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# Appeal Decision

Site visit made on 28 March 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: 10 July 2017**

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**Appeal Ref: APP/N2535/W/17/3167415**

**Land off Main Drive, Sudbrooke, Lincoln LN2 2QY**

- 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 S Waite and Mrs M and Mr A Curtis against the decision of West Lindsey District Council.
  - The application Ref: 134726, dated 18 July 2016, was refused by notice dated 11 October 2016.
  - The development proposed is described as outline planning application for the erection of three dwellings with all matters reserved.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Although the first reason for refusal is expressed in terms of one additional dwelling there is nothing before me to indicate that the appeal is for anything other than the three dwellings sought on the application form. I shall therefore deal with the appeal on that basis.
3. On 24 April 2017, during the appeal process the Council adopted a new policy document entitled the Central Lincolnshire Local Plan (CLLP). In so doing the policies of the West Lindsey Local Plan First Review (2006) were superseded and they no longer carry weight as policy. As a consequence, the Council has confirmed which policies of the new Local CLLP they rely upon. The appellants have been given the opportunity to comment upon that correspondence. I have to determine the appeal upon the policies which are in force at the time of my Decision.

## Main Issues

4. In determining this appeal I shall first consider the planning policy context for the proposed development and then consider the main issues as follows:
    - (a) the effect of the proposals on the character and appearance of the locality;
    - (b) the effect on trees protected by Tree Preservation Order; and,
    - (c) having in mind the above matters, the planning balance in this case.
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## **Reasons**

### ***Policy and context***

5. The Council seeks to rely on the recently adopted CLLP allocations to demonstrate that there is a five year housing land supply available. Whilst the appellants draw attention to the poor record of housing delivery within West Lindsey, there is no substantiated evidence before me to conclude that the recently adopted CLLP, with its allocations, fails to provide for a five year housing land supply. I shall, therefore, not consider this matter further.
6. The CLLP for this area allocates Sudbrooke as a medium village (category 5) under Policy LP2 with scope for limited development (classed by the policy as typically up to 9 dwellings or 0.25 ha) to support its facilities. Policy LP4 permits growth of up to 10% during the plan period for Sudbrooke. However, in Sudbrooke planning permission has been granted on appeal for up to 130 dwellings and 25 apartments for retired living. These 155 dwellings significantly exceed the 68 dwellings that the Council considers would amount to the 10% growth addition envisaged in the CLLP. Whilst the appellants seek to use this Decision to support their case that local plan policies should not be adhered to, the policy position has changed and I am therefore considering this scheme in materially different circumstances, particularly in respect of the five year housing land supply.
7. Policy LP4 sets out that for proposals within or on the edge of a village in category 5-6 of the settlement hierarchy where any development combined with extant permissions, amongst other things, exceeds that 10% figure, the proposal should be accompanied by demonstrable evidence of clear local community support for it. This acknowledges that the 10% addition figure is not a ceiling (a maximum) but that to exceed it there needs to be support. The policy provides a definition which explains that the evidence of community support should be provided at the application stage and explains how it is to be gathered and considered. Should the evidence not be clear Parish or Town Council support will be required.
8. In this case there are a number of objections to the scheme, including from the Parish Council. Thus, whilst the approach of gaining support prior to submission of the application would not have been a policy requirement at the time of the application it seems to me that the balance of local opinion, including that of the Parish Council, is against this proposal. As such, and having in mind the localism approach sought by the relevant policies, the scheme would fail to accord with the recently adopted development plan in respect of policies LP2 and LP4.

### ***Character and Appearance***

9. The character and appearance of this settlement is established by relatively low density housing in a rural setting often, and particularly in this area, with a significant degree of tree planting. The area close to the appeal site is at the edge of the settlement. Here development is characterised by its ribbon form along the main road. However, Main Drive, a single track driveway originally associated with a country house in a parkland setting, has development of frontage houses. That development is largely limited to the opposite side of the drive to the appeal site.

10. The appeal site is situated within an area of woodland with an indicative access via driveways (as shown in the Arboricultural Impact Assessment plans) from Main Drive, so creating a small enclave of houses without road frontage. As a consequence the indicative plans for the proposal show dwellings that would be of an uncharacteristic form for this area. Moreover, the proposal would introduce housing onto the east side of Main Drive, an area in which the parkland setting remains undeveloped, albeit not intact. Despite the frontage screening and noting the proposal is an outline scheme, the development would be likely to be seen given the site area, tree constraints, and likely access arrangements. Those access points would also detract from the verdant frontage. This would be harmful to the character and appearance of the surrounding area and settlement at this point. As such, the development would fail to accord with CLLP Policies 17 and 26 which seek, amongst other things, that proposals should have particular regard to maintaining and responding positively to any natural and man-made features within the landscape and townscape which positively contribute to the character of the area.

### **Trees**

11. The site is situated within an area covered by a Tree Preservation Order (TPO) which was served and confirmed, subject to some modifications, in 2002. At the application stage, the Council's Tree Officer considered that there would be adequate space for three dwellings on the site, such that there was no concern about that aspect of this outline application. However, the Tree Officer was concerned that the driveways and underground utilities would not be so easy to accommodate without causing harm to the trees. As such, she sought clarification to confirm that two access drives and underground cabling could be accommodated.
12. As part of the appeal process the appellants have submitted further evidence in this regard. Their Arboricultural Report acknowledges that the proposed development would be within the root protection area of TPO protected trees. As such, conventional methods of construction would not be acceptable. The Arboricultural Consultant explains trees can accept some changes in rooting environment and concludes that would be the case here for both the driveways, the construction traffic route and temporary parking, provided that specialist techniques are used. Given the trees on the site it is acknowledged that root protection areas could not be avoided so that trench-less techniques are suggested to enable services to be provided. The Arboricultural Consultant explains that an Arboricultural Method Statement would be required as part of any permission.
13. However, the assessment before me seeks to provide solutions to gaining site access rather than commenting on the long term impact on the trees as a whole. It seems to me that the access arrangements would impact on the trees in other ways. In particular, in addition to the removal of trees of lesser quality (T6, T7, T38 and G6 as shown on the Arboricultural Plan) there would be a pruning requirement to a number of trees including those at the access points. This would significantly alter those trees and their amenity value. In addition, despite this being an outline scheme, it seems likely that the trees would cause overshadowing, result in leaf and branch drop, and restrict views out such that future occupiers would be likely to seek further works to the retained trees.

