sites allocated in the emerging CLLP. The appellant maintains that 5,201 dwellings (41%) of the housing land supply is predicated on draft CLLP allocations without planning permission and

points to persistent under delivery of housing within the HMA against the annual requirement. Although I have been given little firm evidence to prove that the emerging allocations are unlikely to be delivered in the next 5 years, given that they are not yet adopted, I recognise that they are at greater risk of not coming forward within that period. Therefore, taking 5,201 dwellings as a worst case proxy for the shortfall in housing land supply, the 38 dwellings proposed on the appeal site would make up less than 1% of that shortfall. Paragraph 47 of the Framework emphasises the need to boost significantly the supply of housing. The appeal proposal would make a small contribution to this objective and accordingly, I attach a limited amount of weight to this as a benefit of the proposal.

17. In terms of affordable housing, the Central Lincolnshire Strategic Housing Market Assessment (SHMA) identifies a need for 911 affordable homes per year across the HMA, with a shortfall in provision of around 200 dwellings per year. The NNP confirms a need for 34 affordable and sheltered homes within Nettleham parish. The appeal scheme proposes 10 affordable dwellings on-site, secured through a planning obligation within a unilateral undertaking. This would meet the expectation in saved Policy RES 6 of the WLLPR for a 25% contribution to affordable housing on sites of 15 dwellings or more in settlements with populations of over 3,000 people. It would also satisfy the provisions of Policy H-4 of the NNP in respect of on-site affordable housing.
18. A signed, dated and completed legal undertaking under S106 of the 1990 Act has been provided by the appellant, which would secure the provision of the 10 dwellings with nomination rights to ensure they would meet local needs. The undertaking satisfies the tests for planning obligations contained in paragraph 204 of the Framework and CIL Regulation 122.
19. Although there is a need for affordable homes within Nettleham parish, the NNP already allocates four housing sites from which the affordable housing needs of the parish would be met. Whilst none of the NNP sites have commenced development, I have seen little evidence to suggest that they would not come forward in the next few years. Beyond the parish needs the proposed development would help to address the overall housing needs of the HMA. The provision of 10 affordable dwellings would make a small contribution to addressing the annual HMA shortfall of 200 affordable homes. Accordingly, I attach a limited amount of weight to this as a benefit in favour of the proposal.

#### *Other Considerations*

20. The proposed development would be well located in relation to village facilities and adequately served by public transport. The site lies approximately 800 metres from the centre of Nettleham where most of the shops and services are located. There is a pavement alongside Scothern Road providing access on foot from the indicative site entrance to the village centre. A playing field is located within 500 metres of the site again accessible on foot via Scothern Road. I also noted bus stops on Scothern Road with regular services to and from Lincoln. Accordingly, the appeal site is accessible to nearby facilities and by sustainable modes of transport. I attach moderate weight to this in favour of the proposal.
21. I also recognise that the development of new homes would help to sustain village shops, local businesses and services. This would be a benefit to the

economy of Nettleham, albeit the value deriving from 38 dwellings and therefore the weight to be accorded to it would be limited.

22. Under the terms of the unilateral undertaking submitted by the appellant, the proposed development would make an education contribution of £45,105. This would fund 4 primary school places at Nettleham junior school, to meet the needs arising from the development when the school reaches capacity in 2018. The undertaking would also secure the transfer of an area of land on the appeal site for public open space, together with a contribution of £15,000 towards open space improvements. Whilst on the one hand these contributions would benefit the area in the form of new and enhanced local facilities, on the other hand it must be recognised that the proposed development would also place additional pressure on the use of local facilities. The purpose of these S106 contributions is to mitigate those impacts. Accordingly, their overall effect on local facilities and infrastructure would be neutral.
23. The planning application was in part refused on the grounds of insufficient information on flooding and drainage. However, a Flood Risk Assessment (FRA) and a Drainage Strategy were submitted with the application, supported by trial hole surveys. The FRA confirms that the site lies within Flood Zone 1 as defined on the Environment Agency's (EA) Flood Zone Maps, which is an area at low risk of flooding. It appears that the Council's remaining concern centres on whether the geology of the site would allow an adequate infiltration rate to prevent flooding from surface water. Whilst I understand that historically the site drains poorly, I have seen little evidence to suggest that with suitable on-site filtration measures, the development could not be drained adequately without increasing flooding on surrounding land and property. The application has been made in outline and I am satisfied based on the evidence before me that a suitable drainage strategy and measures, evidenced by further ground investigations, could be secured by condition, were I minded to allow this appeal. Accordingly I find no harm arising from flood risk or drainage which would weigh against the proposal.
24. I note the concerns about additional traffic generated by the proposed development on roads within the village. However, the increase in the number of car journeys arising from 38 dwellings would not be significant, particularly given the accessibility of the site by more sustainable modes of travel. I recognise the cumulative effect of journeys from this site in addition to the housing sites identified in the NNP. Nevertheless, there is little evidence that the appeal proposal would give rise to unacceptable levels of traffic or that it would cause harm to highway safety.

### *Planning Balance*

25. I have established that it is appropriate to consider this appeal in the light of the fourth bullet point of paragraph 14 of the Framework under the presumption in favour of sustainable development. This means granting permission for the appeal proposal unless the adverse impacts of doing so would significantly outweigh the benefits.
26. In terms of benefits, the appeal site is well located within walking distance of a range of facilities and services in Nettleham and served by public transport. As such the proposed development would support village shops, businesses and services and enable the use of sustainable modes of travel. Together these benefits offer moderate weight in favour of the proposal. The proposal would



also make a small contribution to the overall supply of housing in the HMA and to meeting the need for affordable housing. The benefit arising from this would be limited given the number of dwellings proposed compared to the size of the overall shortfall in supply and the level of housing need in the area.

27. In terms of its impact, the development of part of the open countryside surrounding Nettleham would cause significant harm to both the intrinsic character and beauty of the countryside and to the rural setting of Nettleham. Accordingly, I attach significant weight to this as an adverse impact. The absence of harm to traffic, drainage and flood risk and the impact on community facilities and infrastructure attract neutral weight in the planning balance.
28. Overall, I conclude that the harm the proposal would cause to the character and appearance of the countryside and to the setting of Nettleham would significantly and demonstrably outweigh the benefits of the scheme. Accordingly, the proposal does not constitute sustainable development.
29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine this appeal in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal conflicts with the development plan when read as a whole. Given that on the basis of the planning balance it would not be sustainable development, there are no material considerations warranting a decision other than in accordance with the development plan.

## **Conclusion**

30. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

*M Hayden*

INSPECTOR

# Appeal Decision

Site visit made on 7 February 2017

**by Andrew McCormack BSc (Hons) MRTPI**

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

**Decision date: 7 March 2017**

**Appeal Ref: APP/N2535/W/16/3164131**

**Crossing Cottage, West Bank, Saxilby, Lincoln LN1 2LU**

- 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 Dave Allen against the decision of West Lindsey District Council.
- The application Ref 134872, dated 17 August 2016, was refused by notice dated 10 October 2016.
- The development proposed is change of use and alterations to existing outbuilding to form new dwelling.

## 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 surrounding area; and
  - living conditions of neighbouring occupiers with regard to outlook and privacy.

## Reasons

### *Character and appearance*

3. The appeal site is located on the north bank of the Fossey Navigation on the southern edge of Saxilby. It is adjacent to a level crossing and is situated within the garden area of Crossing Cottage. The character and appearance of area consists of a mix of large one and two storey detached properties built in brickwork with tiled, pitched roofs. These properties are positioned comfortably on spacious plots with good sized front gardens and, as a result, are set back from the public highway known as West Bank. The Fossey Navigation flows to the south of the public highway and the appeal site. This results in an open southerly aspect for the properties located along West Bank. Therefore, the immediate area surrounding the appeal site has a substantially spacious character and appearance.
4. The appellant states that the streetscene is of little merit. However, I find the area to have a spacious character and appearance which has a strong spatial quality that is enhanced by the presence of the Fossey Navigation and riverbank close to the appeal site. The proposed building would be of brick construction which would be evident at ground floor level. However, this would