14. As a consequence, even were the extensive arboricultural techniques successful, such that the trees remained in long term health, the pruning works likely to be required would harm the amenity value of the trees. This would have a harmful effect on the character and appearance of the surrounding area. Additionally, it is likely that there would be pressure for further works to retained trees once the properties were occupied. As a consequence, the appeal scheme would not respond positively to the key characteristics of the site and so fails to accord with the provisions of CLLP Policies LP17 and LP26.

## **Other Matters**

### ***Heritage Assets***

15. The Council, in its committee report, explains that the appeal site is on Main Drive which provides access to Sudbrooke Park from Wragby. However, little else is provided by way of evidence regarding the 'historic park and garden' which is referred to in the reason for refusal. Indeed my colleague in dealing with an appeal in 2015 made it clear that the park is not on the English Heritage (Historic England) List of Registered Parks and Gardens. No evidence has been provided that this situation has changed. Nor is there any evidence before me that the parkland forms any part of a local list. I therefore have not considered the parkland as a designated heritage asset.
16. Having looked at the site, I share my colleague's view that much of the historic parkland has been lost through a combination of development and neglect. Moreover, there is limited evidence before me regarding this matter. Thus, I have dealt with the development in terms of the impact on the character and appearance of the surrounding area, which includes the parkland as set out above.
17. Local residents make particular reference to the listed gates and lodges. It is apparent that these grade II listed buildings, dating from 1795 with later alterations, along with the nearby bridge on Main Drive, would be near to the site but that none would be physically altered by the proposal. These buildings are of architectural interest and are of historic interest because of their association with the former house 'Sudbrooke Holme' and its associations with historic figures including the Ellison Family of whom Richard Ellison was Lincoln MP from 1790-1810. These matters establish the significance of these listed buildings.
18. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special regard to the desirability of protecting the setting of those listed buildings. While the use of the driveway through the listed gates and lodges would see additional activity this would not alter the setting of those buildings rather it would reflect their function. The proposed dwellings would be adequately distant and screened by remaining trees so that they would have little impact upon them, but there would be a marginal change because the area beyond the gates would no longer remain free from development at this side of the drive, where it has previously been an entrance to a parkland landscape. This would detract from the understanding of their role as an entrance to the parkland and, in terms of the Framework, result in less than substantial harm of a modest level.
19. In terms of the heritage assets I conclude, on the evidence before me, that the appeal scheme would have a modest harmful impact upon the setting of the

nearby heritage assets. This matter, although of little weight, is one for the planning balance.

### **Highways**

20. The Parish Council and other local residents express concern at the width of Main Drive as an access road. Having seen this access, I consider that highway access would be adequate for the number of dwellings proposed such that this does not count against the scheme. I have noted the appellants' suggestion of adding a passing bay. However, this would further urbanise the area. Moreover, the driveway to the proposed dwellings would provide some scope for passing such that a formalised bay would be unnecessary. I have noted the Irish Highways Guidance note supplied by one objector. However, that is not planning advice which applies here. I therefore do not attach weight to this matter in coming to my decision. Rather, I note that the local Highway Authority does not object to the scheme and I concur with that view.

### **Ecology**

21. Local residents express concern regarding the impact on wildlife in this location. However, there is no substantiated evidence before me regarding this matter. Concerns regarding nesting birds and development activity would be covered under the provisions of the Wildlife and Countryside Act.

### **Archaeology**

22. The County Council's archaeological officer does not object to this proposal or seek conditions. However, a neighbour points to a number of archaeological finds close to the Lodges. Had I come to a different conclusion in respect of the appeal I would have sought further information as it would have been necessary to consider this matter and its implications, including possibly in respect of planning conditions.

### **Flood Risk**

23. Much of the site lies within Zone 1 which is land at the lowest risk of flooding and which is, therefore, suitable for housing. Whilst part of the site falls within Flood Zone 3, which is not suited to housing, I am satisfied that the outline scheme could be designed to avoid use of this area. I note that the Environment Agency does not object to the scheme on that basis.

24. There is concern raised by a local resident about proximity to the sewage pumping station. However, I note that the corner of the site where the pumping station is located includes many TPO trees so it is likely that the dwellings would be some distance from this infrastructure.

### **Housing Mix**

25. The appellants suggest that 'non-estate' larger dwellings, as proposed here, are needed to retain a housing mix. However, there is no substantiated evidence of such a need in this locality.

### **Planning Balance and Conclusions**

26. As set out above I conclude that the proposed development would harm the character and appearance of the locality, and would have an adverse impact upon trees. In Policy terms the housing need in this location is being met. The

proposal would fail to accord with CLLP policies LP2, LP4, LP17 and LP26. Thus there would be conflict with the Local Plan. There would also be a very modest harm in terms of the setting of listed buildings although I note this is not a determinative factor in this case such that, in Framework paragraph 134 terms, the modest public benefits of providing new housing stock would outweigh the very modest harm.

27. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise, which they do not. Thus, for the reasons set out above and having had regard to all other matters raised I conclude the appeal should fail.

*Zoë H R Hill*

Inspector