- not be visible in the wider area as a result of the boundary fencing to the site. At first floor level, the proposal would have timber cladding on all four sides. This would be visible in the wider area and would be in stark contrast to the prevailing materials used in the surrounding buildings.
5. Having viewed the existing building at the appeal site, I note that it is visible in longer views from the east, at the junction between West Bank and Bridge Street, and particularly so from the west along West Bank. From the evidence before me, the proposal would project further forward than the existing structure towards the front boundary of the site. As a result, it would have a greater visual impact on the streetscene and increase its prominence in longer views from the wider area.
  6. The proposal would be of a style and appearance which differs significantly from the traditional architectural style of the surrounding buildings. As such, it would appear as an incongruous addition to the streetscene. Whilst the proposed building would be of brick construction, it would mostly appear as a timber structure due to the cladding at first floor level. Furthermore its mono-pitched roof would be out of keeping with the traditional pitched and tiled roofs of the surrounding buildings.
  7. I note that the proposal would use materials to match the existing building and that the appellant argues that the scheme would not differ in size by a huge amount. However, I find that it would significantly increase in size. Moreover, the overall style, appearance and increase in size and mass of the appeal property would have a detrimental effect on the quality, character and appearance of the streetscene and surrounding area. In addition, its prominent and visible position forward of the prevailing building line of nearby properties along West Bank would only exacerbate the adverse visual impact on the area.
  8. The appellant refers to a recent development across the watercourse and opposite the appeal site which, it is argued, uses modern materials to create an enhanced link between the host building and the river. I have had due regard to that proposal. Whilst the materials may be more modern, the scheme opposite the appeal site is of a more traditional style and design which is in keeping with the adjoining buildings and the wider character and appearance of the area. Notwithstanding this, I must assess the appeal scheme on its own merits and in its own circumstances.
  9. I appreciate that the appellant is seeking to provide more suitable accommodation in order to meet their future needs. However, from the evidence before me, I find that the benefits put forward in support of the proposed scheme would not outweigh the significant harm I have identified.
  10. Consequently, I conclude that the proposal would have a harmful effect on the character and appearance of the surrounding area. Therefore, it would be contrary to Policies STRAT1 and RES1 of the West Lindsay Local Plan First Review 2006 (the Local Plan). Amongst other matters, these policies seek to ensure that development has a satisfactory regard to the nature, character and appearance of the local environment in terms of siting, layout, scale, massing, materials, design and detailing.

*Living conditions: outlook and privacy*

11. The substantial increase in size and mass of the appeal building would have a particularly detrimental effect at first floor level as this is the element of the scheme which would be most visible to neighbouring occupiers and in the surrounding area. The west elevation of the appeal property, which faces the front garden of 1A West Bank (1A), would extend towards the front boundary of the appeal site. This would approximately double the length of that elevation which would be visible at first floor level. Furthermore, given that this increase would be along the shared boundary with 1A, I find that the proposal would have an overbearing and materially adverse impact on the outlook of the occupiers of 1A from the front window of the property.
12. The Council has stated that the proposed dwelling would have a detrimental effect on the privacy of the occupiers of the host property Crossing Cottage due to the windows serving the proposed bedroom directly overlooking the garden of Crossing Cottage. Whilst this may be the case, I note that the proposed windows serving the bedroom would be at a high level. Therefore, it would be unlikely to result in any significant direct overlooking of the garden area of Crossing Cottage. As such, I am satisfied that the proposal would have no materially adverse effect in terms of overlooking or loss of privacy.
13. The proposed development would have no material impact on the privacy of neighbouring occupiers at Crossing Cottage. It would also make a modest contribution towards housing supply in the area. Notwithstanding this, I find that the scheme would have a significant adverse effect on the outlook of neighbouring occupiers at 1A with regard to outlook due to its scale, position and height. Having considered the evidence before me, I find that the benefits of the scheme would not outweigh the harm I have found in relation to the outlook of neighbouring occupiers.
14. Furthermore, I note that there are no objections to the scheme from neighbouring occupiers. Whilst this may be so, a lack of objection does not necessarily result in an automatic grant of planning permission. Moreover, as I have stated, I must assess this case on its merits rather than on any lack of local objection.
15. Consequently, I conclude that the proposed development would have a materially harmful effect on the outlook of neighbouring occupiers at 1A West Bank. Therefore, it would be contrary to Policies STRAT1 and RES1 of the Local Plan. Amongst other matters, these policies seek to ensure that development has a satisfactory regard to and no significant adverse effect on neighbouring uses and neighbouring occupiers.

**Conclusion**

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

*Andrew McCormack*

INSPECTOR

# Appeal Decision

Site visit made on 7 February 2017

**by Andrew McCormack BSc (Hons) MRTPI**

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

**Decision date: 8 March 2017**

**Appeal Ref: APP/N2535/W/16/3163778**

**Orange Farm, Sykes Lane, Saxilby, Lincoln LN1 2NX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr J Colley against the decision of West Lindsey District Council.
- The application Ref 133568, dated 3 October 2015, was approved on 17 November 2016 and planning permission was granted subject to conditions.
- The development permitted is *'change of use of field to woodyard for log cutting and amendment to 3 sided cutting shed to incorporate amendments made on site, including bio mass unit'*.
- The condition in dispute is No 6 which states that: *'Within 6 weeks of the date of this permission a scheme of passing places along Sykes Lane (between the site and the Saxilby settlement boundary) shall be submitted to, and approved by, the local planning authority. The approved scheme of passing places shall be implemented within 2 months of the date of the written approval and retained in good condition thereafter.'*
- The reason given for the condition is: *'In the interests of safety of the users of the public highway and the safety of the users of the site to accord with the National Planning Policy Framework and STRAT 1 of the West Lindsay Local Plan Review 2006 and Policy LP1 of the Submitted Central Lincolnshire Local Plan 2012-2036.'*

## Decision

1. The appeal is dismissed.

## Procedural Matters and Background

2. The original application Ref: 133568 sought retrospective planning permission for application for the proposed development. This was granted on 17 November 2016. This appeal relates to the imposition of Condition 6 attached to the approved scheme which requires the submission of a scheme to the local planning authority for approval to provide passing places along Sykes Lane between the appeal site and the settlement boundary of Saxilby in the interests of the safety of all road users.
3. The Council has stated that the condition is required to address the deterioration of the roadside verges of Sykes Lane due to its narrowness and lack of capability for vehicles to pass each other at certain points. The appellant argues that a similar condition was not deemed necessary in relation to a previously approved scheme at the site which, it is claimed, did not materially differ in terms of the level of vehicle movements proposed from that in relation to this appeal. As a result, in the appellant's view the condition is not necessary or reasonable.

4. This appeal therefore seeks the removal of Condition 6 attached to planning permission Ref: 133567 relating to the requirement for a scheme of passing places to be submitted to, and approved by, the local planning authority.

### **Main Issue**

5. The main issue is whether the condition is necessary and reasonable having regard to the safety of all road users using Sykes Lane.

### **Reasons**

6. The appeal site is in open countryside approximately one mile to the north west of Saxilby. It is accessed by Sykes Lane, a narrow lane which also serves a number of other properties. The site itself has a wide access and sufficient parking area to ensure that all vehicles visiting the site for deliveries or other purposes can be accommodated off the public highway. Furthermore, all visiting vehicles, including heavy goods vehicles (HGV) appear to be able to enter and exit the site in forward gear. To the east of the site is Willow Tree Farm which is also accessed from Sykes Lane. I am led to understand that the property is used for the transfer and treatment of recyclable domestic and light industrial waste.
7. The approved scheme for the appeal site was granted by the Council subject to a number of conditions as set out in the Officer Report. A suggested condition was submitted by the highway authority during the application process. However, the Officer Report indicates that such a condition would not be reasonable as the amount of HGV deliveries and traffic generated by the scheme would not differ significantly from the previous approved scheme.
8. Notwithstanding this, the Council's planning committee, having based their assessment on personal experience and the expertise of the highway authority, chose to impose the condition. The required scheme of passing points to be provided was identified as providing necessary improvements to the highway and verges of Sykes Lane as a result of, amongst other matters, damage being caused by vehicles passing each other at narrow points along the lane.
9. The appellant argues that the condition is unjust and unfair as the number of heavy goods vehicles travelling to and from the appeal site is negligible, with regard to that identified in relation to the previously approved scheme. However, I note that application Ref: 133568 was retrospective and sought approval for alterations already made on site to facilitate a change of use, including the installation of a Biomass boiler. Whilst the appellant states that there are no changes to the operations on the site and minimal changes to vehicle movements, I find that the approved change of use and the potential for an, on average, increase in HGV trips along Sykes Lane would justify improvements to the public highway along Sykes Lane to be secured.
10. Furthermore, I note that it is indicated that the operations requiring HGV trips to and from the site would be seasonal. As a result, it is reasonable to consider that there would be periods when the number of HGV trips along Sykes Lane would be much higher to meet the needs of the approved site operations. Therefore, the business could increase its production to meet market needs and this would result in a substantial increase given that there is no cap on production. In my view, this would be likely to result in a significant intensification of vehicle movements on Sykes Lane which would be over and

above previous activity. In addition, I must have regard to the activities and uses at other nearby properties which also generate a level of traffic already experienced along Sykes Lane, such as at Willow Tree Farm.

11. The appellant states that they could find no evidence of damage to the roadside verges. In its appeal statement, the Council has provided photographs of the damaged verges along Sykes Lane which indicate that vehicles are necessarily driving over verges in order to avoid oncoming traffic. This was confirmed during my visit where I observed such damage at the points identified by the Council along the lane and in other areas. Furthermore, I observed such damage taking place as two large vehicles passed each other at a particularly narrow point along Sykes Lane.
12. From all I have seen and read, I find that the required scheme set out in Condition 6 would involve relatively minor improvements to Sykes Lane. In achieving those improvements, safe passing places for vehicles and all road users would be provided and this would improve the overall condition of the public highway. The potential for more vehicle trips to and from the appeal site, including HGVs, as a result of the approved scheme would, in my view, justify the improvements requested under Condition 6.
13. Consequently, I conclude that Condition 6, as imposed and attached to planning permission Ref: 133568, is necessary and reasonable with regard to highway safety and the safety of all road users.

### **Conclusion**

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

*Andrew McCormack*

INSPECTOR

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# Appeal Decision

Site visit made on 17 February 2017

**by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC**

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

**Decision date: 16 March 2017**

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**Appeal Ref: APP/N2535/W/16/3164065**

**Church Farm, Church Lane, Harpswell, Gainsborough DN21 5UY**

- 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 G and Mrs P Kealey against the decision of West Lindsey District Council.
  - The application Ref: 134170, dated 16 March 2016, was refused by notice dated 27 May 2016.
  - The development proposed is described as the development of 7 sustainable homes.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. As part of the appeal process a unilateral undertaking (UU) under s.106 was submitted by the appellants. This provides for a minimum Standard Assessment Procedure rating of 90 as established in the Government's Standard Assessment for Energy Rating of Dwellings Published on behalf of DECC by the Building Research Establishment (BRE).
3. The s.106 UU also requires that each dwelling shall be constructed so that, other than from renewable and low carbon energy sources, the maximum energy demand for each dwelling shall be no more than 5,000kw hours per annum. It sets out that for 10 years following completion the owner shall provide evidence that this 5,000kw hours per annum target is met. If the target is not achieved then, within 3 months, the owner will submit details of remedial measures to ensure that the target will be met in successive years. The owner shall, at its own cost, use reasonable endeavours to implement such measures within 3 months of submission of the details.
4. The s.106 UU also requires that within 12 months of fibre optic broadband being made available to the boundary of the property it will be made available in each house. In addition, the undertaking would not allow occupation of a dwelling unless it has at least one electric vehicle charging point.

## Main Issue

5. The main issue in this case is whether or not the proposal would represent sustainable development, having regard to local and national planning policy and legislative requirements; and,
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- (a) the fall-back position for the site;
- (b) the accessibility of the site; and,
- (c) the setting of St Chad a grade I listed building and the setting of Harpswell Hall, a Scheduled Ancient Monument (SAM).

## Reasons

### ***The Fall-back Position and Accessibility of the Site***

6. The West Lindsey Local Plan Review (2006) (the Local Plan) is the current development plan. Policy STRAT 12 seeks to resist open market housing in the countryside. However, policy STRAT 14 makes a specific allocation for much of the appeal site. This policy under allocation Hp(M)1 makes provision for 0.70ha at Church Farm, Harpswell for a 'Bio-mass Renewable Energy Demonstration Project with the Conversion of Existing Buildings & Limited New Build into Live / Work Units'. This type of development, and hence the policy, appears to broadly accord with the Framework which seeks to support small-scale rural offices and facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.
7. Indeed, the appellants set out that the site has planning permission for 7 live/work units (mixed B1/C3 uses) and a biomass boiler with associated infrastructure to provide heating and hot water to these units following appeal APP/N2535/A/09/2103793/NWF (this related to planning application Ref: 121144 and was dated 2 September 2009).
8. The Council claims in its Appeal Statement that this '*decision had lapsed*'. However, the appellants take the view that this is an extant permission and refer to a letter from the Council dated 12 September 2012, which confirms that there has been '*a material start to planning permission 121184 and appeal APP/N2535/A/09/2103793/NWF in line with condition 1*'. The situation is not entirely clear, and not simply because of the different reference numbers and disagreement between the parties. I also note that conditions 5 and 14 are not claimed as discharged and are not referred to in the letter of 12 September 2012 – both conditions relate to the bio-mass boiler and the latter required actions '*prior to the commencement of development*'.
9. However, it is clear that this earlier scheme was for a materially different proposal than that before me. The Appeal Decision sets out that '*The site is in a rural area, poorly related to services and facilities, where new residential development would not normally be accepted in terms of national guidance and development plan policy. However, the majority of the site is specifically designated in the West Lindsey Local Plan Review under policy STRAT14 for mixed use.*' It goes on to explain that specific allocated mixed use as I have set out at paragraph 6 above.
10. Even if I take the earlier scheme to represent a fall-back position, that permission has not been built out and notwithstanding the appellants' assertion that it could be built out and the B1 element subsequently altered under permitted development rights, it seems there is limited likelihood of its implementation. This is particularly the case having regard to the s.106 Obligation and renewable energy associated with the 2009 permission which, as noted in paragraph 12 below, seems to directly link the energy scheme and housing. The appellants, in their Design and Access Statement, explain that

there are some difficulties associated with the biomass boiler, not least related to obtaining the bio-mass fuel. Further, it seems that the appellants are concerned that there are issues relating to financing the live/work units.

11. In this respect, I have considered the appellants point that in, terms of renewable energy, technology has moved on. I have some concerns regarding the implementation of the s.106 UU for this appeal proposal, for instance the installation of fibre optic broadband to each dwelling once it has been provided to the site boundary relies on another organisation's actions and there could be dispute about what is meant by site boundary. Moreover, the energy consumption arrangement relies on monitoring and enforcement which would place a heavy burden on the Local Planning Authority. Notwithstanding those matters, it seems likely that for each of the proposed dwellings alternative renewable energy sources might well be more cost effective and result in the buildings being similarly heat efficient as those in the 2009 scheme.
12. That said, the STRAT 14 Hp(M)1 allocation description and what appears to have been the content of the s.106 Obligation, goes significantly beyond creating energy efficient homes. Indeed the s.106 Obligation referred to in the earlier appeal decision, is said to require '*the setting up of a management company to deal with the renewable energy demonstration project, the supply of energy, the management of the estate and the supply of fuel*<sup>1</sup>'. Although the appellants state that the s.106 Obligation did not require supply of energy to local properties (as suggested by the Council), it seems to me likely that the s.106 Obligation bio-mass boiler was not a simple undertaking in respect of the new dwellings only. Whilst neither side has furnished me with the s.106 Obligation document, I consider one of the key reasons in terms of both policy requirements and the previous Appeal Decision, would be lost were I to allow this appeal, a situation which would not be the case were the earlier permission implemented.
13. The second strand of the Policy STRAT 14 designation relates to live/work units. The main Policy STRAT 14 text is clear that it relates to mixed-use allocations. Although the current proposal for seven residential properties is proposed to be served by fibre optic broadband, facilitating some home working, this relies on such a service being brought to the site boundary which, aside from the concerns mentioned above, may be some time off and act as a disincentive to homeworkers from the outset. In any event, as the appellants note homeworking is an increasing phenomenon, but can take place in accessible locations and does not, on its own, justify use of less accessible locations as homeworkers still need to access services and facilities. Moreover, it is clear that mixed B1 use is not being sought.
14. I agree with the Council that the site is not accessibly located. In fact little seems to have changed since the earlier appeal decision where the Inspector stated '*the site is in a rural area, poorly related to services and facilities, where new residential development would not normally be accepted in terms of national guidance and development plan policy*'. I saw that Harpswell is a modest hamlet with few houses and limited facilities, those primarily being the church and open access land associated with the Scheduled Ancient Monument.
15. The site is in reasonably close proximity (the appellants indicate 1.3 km) to Hemswell Cliff where there are a greater number of facilities and employment

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<sup>1</sup> Paragraph 7 of APP/N2535/A/09/2103793/NWF

- opportunities, such that some trips could be made by bicycle or bus. However, the likelihood is that future occupiers of the proposed dwellings, which would not have the benefit of being mixed live/work units, would have a heavy reliance on the use of the private car for transport. I appreciate that business areas such as Hemswell Cliff require housing, but note that the Council has explained that it has recently allowed a large housing site of up to 170 dwellings in that location.
16. The STRAT 14 policy designation refers to conversion of existing buildings. However, given the earlier permission did not provide for converted buildings I have not attached material weight to this discrepancy. Thus, the lack of conversion elements does not count against the current proposal.
  17. Having assessed the proposal, and having particular regard to the whole of the description of the allocation, I am not satisfied that the proposal would accord with Policy STRAT 14. As such, this is not a case where, for decision-taking, paragraph 14 of the National Planning Policy Framework (the Framework), would require approval without delay because of accord with the development plan. The proposal, because it is for open market housing would also fail to accord with policy STRAT 12.
  18. In this case the location of the proposed housing would result in the need for future occupiers to travel by private car for services and facilities. I do not consider that installing electric car charging facilities would overcome this concern. There is no mechanism to ensure that future occupiers would use such vehicles. The poor accessibility of the site is such that I do not consider that it would be environmentally sustainable despite the measures aimed at improving the environmental efficiency of the proposed dwellings. Whilst future occupiers might assist in keeping the local church open, it seems to me that a development of the size proposed is not likely to be significant in sustaining this type of facility. Thus, I do not attach much weight in this regard.
  19. In addition to the Local Plan, the Council refers to the emerging Central Lincolnshire Plan (emerging CLP). This is a joint authority plan, which includes the West Lindsey District area.
  20. The emerging CLP has been through three rounds of consultation and is awaiting examination by an Inspector. Whilst I appreciate that more weight can be afforded to this document than when my colleague considered the previous appeal, because of the consultation processes it has been through, it remains the case that the emerging CLP may still be altered and particularly so in terms of allocations and housing. Thus, I can only attach a little weight to its policies.
  21. In terms of this appeal the Council draws attention to the fact that this site would no longer have a specific allocation in the emerging CLP. The Council therefore draws attention to policies LP2 and LP55 which establish a settlement hierarchy and limit development in hamlets, the hierarchy category for Harpswell, to uses which would not include open market housing.
  22. I have not accorded significant weight to the emerging CLP, but it does nothing in terms of adding positive weight in the planning balance for this proposal. However, I have considered the appeal in respect of the current Local Plan. In so doing, and having regard to the possible fall-back position and the

Framework, I conclude that the lack of accessibility is not sustainable and counts against the scheme. The scheme is not policy compliant and has no benefit of being live/work units nor does it offer a special green energy project beyond the requirements of the site.

### ***The Setting of St. Chad and the SAM***

23. St. Chad is a grade I listed church. It dates from the late C11<sup>th</sup>, with subsequent phases of work in the C13<sup>th</sup> and C14<sup>th</sup> and restoration in C19<sup>th</sup>. It is constructed of limestone which, in part, is coursed. The roof has plain tiles and stone coped gables. There is a west tower and the nave has a south aisle and porch. The windows vary in date and detail but each demonstrates high quality and detail, with tracery and hood moulds. Its special architectural and historic interest is in its great age, high quality craftsmanship, social value as a place of celebratory and commemorative events, and as a focal point for the community and parish which it serves. The setting of the church is established by its relationship to the churchyard, circulatory routes, the village and, given the respective dates, associative links to the SAM which is Harpswell Hall to which I turn next.
24. Harpswell Hall is a post-medieval house and gardens overlying medieval remains. The monument includes the earthwork and surviving extent of the buried remains of Harpswell Hall. The most notable feature of the site at present is the ornamental water-filled moat which encloses three sides of a rectangular island. The house and garden features are also significant. From the sunken garden area there is a broad avenue of some 250m, which the list entry record explains was originally lined with trees along the south side. This avenue provided a vista of the village church beyond its eastern end.
25. I am mindful that the information I have before me is largely that of the SAM list description which has been expanded upon a little more in the appellants' appeal statement. However, having regard to the consultation response from Historic England, it appears further information may be available given that works were undertaken in 2013 relating to new foul drainage for which consented excavations took place, the details of which were awaiting publication at the time of the Historic England letter. Whilst I appreciate that permission was granted for dwellings on the appeal site, that approval clearly predates the most recent investigations and, indeed, the advice of the Framework.
26. The Framework makes it clear that an applicant is required to describe the significance of any heritage asset affected, including the contribution made to their setting. In this case I am not satisfied that adequate assessment has taken place such that the impact can be properly assessed. Indeed Historic England notes that the originally-provided Design and Access Statement failed to consider the potential impact on the nationally important SAM. It goes on to make it clear that any non-designated remains of historic settlement preserved within the development site would make a positive contribution to the significance of both this nationally important SAM and the grade I listed church, and the understanding of settlement in Harpswell.
27. In particular, there is limited evidence relating to the SAM, and significantly to the relationship between the SAM and the listed church. For instance, no cartographic evidence is provided and there is limited specialist assessment. In this regard I note that the Parish Council draws attention to *'old maps which*

*identify ancient trackways from Middle Street, that would likely have run near & through the site'* and I saw walling to the rear of the church which may well have a relationship to the site. As such, I am not satisfied that there is adequate information upon which to assess the scheme before me and its impact on the setting of the heritage assets identified. Therefore, I find that, in the absence of adequate assessment, I cannot conclude that the proposal would not harm the setting of the SAM and/or the church of St. Chad, a grade I listed building. I note that a better assessment of the heritage assets need not preclude development but might inform how it should be designed.

28. In terms of the assessment of the impact of the proposed development, the levels significantly change within the site (and are noted on plan with sections within the site) but there is no contextual 'streetscene' information to include areas beyond the site or the listed church. Further, the design approach seems to largely relate to the environmental efficiency of the buildings and former layout, with little to explain the how the design would relate to the setting and thus significance of the heritage assets.
29. Whilst I appreciate that some of the farm buildings are not particularly attractive they are subservient because of their subdued colour and utilitarian form when seen in views from the SAM. I do not share the appellants' view that it is necessary to remove the agricultural buildings and replace them with housing so as to improve the setting of the heritage assets.
30. In this regard I find that the proposal fails to accord with national advice contained within the Framework. Moreover, I cannot satisfactorily address my statutory duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that I have special regard to the desirability of preserving the setting of the listed building. The proposal also fails to accord with policy LP25 of the emerging CLP and whilst this is only afforded limited weight it follows the Framework in setting out the information needed to make an assessment of development proposals.

## **Conclusion on the Main Issue**

31. I have concluded that the fall-back position does not attract significant weight, the site is not readily accessible such that future occupiers would be reliant on private vehicles, and I have inadequate evidence regarding the setting of heritage assets on which to make an informed decision. I have found that the proposal fails to accord with the provisions of the development plan and the Framework and conclude that, on the basis of the evidence before me, the development of seven dwellings on the site, even constructed to high energy efficiency standards, would not amount to sustainable development.

## **Other Matters**

### *Other Policies*

32. The appellants refer to other policies within the Local Plan. Policy STRAT 3 classifies Harpswell as a Small Rural Settlement where Policy STRAT 8 allows for windfall and infill housing. However, this only supports rural affordable housing, housing for essential agricultural need or a single dwelling none of which apply in this case. The appellants also draw attention to Policy STRAT 9 which relates to previously-developed sites. However, this is not applicable

here as the Framework makes it clear that land that is or has been occupied by agricultural buildings is excluded from being considered as such.

### *Housing Land Supply*

33. I note that the Council maintains it has a 5 year housing land supply and yet the appellants maintain that the Council cannot demonstrate a robust 5 year supply because the supply relies on draft local plan allocations. However, the appellants do not base their case upon this matter, as confirmed in their final comments. Even if I were to assume that the Council could not demonstrate a 5 year housing land supply, I would still not be able to properly assess the effect on the setting of the heritage assets in this case. As such, being clear about the 5 year housing land supply situation would not alter the outcome of this appeal.
34. Rather in such circumstances I would have to conclude that, for the purposes of the Framework, the adverse effect of not being able to properly assess the impacts on the heritage assets cited would significantly and demonstrably outweigh the benefits of providing seven dwellings, having assessed the proposals against the Framework as a whole because heritage assets are a finite resource and the scheme proposed might well be irreversible in terms of the harm that could arise. I note that even with the benefit of a more rigorous assessment it might be that the paragraph 14 test contained within the Framework is not the 'significantly and demonstrably outweighs' test because the designated heritage assets are included within 'footnote 9' such that specific policies in the Framework indicate that, in certain circumstances, development should be restricted.

### **Final Conclusion**

35. Having had regard to all matters raised, I conclude that the appeal should fail.

*Zoë H R Hill*

Inspector